

# City of Las Cruces®

PEOPLE HELPING PEOPLE

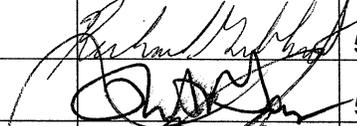
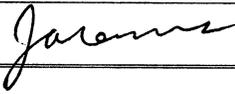
## Council Action and Executive Summary

Item # 17Ordinance/Resolution# 10-097Council District: 1For Meeting of September 21, 2009

(Adoption Date)

**TITLE:** A RESOLUTION APPROVING TWO GRANTS UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP), ONE FOR TIERRA DEL SOL AND ONE FOR LA CASA, INC. THE GRANTS PROVIDE OPERATING AUTHORITY TO EACH NON-PROFIT AGENCY TO BECOME NSP PROPERTY OWNERS, REHABILITATE AND SELL THE PROPERTIES TO ELIGIBLE HOMEBUYERS OR MAKE THEM AVAILABLE TO ELIGIBLE RENTERS.

**PURPOSE(S) OF ACTION:** To provide the documents authorizing the City's NSP grantees to move forward and implement the NSP.

Name of Drafter: Jerry Nachison		Department: Community Development		Phone: 528-3208	
Department	Signature	Phone	Department	Signature	Phone
Community Development		528-3060	Budget		541-2300
			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** In July 2008, the U.S. Congress developed and President Bush signed the Housing and Economic Recovery Act of 2008 or HERA. HERA was created to provide neighborhood stabilization to communities throughout the United States with foreclosed and abandoned residential properties due to tough economic times, thus creating the Neighborhood Stabilization Program (NSP). Under HERA, the State of New Mexico received a total allocation of \$19.6 million. The City applied for and received \$1.5 million from the State Department of Finance and Administration, Local Government Division in April 2009.

The City developed and issued competitive requests for qualifications to a list of eligible applicants. The two cited non-profits were selected in late spring 2009. The City is awarding a grant to each that provides the ability to receive property from the City and carry out all necessary rehabilitation work. Tierra del Sol will receive \$695,000 and La Casa, Inc. will receive \$700,000. After rehabilitation, Tierra del Sol will sell the properties to eligible homebuyers. The proceeds for the sale will come back to the City and be recycled into additional property purchases. After rehabilitation, La Casa, Inc. will hold the properties in perpetuity as affordable rental units for low income individuals or families.

(Continued on page 2)

**SUPPORT INFORMATION:**

Fund Name / Account Number	Amount of Expenditure	Budget Amount
HUD Special Projects Tierra del Sol / 20184230-TBD La Casa / 20184230-TBD	\$695,000.00 \$700,000.00	\$695,000.00 \$700,000.00

1. Exhibit "A" – Resolution
2. Exhibit "B" – Grant Agreement, Tierra del Sol
3. Exhibit "C" – Grant Agreement, La Casa, Inc.

**OPTIONS / ALTERNATIVES:**

1. Vote YES and approve the Resolution formalizing the two cited NSP grant agreements.
2. Vote NO and disapprove the Resolution, thus not approving authorization for the two grantees. Such action puts the City's NSP on hold, requiring further discussions on the rationale for non-approval. The City's compliance with NSP required timetables could be endangered, possibly requiring some reversion of funds to the State at a later date.
3. Modify the Resolution and vote YES to approve a modified Resolution. This action will be based on the Council's discretion and may or may not impact implementation of the NSP.
4. Table or Postpone action on the requested Resolution. Direction would be required of the Council to staff. Tabling or postponing could jeopardize the City's ability to utilize these funds from the State due to HUD's established deadlines.

**RESOLUTION NO. 10-097**

**A RESOLUTION APPROVING TWO GRANTS UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP), ONE FOR TIERRA DEL SOL AND ONE FOR LA CASA, INC . THE GRANTS PROVIDE OPERATING AUTHORITY TO EACH NON-PROFIT AGENCY TO BECOME NSP PROPERTY OWNERS, REHABILITATE, AND SELL THE PROPERTIES TO ELIGIBLE HOMEBUYERS, OR MAKE THEM AVAILABLE TO ELIGIBLE RENTERS.**

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; and

**WHEREAS**, due to the urgency expressed under HERA, the entire allocation of HERA funding were awarded to the State of New Mexico Department of Finance and Administration, Local Government Division, and the City of Las Cruces received a grant from the New Mexico Department of Finance and Administration for \$1,500,000 to operate its NSP; and

**WHEREAS**, the City staff have prepared the grant agreements to Tierra del Sol (\$695,000) and to La Casa, Inc. (\$700,000) to carry out their responsibilities in these grants to implement the NSP; and

**WHEREAS**, the responsibilities of the non-profits include owning NSP properties transferred from the City and rehabilitating them to code and after rehabilitation, Tierra del Sol will resell the properties to eligible homebuyers and La Casa will hold the properties in perpetuity for low income renters.

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

(I)

THAT the City of Las Cruces Neighborhood Stabilization Program Agreements with Tierra del Sol and La Casa, Inc. to implement the NSP, as shown in Exhibit "A" and "B," attached hereto and made part of this Resolution, are hereby approved.

(II)

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

DONE and APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2009.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

VOTE:

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

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

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

Councillor Connor: \_\_\_\_\_

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

Councillor Archuleta: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

Councillor Jones: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

APPROVED AS TO FORM:

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

**MASTER AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL (TdS) FOR THE ACQUISITION, REHABILITATION AND RESALE OF SINGLE FAMILY DWELLINGS UNDER THE NEIGHBORHOOD STABILIZATION PROGRAM (NSP)**

**THIS AGREEMENT** is entered into between the City of Las Cruces (herein called the "Grantee") and Tierra del Sol (herein called the "Developer") under a State-issued NSP Grant; the Developer 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 Developer 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 Developer agree and follow hereto that;

**I. SCOPE OF SERVICE**

**A. NATIONAL OBJECTIVE:**

The Grantee and Developer 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 (HERA). This is acquisition and rehabilitation for the purpose of providing home ownership opportunities for low to middle 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. Annual Gross Income Adjusted for Family Size – means 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 the U.S. Department of Housing and Urban Development (HUD) for the Las Cruces Metropolitan Statistical Area (MSA).

3. Affordability Period – means as defined in Section I, Paragraph C.9 of this Agreement and is up to 15 years.
4. Dwelling/Unit - A dwelling unit has a minimum of one (1) bedroom, one (1) full bath. Living Room, Dining Area and Kitchen with at least 650 square feet of living space. The property should have a minimum of 150 square feet of outside space.
5. 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.
6. 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.
7. Grant Documents – means this Agreement, the Mortgage and Restrictive Covenants 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.
8. Lease to Own – means a structured rental agreement (i.e., lease) of up to 24 months executed between the Developer and a members of a qualified family that allows them to rent said property, build a down payment and commit to purchasing the dwelling at the end of the lease period. A lease up to 36 months may be considered in exceptional circumstances approvable by the Grantee.
9. 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 median annual income Adjusted for Family Size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.
10. 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 SMSA, which includes the City of Las Cruces, as determined by HUD.
11. Middle Income Person or Middle Income Household - means one or more natural persons or a family who has a total Annual Gross Income for the household that is between eighty percent (80%) to one hundred and twenty percent (120%) of the Family Size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

12. Project – means the acquisition of one or more dwellings and rehabilitation thereof within the city limits of Las Cruces, that will be re-developed and sold for owner-occupied, single family residences. These shall be exclusively owned and occupied by Low to Middle Income persons, subject to the affordability requirements as stated in Section I, Paragraphs C.9-10.
13. Project Completion – means that the rehabilitation work on each dwelling contemplated under this Agreement has been completed, the unit has met all CDBG and NSP Program regulations, received the Certificate of Occupancy Completion by the Grantee, and the unit is sold and occupied by qualified homeowners, 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.
14. Property Amendments – means all qualified properties transferred to the Developer by from the Grantee and made available for sale to qualified buyers under this Agreement as part of Attachments “A” and “B” (described below).
15. Property Purchaser – The Developer shall do an initial review of income eligibility for each prospective homebuyer. In determining eligibility, the Developer acknowledges that the City may examine the source documents evidencing the prospective tenant’s AGI, per 24 CFR Part 5.609. All documentation including, but not necessarily limited to, a homebuyer’s application, verifications, proposed sale and/or lease terms may be reviewed by the City’s Neighborhood Services Section, its Successors or Assigns, for final approval before a purchase/lease contract is signed and per City monitoring requirements.

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 be aware that “dwelling” and “unit” are used interchangeably in this Agreement.

### **C. HOMEOWNERSHIP ACTIVITIES:**

The Grantee will purchase single family detached or attached houses. All properties will either be foreclosed and available or abandoned, blighted and unused, with owners willing to sell. Vacant lots for infill purposes may also be considered for new residential construction. Such properties will be deeded over to the non-profit Developer for rehabilitation/reconstruction and resale to qualified homebuyers.

There are two phases to this award. Phase I goes from the date of award through October 31, 2010. It is expected that at least 5-8 single-unit or other qualifying properties will be bought by the City, transferred to the Developer, rehabilitated and then re-sold by the Developer. All funds for the rehab and re-sale of these properties must be obligated on or before October 31, 2010. Any properties rehabbed, sold and closed prior to October 31, 2010 will be treated the same way as those in Phase II, following.

Phase II goes from November 1, 2010 through April 30, 2013. In this phase any funds from the re-sale of rehabilitated homes will be returned to the Grantee, aggregated as appropriate and recycled into the purchase, transfer and re-sale of additional properties. Such recycling will continue at least through October 31, 2013.

1. Each property transferred to the Grantee from a seller will be amended to this agreement under Attachment "A1"; all property transfer documents from Grantee to Developer are at Attachment "A2" and property transfers from Tierra del Sol to the eligible home-buyers are at Attachment "A3." Attachment "B2" Restrictive Real Estate Covenants, is required with all real estate transfers and resales.
2. The Developer may sub-contract appropriate activities, consistent with 24 CFR Part 85. The Developer will 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 initial purchase, redesign, permits, fees, appraisals, transfers, etc., are not counted with the \$50,000 rehabilitation cap. These will be paid by the developer from funds in the grant or directly from the Grantee's NSP Administrative funds on behalf of the Developer, as appropriate. The developer must follow the Energy Efficiency guidelines in Section I.B(6), prior in all rehabilitation plans..
3. The Developer has the option of establishing a sweat equity requirement of no more than 500 hours per property. These hours will be applied to the cost of the rehabilitation, to help ensure affordability of the property.
4. Rehabilitated/redeveloped properties may be sold outright or on a lease-to-own basis, with a lease term of no more than twenty-four (24) months. In exceptional circumstances, the lease-to-own may be written for up to thirty-six (36) months with the approval of the Grantee. If lease-to-own is utilized, the Developer must provide a letter to the tenants and include similar language in the lease informing them of non-URA eligibility (see draft letter to adapt at Attachment "C").

At the time of sale to an eligible household (after completion of rehabilitation to code) the property will be re-appraised by the Grantee. The appraised value must be in the "affordable housing" range, which currently (2009) is not-to-exceed \$140,000 (**NOT FINAL**) per unit in Las Cruces. Exceptions and special circumstances will be considered. The post-rehab appraisal will establish the affordability level. This amount may or may not be the same as the final sale price. A soft second to ensure affordability is required based on the differences between the appraisal and actual sell value. **NOTE:** At the time of sale to an eligible homebuyer, the appraisal must be no more than 60 days old, so coordination with the Grantee is critical.

5. Ownership of the rehabilitated property is limited to families at or below 120% of Adjusted Median Income (AMI). The Grantee encourages the Developer to give priority consideration to those persons/households above 50% and below 120% of AMI.
6. The Developer will identify eligible individuals/households and provide at least 10 hours of homebuyer counseling with appropriate documentation, either directly or

through a qualified partner, for each qualifying individual or family slated to purchase a unit. Other services may also be needed and provided.

7. The monthly cost of a property to an eligible applicant (see #4 above) should be no more than 30% of that applicant's monthly gross income. Developer will work with NSP homebuyer applicants and local lending institutions to gain favorable mortgage terms (0-7% interest, maximum).
8. Once the properties are sold, any program income generated by the Developer as a result of the sale must be returned to the Grantee for re-investment in similar properties during the initial 4-year program period, and beyond, as applicable. The Developer will take possession of these additional properties and rehabilitate/sell them, and assist additional clients with re-invested NSP funds. Third party funds may be added to these additional re-sales to aid affordability.
9. There is an Affordability Period associated with each property sold to an eligible purchaser, based on a subsidy amount (soft second) and equity gain. If the Homeowner assisted amount is between 0-\$15,000, the affordability period is for five (5) years. If the homeowner assisted amount is between \$15,001 and 40,000, the affordability period is for ten (10) years. If the homeowner assisted amount is \$40,001 or more, it is for fifteen (15) years. The affordability period begins on the date of the original mortgage to the homebuyer. The affordability and equity sharing chart must be included in the mortgage documents.

If at any time the property is sold or transferred during the affordability period, it must be to another qualified homeowner and must follow the equity share requirement listed below. If the property is sold by one owner to another (see No. 10, following), the start point for an equity share for the second buyer will begin at the year/date the unit is purchased. For example, if the dwelling has a soft second of \$17,000, the affordability period is 10 years. If the unit is sold at year 5, month 10, the affordability period will be the remainder of that established at by the original mortgage. The new owner's affordability period will begin at year 5 month 10 and go through the end of year 10. During this period, if there is any equity gain and the property is again sold, such equity will be shared between the Owner and the City. The equity sharing principle is illustrated in the following chart.

<b>AFFORDABILITY AND EQUITY SHARING</b>			
<b>Equity Gain Percent Share</b>	<b>5-Year</b>	<b>10- Year</b>	<b>15-Year</b>
	<b>City/Owner</b>	<b>City/Owner</b>	<b>City/Owner</b>
Year 1	80/20	90/10	85/15
Year 2	60/40	80/20	75/25
Year 3	40/60	70/30	65/35
Year 4	20/80	60/40	55/45
Year 5	0/100	50/50	50/50
Year 6	---	40/60	45/55
Year 7	---	30/70	40/60
Year 8	---	20/80	35/65

Year 9		---	10//90	30/70
Year 10		---	0/100	25/75
Year 11		---	---	20/80
year 12		---	---	15/85
Year 13		---	---	10/90
Year 14		---	---	5/95
Year 15		---	---	0/100

10. The property must remain Owner-occupied during the Affordability Period. If it ceases to be Owner-occupied during this period, whether through sale or otherwise, the Owner agrees to sell the property to another individual or family that qualifies as eligible under the terms of this program. The Developer and the Grantee shall have the right of first refusal. The new Owner must use the property as a principle residence and be bound by the stipulations of the Affordability Period.

**II. PRIORITY LOCATIONS**

First priority on properties to be acquired by the Grantee for transfer to the developer are within those areas of greatest identified need and are the following Census Tracts, in order of priority:

<u>First Priority Level</u>		<u>Second Priority Level</u>	
1)	3.00	1)	4.01
2)	5.00	2)	6.00
3)	1.02	3)	7.00
4)	4.02	4)	8.00
5)	2.00	5)	9.00

The need is for all block groups within these Census Tracts. These are within the heart of the city and near jobs, shopping, transit, and government access. Other Census Tracts, outside the First and Second Priority Levels, but within the city limits may be considered, but are not a priority for property identification and selection. See map at Attachment "D".

**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 Developer full authority, subject to Grantee oversight, for the redevelopment of the transferred properties, housing counseling, other services as appropriate and all direct costs associated with the additional property transactions to eligible buyers. The grant to the Developer shall be on the terms set forth in this Agreement and Mortgage and Restrictive covenants, as required by the Grantee and all other documents in the progressive chain of transfers illustrated by Section I.C.. Conforming to the same documents shall be a mortgage secured by the homeowner upon purchase from the Developer and also incorporated herein by reference.

**C. BUDGET:**

Payments will be made only for the line items listed below:

NSP HOMEOWNER ESTIMATED COSTING				
Planned Line Items	Unit Cost	Multiple Units (#)	TOTAL	NSP \$\$\$
			BUDGET	ONLY
Developer's Fee				
Real Estate Consultant (opt)				
Purchase Price w/o broker/appraiser cost				
Design Fee for Rehab				
Hard Rehab Costs				
Front End Closing Costs (City to developer)				
a.				
b.				
c.				
d.				
Management Overhead costs				
Qualifying Homeowner costs				
Housing Counseling costs				
Supportive services (List)				
a.				
b.				
c.				
Lease-to-Own Costs (management/utility				
Lease-to-Own Escrows (rents, etc.)				
Closing Costs (Homebuyer)				
a.				
b.				
c.				
d.				
In-Kind Costs (List)				
a.				

b.				
c.				
Sweat Equity (#Hours/Rate)				
Other (List)				
a.				
b.				
TOTAL COSTS/COMPLETE PROGRAM				\$695,000

ADD SHEETS/EXPLANATIONS AS NEEDED

**Indirect costs cannot be charged to this agreement.**

**D. PAYMENTS:**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement to the Developer shall not exceed \$695,000 and is expected to be used for eligible expenses as stated in the budget specified in Section II, Paragraph 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 "D." It is also understood that all requests for payment or advances shall be in writing and must be submitted by the developer to the Grantee.

**E. DISBURSEMENTS:**

The Grantee shall disburse the grant proceeds only after receipt of invoices and certification from the Developer that the portion of work then being billed has been satisfactorily completed. Disbursement of grant proceeds will be to the developer 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, April 30, 2013. Any funds, recycled or otherwise neither obligated nor expended 60 days after the end of the grant period (April 30, 2013) will be held by the Grantee and not be available to the developer.

**F. USE OF GRANT FUNDS:**

The Developer 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 Developer 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 Developer does acknowledge and agree that any funds not used in accordance with permitted CDBG regulations must be repaid to the Grantee. The Developer does acknowledge and agree if this Project as a whole, or as individual single-family houses (units) within the whole, is terminated before completion, either voluntarily or otherwise, the Developer must repay any NSP funds invested in the Project to the Grantee.

**G. PROGRAM INCOME:**

Program income generated from the proceeds of the NSP grant through the sale of properties to eligible homebuyers must be returned to the Grantee for recycling into additional NSP properties, in accordance with 24 CFR §570.500(a) and 24 CFR §570.504. The Developer must demonstrate that its financial management system will track all proceeds of the NSP grant into additional properties, their rehabilitation and resale. The Grantee reserves the right to disallow the retention of program income by the developer with an administrative amendment to this agreement upon review of required operational procedures to track the income by the developer.

**IV. TIME OF PERFORMANCE****A. TERM OF AGREEMENT:**

The term of this Agreement shall commence on the effective date thereof which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through two phases. The first period of performance will continue through October 31, 2010. Phase II runs through April 30, 2013. The term extends to the end of the fifteen (15) year Affordability Period for all properties sold under the NSP between the effective date of the grant and April 30, 2013. 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.

**B. ELIGIBLE PAYMENT PERIOD:**

All eligible expenses and purchases approved by this Agreement and incurred during the grant period through Phase II by the Developer may be reimbursed.

**V. AMENDMENTS**

The Grantee may amend and the Developer can propose to amend the scope of work of this Agreement at any time, when appropriate. Such proposed change requires a written request, to be submitted on the available "Budget Line Item Revision." 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 Developer from its obligations under this Agreement. Extensions of time are not permitted.

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 developer.

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

## VI. 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

Jerry Nachison, Housing  
Development Coordinator  
Community Development Department  
City of Las Cruces  
P.O. Box 20000  
Las Cruces, NM 88004  
Phone: (575) 528-3208  
E-mail: [jnachison@las-cruces.org](mailto:jnachison@las-cruces.org)

### Developer

Ms. Rose Garcia  
Executive Director  
Tierra del Sol, Inc.  
P.O. Box 2626  
Anthony, NM 88021  
  
(575) 882-3554  
[rgarcia@tierradelsol.org](mailto:rgarcia@tierradelsol.org)  
[adavalos@tierradelsol.org](mailto:adavalos@tierradelsol.org)

## VII. ADMINISTRATIVE REQUIREMENTS

### A. APPLICABLE LAWS:

The Developer shall comply with all applicable Federal, state and local statutes, rules and regulations dealing with property acquisition, rehabilitation, resale and quality standards whether they are presently or subsequently promulgated. The Developer 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 Developer 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 Developer 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 RECORDKEEPING:

The Developer 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 Developer shall comply with 24 CFR 570.506 regarding records that must be maintained for this Project. The Developer shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after the Affordability Period. The Developer shall make all records available to the City, State, HUD, and to their respective representatives during normal business hours. The Developer shall maintain all Mortgages and Project financial records, including source documentation to support how NSP funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the 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 Developer must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 5-year period, whichever is later. This section shall survive the termination of this Agreement.

2. Reports:

The Developer shall submit reports every other month beginning 75 days after the execution of the grant award with such reports due by the 15<sup>th</sup> of each target month. These reports shall show the status of participants in the Developer's program, status of construction progress and status of identifying homeowner applicants and qualifying them for occupancy and purchase..

3. Client Data:

The Developer 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 program income limits as published annually by HUD. The Developer will use 24 CFR Part 5 for determining eligibility. Such information shall be maintained in a client file by the Developer and shall be made available to the City's monitors and/or their designees for review upon request.

4. Uniform Administrative Requirements:

The Developer and the Grantee shall comply with 24 CFR §570.610 regarding uniform administrative requirements. The Developer shall provide the Grantee with such documentation and records to satisfy its requirements under these various provisions. The Developer also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

**D. PROPERTY STANDARDS:**

The Developer shall comply with the property standards requirements set forth in City and State Law. The Developer shall keep records to document compliance with these property standards. At Project Completion, each 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 Developer during the pre-occupancy portion of the project and annually to insure that design and construction documents, services provided to the homeowner applicants and mortgage documents are consistent with CDBG rules and regulations and this grant document. There will also be required short annual reports and a certification from the developer to the Grantee annually during the affordability period delineating appropriate statistics on number of initial clients for each sold property consistent with Section VIII.C, prior.

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

**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 and parcel of this Agreement and have the same weight and importance as the initial Paragraphs I through VIII.
- D. All certifications at Attachments A to J shall be signed by the developer as part of this Agreement.

**SIGNATURES ON NEXT PAGE**

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

**TIERRA Del SOL**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CITY OF LAS CRUCES**

\_\_\_\_\_  
Terrence Moore, City Manager  
City of Las Cruces

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

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

**REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:**

Attachment A: Property Documents

- A1 – Property Sale and transfer from Seller to City.
- A2 – Property transfer from City to Developer.
- A3 – Property resale from Developer to eligible homebuyer.

Attachment B: Restrictive Real Estate Covenants for Properties

Attachment C – Sample URA Letter for Adaptation.

Attachment D - Map of Priority Areas.

Attachment E - General Grant Requirements.

Attachment F - Drug-Free Workplace for all Properties.

Attachment G - EEO/AA Clause.

Attachment H - Anti-Lobbying Clause;

Attachment I - Section 3 Clause + Stipulations

Attachment J - Required City and Federal Clauses and Certifications.

**Attachment A:**

**OPEN FOR  
PURCHASE/TRANSFER DOCUMENTS**

ATTACHMENT "B"

CITY OF LAS CRUCES

RESTRICTIVE COVENANTS AGREEMENT

RESTRICTIVE REAL ESTATE COVENANT – \_\_\_\_\_, Las Cruces, New Mexico.

Made in Las Cruces, New Mexico

Date \_\_\_\_\_

Option A – City to Developer; Option B - Developer to homeowner. This agreement is made by \_\_\_\_\_ in favor of \_\_\_\_\_. The premises discussed in this covenant are at \_\_\_\_\_. This covenant is a part of NSP Grant \_\_\_\_\_, Dated \_\_\_\_\_ (herein called the "Agreement"). At completion of acquisition, the premises are owned by the developer, with certain limitations.

1. Recitals:

- A. The following premises described as follows:
  - (i) Description of building and premises including legal description. (to be added).
  - (ii) Square footage of the property is approximately \_\_\_\_\_ and square footage of the buildings on the property are \_\_\_\_\_.
- B. The Owner 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 \_\_\_\_\_.
- D. In consideration for the assistance given by the City for the benefit of the \_\_\_\_\_, 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..

2. Restrictive Covenants:

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

A. Use of Property:

(a) for Developer - In exchange for \$ \_\_\_\_\_ to acquire, rehabilitate and resell the premises, as described by the Developer's application of May 8, 2009 the premises of the

Developer owns this property which shall maintain it under this Covenant, with the first priority usage as slated for sale to qualified low to middle income persons.

(b) for Homeowner - In exchange for \$ \_\_\_\_\_ to acquire the premises at \_\_\_\_\_ and shall maintain it under this Covenant for an affordability period of fifteen (15) years.

The real property shall be used as lived-in habitation of record for the new owners.

- B. 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 using legal and equitable action including injunctive relief.
- B. This Agreement and Restrictive Covenant shall automatically terminate at the time of sale to homeowner, or for the homeowner, at the earlier of 5 PM New Mexico Time on the 15<sup>th</sup> anniversary of such recordation that is running with the real property and subject to Item 2.A above.
- C. 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 at 24 CFR Part 982.401 and local building code requirements when sold to an eligible applicant.

**3. Reporting Requirements**

The Developer shall report in writing, at least annually to the City through the affordability period consistent with Section I.C, prior, of this document. With this report the developer shall also submit a certification that the owners of the premises are of low to middle income.

**4. 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.

**5. Binding Effect**

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

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Tierra del Sol, in the amount of \$\_\_\_\_\_ ("Loan") for acquisition. The Loan is made to the Homebuyer through the Lender's NSP Program pursuant to Title 24 of the Code of Federal Regulations Part 570, as amended from time to time, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

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

- A. Affordability. Homebuyer shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the subsidy is from \$1 to \$15,000, then the Affordability Period is five (5) years from the date of the Mortgage; if the subsidy is from \$15,001 up to and including \$40,000, then the Affordability Period is ten (10) years from the date of the Mortgage; if the subsidy is greater than \$40,000, then the Affordability Period is fifteen (15) years from the date of the Mortgage. The Affordability Period will begin on the date of the Mortgage.
- B. Owner Occupied. If, at any time during the term of the Affordability Period, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for subsequent purchase only to a buyer whose family qualifies as a low-income family, as defined by the United States Department of Housing and Urban Development, and will use the Property as its principal residence. The Owner further represents and warrants that his /her family, if any and the Owner met income eligibility requirements at the time the Loan was committed to the Property, through the Agent, Tierra del Sol.
- C. Transfer of the Property. Developer or Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. The City and Tierra del Sol have the first right of refusal. Owner agrees that the entire Loan will be due and payable upon any such unapproved sale or transfer except as provided for in Paragraph (D).
- D. Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the Loan will not be due on transfer of the Property if (1) a transfer of the Property is the result of the death of Owner and the transfer is by devise or operation of law, (2) the transfer is to a member of Owner's immediate family ("Heir") (for purposes of this Agreement the term "immediate family" means parents, siblings or children only), (3) the Heir qualifies for assistance under the federal regulations governing income eligibility for the Loan, and (4) the Heir covenants and agrees in writing to maintain the Property as the Heir's principal residence for the remainder of the term of the Loan and to otherwise comply with all the terms and conditions of this Agreement.
- E. Default. Developer or Owner agree that any default under the terms of the Loan, as those terms are set forth in this Agreement and executed contemporaneously herewith, or under the terms of any other mortgage or encumbrance on the Property, whether superior to or junior to this Agreement, will constitute a default under this

Agreement and shall cause the full amount of the Loan to become immediately due and payable.

F. Right of Redemption. If this mortgage is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months.

Developer or Owner acknowledges having read all the provisions of this document, and agree to its terms.

IN WITNESS WHEREOF the undersigned Owner(s) have hereunto set their hand(s) this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Owner/Borrower , Owner/Borrower

\_\_\_\_\_  
Owner/Borrower , Owner/Borrower

**Acknowledgment**

STATE OF NEW MEXICO )  
 ) ss  
COUNTY OF DONA ANA )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_, by \_\_\_\_\_.

\_\_\_\_\_  
Notary Public

My commission expires:

\_\_\_\_\_

## Attachment C

**SAMPLE URA Ineligibility Move-In Notice – Adapt and Revise as Necessary**

(Use Grantee Letterhead)

Date: \_\_\_\_\_

Dear \_\_\_\_\_:

Tierra del Sol was funded to implement a program with dollars from the State of New Mexico and the Department of Housing and Urban Development (HUD). The project involves, acquisition and rehabilitation of the property located at \_\_\_\_\_.

Because federal funds are involved in this project, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), may apply to persons in occupancy at the time of dwelling purchase. **However, if you choose to occupy this property as a new tenant after rehabilitation you will not be eligible for relocation payments or assistance under the URA.** This notice is to inform you of the following information before you enter into a lease agreement and/or occupy the property located at the above address.

- You may be displaced or required to temporarily relocate;
- You may be subject to a rent increase; and
- You will not be entitled to any relocation payments or assistance provided under the URA. If you have to move or your rent is increased as a result of the project you will not be reimbursed for any such rent increase or for any costs or expenses you incur in connection with a move as a result of the project.

Please read this notification carefully prior to signing a rental agreement and moving into the dwelling. If you should have any questions about this notice, please contact \_\_\_\_\_ at \_\_\_\_\_, phone # \_\_\_\_\_. Once you have read this and understood this notice,

**please sign the statement below and return it to the project office if you still desire to rent the unit.**

**Sincerely**

\_\_\_\_\_ **(name and title)**

\*\*\*\*\*

**I have read the above information and understand the conditions under which I am moving into this project.**

**Print Names of All Tenants**

**Signatures of all Tenants**

**Address, and unit # if applicable.**

**Date**



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

The Developer 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 Developer 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 Developer shall submit its annual audit to the Grantee within one hundred twenty (120) days of the end of the Developer's fiscal year.

All Developer 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 Developer'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 Developer or within 30 days after receipt. Failure of the Developer 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 developer 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 developer under this Agreement shall become the property of the Grantee and the Developer 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 developer 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 developer 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 Developer 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 Developer is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

**C. Insurance and Bonding**

**1. General:**

The Developer 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 Developer shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the 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 developer 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 developers performance of the Agreement. Neither the Grantee nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Developer with in 30 days of execution of this Agreement or it shall be automatically terminated.
- (b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Developer shall provide the Grantee with evidence of the renewal of said insurance policies in a form satisfactory to the Grantee.

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

- (i) Commercial General Liability Insurance: The developer 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 Developer must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
- (iii) Flood Insurance: The Developer shall provide Flood Insurance as required under applicable HUD regulations, if necessary.

**D. Close-Outs**

The Developer'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 Developer 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 Developer 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 Developer is an "independent contractor."

**G. Hold Harmless**

The Developer 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 developer 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 developer is relieved of its obligation to defend the grantee, and (b) the developer's obligation to indemnify and save harmless is limited to the actual amount representing the developers comparative share of negligence with the Grantee.

#### **H. Grantee Recognition**

The Developer 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 Developer 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 Developer'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 Developer 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 Developer'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 developer 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 Developer 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 Developer outside the metropolitan area of Las Cruces or south Dona County is not permitted with funds provided under this Agreement.

**L. Religious Organizations**

The Developer 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 properties, subject to HUD rules and regulations and prior Grantee approval.

**III. PERSONNEL & PARTICIPANT CONDITIONS**

**A. Civil Rights - Compliance**

The Developer 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 Developer 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 Developer 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 Developer 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 developer shall make such postings available in alternate formats upon request. The developer 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 Developer shall prepare and provide to the Grantee an approved AAP and appropriate Tenant Selection plans to the Grantee.

2. Women/Minority Business Enterprise

The Developer 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 Developer 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 Developer 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 Developer 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 developer 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 Developer 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 Developer 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 Developer 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 Developer 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. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the developer, or of any designated public agencies, developer that receives funds under the NSP. The Developer 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 Developer 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 Developer 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 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 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 Developer, or of any designated public agencies, or developer that is receiving funds under this part.

The Developer 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 Developer shall also provide signed COI statements dated no earlier that 180 days prior to the effective date of this Agreement for Board members and appropriate staff so identified.

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_ **Date**

By: \_\_\_\_\_

\_\_\_\_\_ **Date**

## ATTACHMENT "F-1" Part 1

### 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 as stated in Exhibit A. If it is later determined that the Developer knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The developer will comply with the other provisions of the Act and with other applicable laws.

#### CERTIFICATION

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

the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.

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

**ATTACHMENT "F-1," Part 2**

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

Name of developer:

Program Name:

Date: \_\_\_\_\_

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

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

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

**ATTEST:**

By: \_\_\_\_\_ Date \_\_\_\_\_

By: \_\_\_\_\_ Date \_\_\_\_\_

**ATTACHMENT "F", Part 3**

**PLACE OF PERFORMANCE**

**FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

Name of Developer:

Program Name:

Date: \_\_\_\_\_

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

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

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

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_ Date

By: \_\_\_\_\_

\_\_\_\_\_ Date

**ATTACHMENT "G"**

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

In carrying out this Agreement, the developer 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 developer shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The developer shall state in all solicitations or advertisements for employees placed by or on behalf of the developer that it is an Equal Opportunity or Affirmative Action employer.

**ATTEST:**

**By:**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**By:**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**ATTACHMENT "H"****CERTIFICATION REGARDING LOBBYING**

The undersigned certifies, subject to Section II.D, Attachment A, 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 herein is on a project receiving direct Federal financial assistance from the Department of Housing and Urban Development (“HUD”) and 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 directed to low and very low income persons residing in 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 City and 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 HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.
- C. The contractor 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, 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. Part 135, and all applicable rules and orders of HUD issued therein prior to the execution of this contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the contractor and subcontractor(s) for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the contractor and subcontractor(s) and assigns to those sanctions identified by the City’s Agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.
- E. The Contractor will include this Section 3 Clause in every subcontract for work in connection with the Program and will, at the direction of the City of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-recipient or contractor is in violation of the HUD regulations at 24 CFR Part 135. The Subcontractor will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of at 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.

F. The contractor will certify that any vacant employment positions, including those for training, 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 at 24 CFR Part 135 require employment opportunities to be directed were not filled to circumvent the contractor's obligations under said regulations.

G. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD issued there under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project and shall be binding upon the contractor or subcontractor(s), its successors or assigns. Failure to fulfill these requirements shall subject the contractor, its successors, and assigns to those sanctions specified by the City Agreement or contract through which Federal assistance is provided, and as are specified by 24 CFR Part 135. These include, but are not limited to, termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.

H. The subcontracting parties to the prime contractor of this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The subcontracting parties will sign a separate Section 3 clause certification (this form) prior to contract execution with the prime contractor and the execution of the contract between the prime contractor and the City. The subcontracting parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.

**ATTEST:**

**By:**  
\_\_\_\_\_

**Date:** \_\_\_\_\_

**By:**  
\_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT "J"**

**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: \_\_\_\_\_

## Attachment "K"

### 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 these 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.

**Tierra del Sol, Inc.**

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 developer and the Grantee, or agent of the developer 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 developers officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. Developer 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 developer's, employees, or agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. The developer 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 developer, 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 developer 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 developer, 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 developer and such disclosure is entered upon the minutes of the developer, 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 developer 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 developer 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 these 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 these 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 developer'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 developer 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 developer, 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 developer 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 developer 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

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Name and Title of Authorized Representative

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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 developer 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 developer is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**Name and Title of Authorized Representative**

---

**Signature**

**Date**

## **INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this Agreement, the developer 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.
- 5.3. The developer 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.
- 6.4. The developer 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.
- 7.5. 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.
- 8.6. 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 these 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 these 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.

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**Name and Title of Authorized Representative**

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**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.

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**Name and Title of Authorized Representative**

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**Signature**

**Date**

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**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 developer 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 developer 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 developer 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 developer 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 developer 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 developer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the developer 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 developer 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 developer agrees to comply with any implementing requirements HUD may issue.

(3) The developer also agrees to include these 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.

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**Name and Title of Authorized Representative**

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**AGE DISCRIMINATION ACT**

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The developer 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.

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**Name and Title of Authorized Representative**

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**Signature**

**Date**

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**MASTER AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND LA CASA, INC.  
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 La Casa, Inc. (herein called the "Developer") under a State-issued NSP Grant; the Developer 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 Developer 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 Developer agree and follow hereto that;

**I. SCOPE OF SERVICE**

**A. National Objective**

The Grantee and Developer 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. These 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 \$140,000 (**NOT FINAL \$**); (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 Developer and rehabilitated/re-developed by the developer 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 properties transferred to the developer from the Grantee under this Agreement as part of Attachments “A” and “B” of the required certifications attached to the Grant 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. These 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 Developer shall do an initial review of income eligibility for each prospective tenant. In determining eligibility, the developer acknowledges that the City may examine the source documents evidencing the prospective tenant’s AGI, per 24 CFR Part 5.609. The Developer 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).

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, residential properties that have been abandoned or foreclosed upon, or are blighted or unused (with owners willing to sell) in order to deed them to the Developer 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 Developer 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 an estimated 5-8 properties (units), in consultation with the Developer. The properties will be single family detached houses, preferably, but duplexes, single family attached properties, and other small multifamily properties (generally less than eight (8) units) will be considered.
- C. The Grantee will transfer the Titles for the properties to the Developer prior to rehabilitation, who will own the properties outright and in perpetuity and operate them as rental units. The Developer may partner with subsidized rental program(s) that may be available for these units. It has the option of establishing a special purpose entity to own and operate these properties.
- D. The Developer 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. These will be paid directly by the Grant or by Grantee NSP Administrative funds. In rehabilitation, the Developer 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 developer as needed.
- E. At the time of rehabilitation completion of each unit (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 (2008) is not-to-exceed \$140,000 (**NOT final \$\$**) 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 of each unit, 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 Developer must provide the Grantee with a management plan for approval, to oversee the operation and cash flow of the properties within 120 day's of the signing of this Grant Agreement or no later than 45 days prior to the first occupancy of the first completed rental dwelling, which ever is later. The developer also has the option of hiring a professional management firm to operate these properties. Such contract must be approved in advance of its signing, by the Grantee, and incorporating Sections II.G-J, following.
- G. The Developer must establish separate accounts for rents collected on each 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 these properties.

- 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 Developer 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 Developer 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 developer 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 units are sold or otherwise disposed of at any time after initial title is granted to the Developer, 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. PRIORITY LOCATIONS**

First priority on properties to be acquired by the Grantee for transfer to the developer are within those areas of greatest identified need and are the following Census Tracts, in order of priority:

First Priority Level		Second Priority Level	
1)	3.00	1)	4.01
2)	5.00	2)	6.00
3)	1.02	3)	7.00
4)	4.02	4)	8.00
5)	2.00	5)	9.00

The need is for all block groups within these Census Tracts. These are within the heart of the city and near jobs, shopping, transit, and government access. Other Census Tracts, outside the First and Second Priority Levels, but within the city limits may be considered, but are not a priority for property identification and selection. See map at Attachment "C".

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

**B. Budget**

Payments will be made only for the line items listed below:

NSP RENTER ESTIMATED COSTING				
Planned Line Items	Unit Cost	Multiple Units (#)	TOTAL BUDGET	NSP \$\$\$ ONLY
Developer's Fee				
Real Estate Consultant (opt)				
Purchase Price w/o broker/appraiser cost				
Design Fee for Rehab				
Hard Rehab Costs				
Front End Closing Costs (City to developer)				
a.				
b.				
c.				
d.				
Front End Management Managment				
Overhead costs				
Qualifying Renter Costs				
Front End Social Services				
Management Fee OR Ongoing Property Mgmnt				
Rent Escrows				
Rent Subsidy provided by Third parties				
Rent Subsidy for non-eligibles committed by Grantee or third parties.				
Utilities Escrow Costs				
Maintenance Escrow Costs				
Case Mgmnt/Services Escrow				
Repair/Replacement Escrow				

In-Kind Costs (List)					
a.					
b.					
c.					
Other (List)					
a.					
b.					
TOTAL COSTS/COMPLETE PROGRAM					\$700,000.

ADD SHEETS/EXPLANATIONS AS NEEDED

**Indirect costs cannot be charged to this agreement**

**D. Payments**

It is expressly agreed and understood that the total amount to be paid by the Grantee under this Agreement to the Developer shall not exceed \$700,000 directly or indirectly on the Developers 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 Developer to the Grantee.

**E. Disbursements**

The Grantee shall disburse the grant proceeds only after receipt of invoices and certification from the Developer that the portion of work then being billed has been satisfactorily completed. Disbursement of grant proceeds will be to the Developer 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, April 30, 2013. Any funds, recycled or otherwise neither obligated nor expended 60 days after the end of the grant period (April 30, 2013) will be held by the Grantee and not be available to the Developer.

**F. Use of Grant Funds**

The Developer 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 Developer 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 Developer does acknowledge and agree that any funds not used in accordance with permitted CDBG regulations must be repaid to the Grantee. The developer does acknowledge and agree if this Project is terminated before completion, either voluntary or otherwise; the Developer 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 Developer 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 Developer 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 Developer 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 two time periods. The first period of performance will continue through October 31, 2010 and includes all dollar obligations for the original dwellings identified. The second time period runs through April 2013. 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.

### **B. Eligible Payment Period**

All eligible expenses and purchases approved by this Agreement and incurred during the grant period, the Developer may be reimbursed for expenditures, subject to the time limitations on obligations during the period prior to November 1, 2010.

## **VI. AMENDMENTS**

The Grantee may amend, and the Developer 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 Developer from its obligations under this Agreement. Extensions of time are not permitted.

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 developer.

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

Jerold S. Nachison, Housing  
Development Coordinator  
Community Development Department  
City of Las Cruces  
P.O. Box 20000  
Las Cruces, NM 88004  
Phone: (575) 528-3028  
E-mail: [jnachison@las-cruces.org](mailto:jnachison@las-cruces.org)

### Developer

Ms. Gina Ruiz  
Executive Director  
La Casa, Inc.  
P.O. Box 2463  
Las Cruces, NM 88001  
  
(575) 526-2819  
[gruiz@lacasainc.org](mailto:gruiz@lacasainc.org)

## VIII. ADMINISTRATIVE REQUIREMENTS

### A. Applicable Laws

The Developer 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 Developer 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 Developer 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 Developer 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 Developer 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 Developer shall comply with 24 CFR Part 570.506 regarding records that must be maintained for this Project. The Developer shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after the Affordability Period. The Developer shall make all records available to the City, State, HUD, and to their respective representatives during normal business hours. The Developer shall maintain all Mortgages, Covenants, and Project financial records, including source documentation to support how NSP funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the 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 Developer must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 5-year period, whichever is later. This section shall survive the termination of this Agreement.

2. Reports:

The Developer shall submit bi-monthly reports with such reports due by the 15<sup>th</sup> of each target month. These reports shall show the status of participants in the Developer'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 Developer 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 Developer and shall be made available to the City's monitors and/or their designees for review upon request.

4. Uniform Administrative Requirements:

The Developer and the Grantee shall comply with 24 CFR §570.610 regarding uniform administrative requirements. The Developer shall provide the Grantee with such documentation and records to satisfy its requirements under these various provisions. The Developer also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

**D. Property Standards**

The Developer shall comply with the property standards requirements set forth in City and State Law. The Developer shall keep records to document compliance with these property standards. At Project Completion, the each 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 Developer 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 Developer 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 Developer as part of the execution of the Agreement.

**SIGNATURE ON NEXT PAGE**

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

**LA CASA, INC.**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**CITY OF LAS CRUCES**

\_\_\_\_\_  
Terrence Moore, City Manager  
City of Las Cruces

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

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

**REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:**

Attachment A: Property Documents

AI – Property Sale and transfer from Seller to City.

A2 – Property transfer from City to Developer.

Attachment B: Restrictive Real Estate Covenants for Properties from Grantee to Developer.

Attachment C – Map of Priority Areas.

Attachment D - General Grant Requirements.

Attachment E - Drug-Free Workplace for all Properties.

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**

**OPEN FOR  
PURCHASE / TRANSFER DOCUMENTS**

**Attachment B****RESTRICTIVE REAL ESTATE COVENANT – \_\_\_\_\_, Las Cruces, New Mexico.**

Made in Las Cruces, New Mexico

Date \_\_\_\_\_

This agreement is made by **La Casa, Inc.**, a New Mexico non-profit organization (herein after referred to as Developer), whose address is P.O. Box 2463, Las Cruces, New Mexico 88001, in favor of **the City of Las Cruces**, a municipal corporation (hereinafter designated as "the City." The premises discussed in this Covenant are at \_\_\_\_\_. This Covenant is a part of NSP Grant \_\_\_\_\_, Dated \_\_\_\_\_ (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) Description of building and premises including legal description (to be added).
  - (ii) Square footage of the property is approximately \_\_\_\_\_ and square footage of the buildings on the property are \_\_\_\_\_.
- 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 \$\_\_\_\_\_ to acquire, rehabilitate and rent the premises, as described by the Developer's application of May 8, 2009 the premises 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 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 and 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, prior, of this document. With this 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.

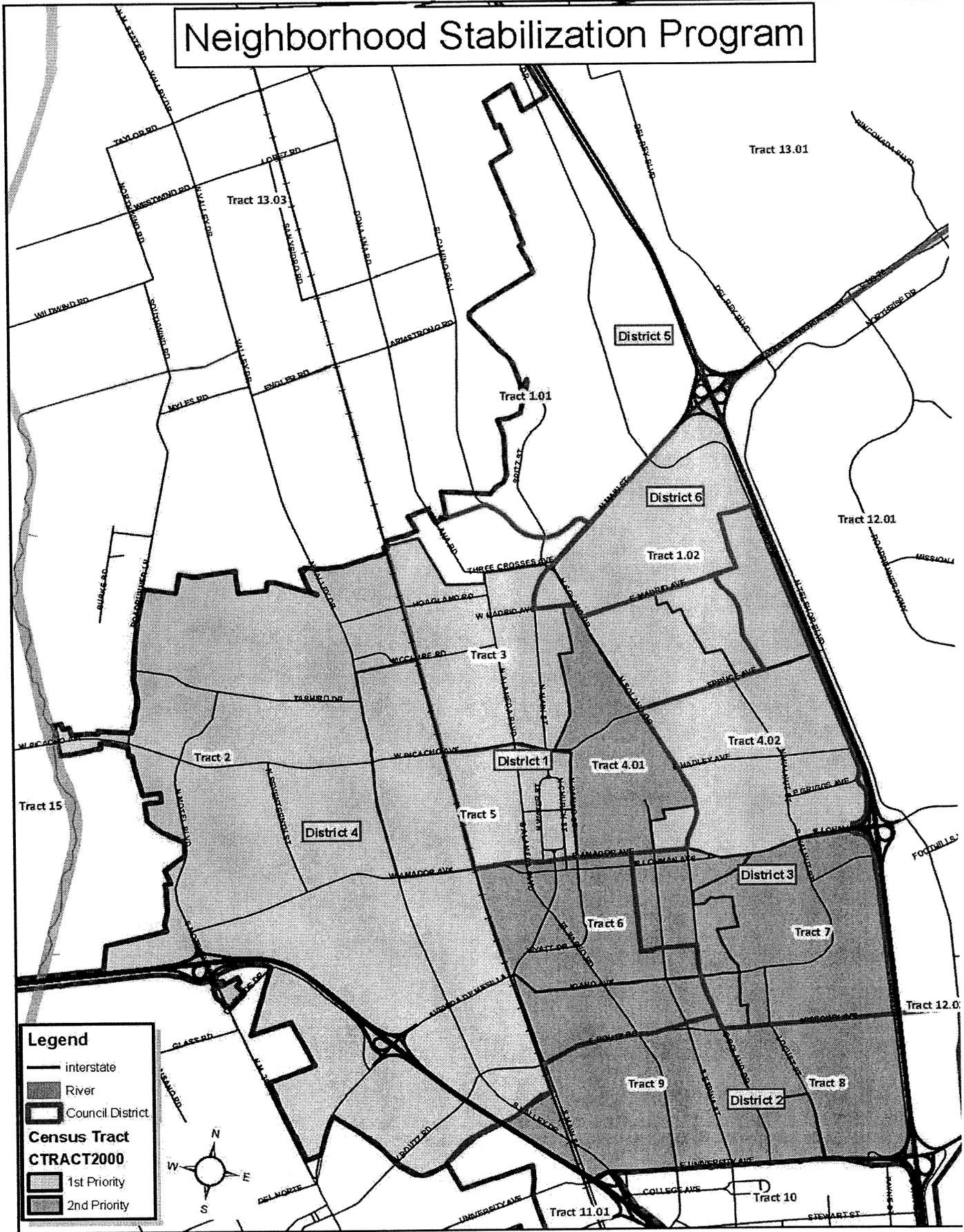
### **V. Binding Effect**

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**



# Neighborhood Stabilization Program



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

The Developer 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 Developer 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 Developer shall submit its annual audit to the Grantee within one hundred twenty (120) days of the end of the Developer's fiscal year.

All Developer 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 Developer'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 Developer or within 30 days after receipt. Failure of the Developer 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 developer 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 developer under this Agreement shall become the property of the Grantee and the Developer 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 developer 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 developer 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 Developer 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 Developer is found to be in compliance by the Grantee, or is otherwise adjudicated to be in compliance.

### **C. Insurance and Bonding**

#### **1. General:**

The Developer 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 Developer shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the 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 developer 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 developers performance of the Agreement. Neither the Grantee nor any of its insurers shall be required to contribute to
- (b) any such loss. The required certificate shall be furnished by the Developer with in 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 Developer 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 developer 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 Developer must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
  - (iii) Flood Insurance: The Developer shall provide Flood Insurance as required under applicable HUD regulations, if necessary.

**D. Close-Outs**

The Developer'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 Developer 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 Developer 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 Developer is an "independent contractor."

**G. Hold Harmless**

The Developer 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 developer 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 developer is relieved of its obligation to defend the grantee, and (b) the developer's obligation to indemnify and save harmless is limited to the actual amount representing the developers comparative share of negligence with the Grantee.

**H. Grantee Recognition**

The Developer 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 Developer 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 Developer'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 Developer 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 Developer'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 developer 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 Developer 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 Developer outside the metropolitan area of Las Cruces or south Dona County is not permitted with funds provided under this Agreement.

**L. Religious Organizations**

The Developer 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 properties, subject to HUD rules and regulations and prior Grantee approval.

**III. PERSONNEL & PARTICIPANT CONDITIONS**

**A. Civil Rights - Compliance**

The Developer 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 Developer 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 Developer 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 Developer 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 developer shall make such postings available in alternate formats upon request. The developer 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 Developer shall prepare and provide to the Grantee an approved AAP and appropriate Tenant Selection plans to the Grantee.

2. Women/Minority Business Enterprise

The Developer 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 Developer 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 Developer 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 Developer 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 developer 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 Developer 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 Developer 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 Developer 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 Developer 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. These conflict of interest provisions apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the developer, or of any designated public agencies, developer that receives funds under the NSP. The Developer 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 Developer 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 Developer 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 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 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 Developer, or of any designated public agencies, or developer that is receiving funds under this part.

The Developer 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 Developer 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

## ATTACHMENT "E" Part 1

### CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

#### CERTIFICATION

1. **The developer certifies that it will provide a drug-free workplace by:**
  - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Developer's 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 Developer's policy of maintaining a drug-free workplace;
    3. Any available drug counseling, rehabilitation and employee assistance programs; and
    4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
  - C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by paragraph "A".
  - D. Notifying the employee in the statement required by paragraph "A" that, as a condition of employment under the Grant, the employee would:
    1. Abide by the terms of the statement; and
    2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

- E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
  - F. Taking one of the following actions, within 30 calendar days of receiving notice, with respect to any employee who is so convicted:
    - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
    - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.
  - G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).
2. The Developer shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Developer further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement, it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

**ATTACHMENT "E," Part 2**

**PLACE OF PERFORMANCE**

**FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

Name of developer:

Program Name:

Date: \_\_\_\_\_

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

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

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

**ATTEST:**

By: \_\_\_\_\_ Date \_\_\_\_\_

By: \_\_\_\_\_ Date \_\_\_\_\_

**ATTACHMENT "E," Part 3**

**PLACE OF PERFORMANCE**

**FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS**

Name of Developer:

Program Name:

Date: \_\_\_\_\_

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

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

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

**ATTEST:**

By: \_\_\_\_\_

\_\_\_\_\_ Date

By: \_\_\_\_\_

\_\_\_\_\_ Date

**ATTACHMENT "F"**

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

In carrying out this Agreement, the developer 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 developer shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The developer shall state in all solicitations or advertisements for employees placed by or on behalf of the developer that it is an Equal Opportunity or Affirmative Action employer.

**ATTEST:**

**By:**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**By:**

\_\_\_\_\_

**Date**

\_\_\_\_\_

**ATTACHMENT "G"**

**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 herein is on a project receiving direct Federal financial assistance from the Department of Housing and Urban Development (“HUD”) and 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 directed to low and very low income persons residing in 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 City and 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 HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.
- C. The contractor 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, 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. Part 135, and all applicable rules and orders of HUD issued therein prior to the execution of this contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the contractor and subcontractor(s) for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the contractor and subcontractor(s) and assigns to those sanctions identified by the City’s Agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.
- E. The Contractor will include this Section 3 Clause in every subcontract for work in connection with the Program and will, at the direction of the City of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Sub-recipient or contractor is in violation of the HUD regulations at 24 CFR Part 135. The Subcontractor will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of

at 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.

- F. The contractor will certify that any vacant employment positions, including those for training, 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 at 24 CFR Part 135 require employment opportunities to be directed were not filled to circumvent the contractor's obligations under said regulations.
- G. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of HUD issued there under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project and shall be binding upon the contractor or subcontractor(s), its successors or assigns. Failure to fulfill these requirements shall subject the contractor, its successors, and assigns to those sanctions specified by the City Agreement or contract through which Federal assistance is provided, and as are specified by 24 CFR Part 135. These include, but are not limited to, termination of this Agreement or Contract for default and debarment and suspension from future HUD-assisted contracts.
- H. The subcontracting parties to the prime contractor of this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by HUD set forth in 24 CFR Part 135, and all applicable said rules and orders issued prior to the execution of this contract. The subcontracting parties will sign a separate Section 3 clause certification (this form) prior to contract execution with the prime contractor and the execution of the contract between the prime contractor and the City. The subcontracting parties to this Agreement certify and agree that they have no contractual agreement or other impediment that would prevent them from complying with these requirements.

**ATTEST:**

**By:**  
\_\_\_\_\_

**Date:** \_\_\_\_\_

**By:**  
\_\_\_\_\_

**Date:** \_\_\_\_\_

**ATTACHMENT "I"**

**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: \_\_\_\_\_

## Attachment "J"

### 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 these 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.

**Tierra del Sol, Inc.**

**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 developer and the Grantee, or agent of the developer 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 developers officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. Developer 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 developer's, employees, or agents. The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. The developer 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 developer, 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 developer 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 developer, 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 developer and such disclosure is entered upon the minutes of the developer, 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 developer 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 developer 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 these 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 these 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 developer'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 developer 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 developer, 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 developer 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 developer 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

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Name and Title of Authorized Representative

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Signature

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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 developer 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 developer is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

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**Name and Title of Authorized Representative**

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**Signature**

**Date**

## **INSTRUCTIONS FOR CERTIFICATION**

1. By signing and submitting this Agreement, the developer 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.
- 5.3. The developer 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.
- 6.4. The developer 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.
- 7.5. 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.
- 8.6. 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 these 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 these 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.

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**Name and Title of Authorized Representative**

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**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.

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**Name and Title of Authorized Representative**

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**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 developer 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 developer 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 developer 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 developer 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 developer 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 developer agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the developer 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 developer 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 developer agrees to comply with any implementing requirements HUD may issue.

(3) The developer also agrees to include these 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.

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**Name and Title of Authorized Representative**

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**AGE DISCRIMINATION ACT**

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The developer 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.

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**Name and Title of Authorized Representative**

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**Signature**

**Date**

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