

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 8 Ordinance/Resolution# 15-233

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of June 15, 2015
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND ST. LUKE'S HEALTHCARE CLINIC FOR THE HVAC UPGRADE PROJECT.

PURPOSE(S) OF ACTION:

Approve execution of a CDBG Agreement.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Raymond Burchfield	<u>Department/Section:</u> Community Development / Planning & Neighborhood Services	<u>Phone:</u> 528-3094
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974 which created the Community Development Block Grant (CDBG) Program. The CDBG Program provides the City the opportunity to administer a federally-funded program in accordance with the goals of the City's 2011-2015 Consolidated Plan, a comprehensive planning document which outlines housing and community development needs.

On May 7, 2012, the City Council approved Resolution No. 12-181, thereby adopting the 2012 Action Plan. The Action Plan outlines how the City's CDBG funds will be spent during Fiscal Year 2013. The 2012 Action Plan allocated \$55,000.00 in CDBG funding to St. Luke's Healthcare Clinic for the HVAC upgrade project at 999 W. Amador, Building 1, Suite A.

On May 5, 2014, the City Council approved Resolution No. 14-176, thereby adopting the 2014 Action Plan. The Action Plan outlines how the City's CDBG funds will be spent during Fiscal Year 2015. The 2014 Action Plan allocated \$75,000.00 in CDBG funding to the same project for a total of \$130,000.00.

St. Luke's has been in operation in Suite D, Building 1 since 1998. The larger space in Suite A recently became available and St. Luke's secured a lease from the Mesilla Valley Community of Hope for this location. This project will help fund the HVAC upgrade for the new clinic and is part of a larger renovation/rehab of Suite A for the new healthcare clinic.

In order to comply with CDBG regulations, a CDBG grant agreement, as shown in Exhibit "A," between the City and St. Luke's is required to be executed.

SUPPORT INFORMATION:

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

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	Budget Adjustment Attached	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

\$75,000.00 is available in account number 20184400-852100-60E13. \$55,000.00 is available in account number 20184350-852100-60E13 for a total allocation of \$130,000.00 to be expended in FY16.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

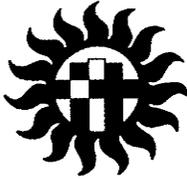
1. Vote "Yes"; this action will approve the Resolution to approve the CDBG agreement between the City and St. Luke's for the HVAC upgrade project.

2. Vote "No"; this action will deny the Resolution to approve the CDBG agreement between the City and St. Luke's for the HVAC upgrade project.
3. Vote to "Amend"; further direction would come from City Council.
4. Vote to "Table"; further direction would come from City Council.

REFERENCE INFORMATION:

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

1. Resolution No. 12-181.
2. Resolution No. 14-176.



City of Las Cruces®

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of June 15, 2015
 (Adoption Date)

TITLE:

A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND ST. LUKE'S HEALTHCARE CLINIC FOR THE HVAC UPGRADE PROJECT.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		528-3094	5-28-15
Department Director		528-3067	5/28/15
Other			
Assistant City Manager /CAO		541-2078	6/2/15
Management & Budget Manager	<i>1474232360 for Robert Lueders</i>	541-2107	6/1/15
Assistant City Manager/COO		528-3136	6/8/15
City Attorney		EXT 2128	8 JUNE 2015
City Clerk - Interim		1215	6/9/15

RESOLUTION NO. 15-233**A RESOLUTION APPROVING A COMMUNITY DEVELOPMENT BLOCK GRANT (CDBG) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND ST. LUKE'S HEALTHCARE CLINIC FOR THE HVAC UPGRADE PROJECT.**

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) has applied for and received funds from the U.S. Department of Housing and Urban Development under Title I of the Housing and Community Development Act of 1974, which created the Community Development Block Grant (CDBG) Program; and

WHEREAS, the CDBG Program provides the City the opportunity to administer these federal funds in accordance with the City's adopted Consolidated Plan to address community development needs in low-income areas or for low-income residents; and

WHEREAS, on May 7, 2012, the City Council approved Resolution No. 12-181, adopting the 2012 Action Plan, which outlined how CDBG funds will be expended for City Fiscal Year 2013; and

WHEREAS, the 2012 Action Plan allocated \$55,000.00 in CDBG funds to the St. Luke's Healthcare Clinic for the HVAC upgrade project; and

WHEREAS, on May 5, 2014, the City Council approved Resolution No. 14-176, adopting the 2014 Action Plan, which outlined how CDBG funds will be expended for City Fiscal year 2015; and

WHEREAS, the 2014 Action Plan allocated \$75,000.00 in CDBG funds to the St. Luke's Healthcare Clinic for the HVAC upgrade project; and

WHEREAS, in order to comply with HUD regulations, a CDBG grant agreement between the City of Las Cruces and the St. Luke's Healthcare Clinic must be executed.

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

(I)

THAT the CDBG grant agreement between the City of Las Cruces and the St. Luke's Healthcare Clinic, as shown in Exhibit "A," attached hereto and made a part of this Resolution, is hereby approved.

(II)

THAT the Assistant City Manager/Chief Operating Officer is hereby authorized to sign the agreement on the City's behalf.

(III)

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

DONE AND APPROVED this _____ day of _____ 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

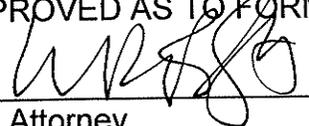
Moved by: _____

Seconded by: _____

VOTE:

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

APPROVED AS TO FORM:



City Attorney

**COMMUNITY DEVELOPMENT BLOCK GRANT AGREEMENT BETWEEN THE CITY
OF LAS CRUCES AND THE ST. LUKE'S HEALTHCARE CLINIC FOR THE HVAC
UPGRADE PROJECT**

THIS AGREEMENT is entered into this ____ day of _____, 2015, between the City of Las Cruces, a New Mexico municipal corporation with a principal mailing address of P.O. Box 20000, Las Cruces, New Mexico 88004 (herein called the "City") and The St. Luke's Healthcare Clinic, a Non Profit Agency, whose mailing address is 999 W. Amador Ave., Las Cruces, New Mexico 88005 (herein called the "Sub-recipient"), under CDBG Grant Number **B-12/14-MC-35-0002**.

WHEREAS, the City has applied for and received funds from the United States Government under Title I of the Housing and Community Development Act of 1974, Public Law 93-383, Title 24 of the Code of Federal Regulations (CFR) and Catalogue of Federal Domestic Assistance No. 14.218; Munis Project #20184400 -722190- 10414; CDBG Activity # ____.

WHEREAS, the City will have performed all of the steps necessary to obtain U.S. Department of Housing and Urban Development (HUD) approval of the City's 2011-2015 Consolidated Plan, including the 2012/14 Action Plan, which includes funding for this project in the amount of **\$55,000.00** for FY 2012-2013 and **\$75,000.00** for FY 2014-2015; and

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

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

I. SCOPE OF SERVICE

A. National Objectives

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

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

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

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

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

___ In accordance with 24 CFR Part 570.208 (a) (3) Housing activities: An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low- and moderate-income households.

B. Activities

The Sub-recipient will benefit from the installation of a HVAC system in a manner satisfactory to the Grantee and consistent with any standards that comply with HUD regulations and City/State requirements required as a condition of providing these funds. The CDBG program is regulated by 24 CFR part 570, and the Subrecipient hereby agrees to complete the approved project activity in compliance with these regulations.

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

1. Program Description:

The program includes: the installation of an HVAC system at the St. Luke's Healthcare clinic, in the City of Las Cruces. The scope of activity includes contract procurement, construction and management oversight, completion, and all reporting requirements. The renovated spaces (hereinafter known as the "premises"), are intended to be used by the Subrecipient in a manner that complies with HUD CDBG Regulations at Sections 570.201(c), and any other Grantee requirements specified herein.

The total project cost is estimated to be \$300,000. The CDBG Grant will cover 50%, up to \$130,000.00 and St. Luke's will use other funds at their disposal for the 50% match that is required per the 2011/15 City of Las Cruces Consolidated Plan.

2. Program Type: Health Facility Improvements
Program Title: St. Luke's HVAC Upgrade project

3. Program Management: The aforementioned program will be managed by the Grantee's facility management team. This will include procurement and all construction management and management of funds.

C. Levels of Accomplishment

In addition to the normal administrative services required as part of this Agreement, the Sub-recipient acknowledges that funds will be disbursed for eligible expenses in conjunction with the project and agrees to provide the following level of program services during PY 2014-2015:

Activity

St. Luke's operates a healthcare clinic which provides healthcare services for homeless and low-income persons.

D. Staffing

The program grant will be managed by the facilities management section of the Public Works Department of the City.

E. Performance Monitoring

The City will monitor the performance of the Sub-recipient against goals and performance standards required herein. The Sub-recipient is expected to complete the project within one year from the date of the execution of the agreement. Substandard performance as determined by the Grantee, will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Subrecipient within a reasonable period of time after being notified by the Grantee, contract suspension or termination procedures may be initiated.

II. TIME OF PERFORMANCE

A. Term of the Agreement

This Agreement shall start on the Effective date of this Agreement which is the date of the last person to sign or July 1, 2015, or the date on which the United States Department of Housing and Urban Development releases funds to the City for Grant B-12/14-MC-35-0002, whichever is later. The period of performance will continue for twelve (18) months after the Effective date of the Agreement.

B. Eligible Payment Period

All eligible expenses and purchases approved by this Agreement and incurred during the grant period beginning from the effective date of this agreement and 12 months thereafter are eligible for payment. The term of this Agreement and the provisions herein shall not be extended unless deemed necessary by the grantee, which is managing the project. Such an extension may be granted by the City's Community Development Director or his designee, provided that such an extension is for cause beyond the Sub-recipient's control, and in accordance with the same terms and conditions of the original agreement. All other extensions or changes in scope, performance, or approved responsibility to this Agreement shall be by the City's governing body and the Sub-recipient in writing.

III. BUDGET

Sub-recipient is required to expend funds in a timely manner. Sub-recipient should expend 100% of the funds within 18 months of the Agreement Start date. Funds that are not expended by the end of the term of the Agreement will be held by the City and will not be available to the Sub-recipient.

Payments will be made for the line items listed below:

EXPENDITURE CLASSIFICATION	DESCRIPTION OF ITEM	APPROVED BUDGET
	HVAC upgrade project to include design, purchase of equipment, and construction.	\$130,000.00
	TOTAL	\$130,000.00

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

Detailed description requested: Yes No

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

Indirect costs cannot be charged to this Agreement.

IV. PAYMENT

It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed **\$130,000.00**. The payment of eligible expenses shall be made for only the line item budgets specified in Section III herein and in accordance with the scope of service. Payments are contingent upon adherence to all administrative requirements as specified in Section VII of this Agreement.

The Grantee shall disburse grant proceeds for approved budget items only after the Grantee has approved the Subrecipient's project plans, reviewed and approved of both procurement and contracting award procedures, and ascertained that all the necessary and proper permits have been obtained by the Subrecipient at each phase prior to the beginning of construction. Other documents may be needed during construction specified in writing by the Grantee to the Subrecipient, including all phases of the competitive bid process (see Attachment "A," Section II). Disbursement of funds will be to the Subrecipient for reimbursement of payment of approved invoices submitted and verified by the Subrecipient in accordance with applicable CDBG regulations, including Davis-Bacon and Related Acts. Notwithstanding anything 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 the Subrecipient's budget may be modified by the Grantee accordingly. Funds expected to be spent during the last 30 days of the grant will be presented for payment consideration to the Grantee within 60 days of the end of the grant period. Any

funds that are not expended by the end of the 60-day period after the end of the grant will be held by the Grantee and not be available to the Sub-recipient, unless an Agreement extension is approved in accordance with Section II, (B).

V. NOTICES

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

CITY	SUB-RECIPIENT
Raymond Burchfield, Neighborhood Programs Specialist Community Development Department City of Las Cruces P.O. Box 20000 Las Cruces, NM 88004 Phone: (575) 528-3094 E-mail: rburchfield@las-cruces.org	Pamela L. Angell, Executive Director St. Luke's Healthcare Clinic 999 W. Amador Las Cruces, NM 88005 Phone: (575) 527-5482 E-mail: pangell@slhcc.info

VI. GENERAL CONDITIONS

A. General Compliance

The Subrecipient agrees to comply with the requirements of Title 24 of the Code of Federal Regulations, Part 570 (the U.S. Housing and Urban Development regulations concerning Community Development Block Grants (CDBG)) including subpart K of these regulations, except that (1) the Subrecipient does not assume the recipient's environmental responsibilities described in 24 CFR 570.604 and (2) the Subrecipient does not assume the recipient's responsibility for initiating the review process under the provisions of 24 CFR Part 52. The Subrecipient also agrees to comply with all other applicable Federal, State and local laws, regulations, and policies governing the funds provided under this contract. The Subrecipient further agrees to utilize funds available under this Agreement to supplement rather than supplant funds otherwise available.

B. Independent Contractor

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

C. Hold Harmless

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

1. The preparation or approval of maps, drawings, opinion, reports, surveys, change orders, designs or specification by the City, or its agents or employees; or
2. The giving of or failure to give directions or instructions by the City, or its agents or employees, where such giving or failure to give directions or instructions is the primary cause of bodily injury to persons or damage to property.

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

D. Workers' Compensation

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

E. Insurance and Bonding

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

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

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

F. Grantee Recognition

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

G. Amendments

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

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

H. Suspension or Termination

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

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

VII. ADMINISTRATIVE REQUIREMENTS

A. Financial Management

1. Accounting Standards

The Subrecipient agrees to comply with 24 CFR 84.21–28 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.

2. Cost Principles

The Subrecipient shall administer its program in conformance with OMB Circulars A-122, "Cost Principles for Non-Profit Organizations," or A-21, "Cost Principles for Educational Institutions," as applicable. These principles shall be applied for all costs incurred whether charged on a direct or indirect basis

B. Applicable Laws

The Subrecipient shall comply with all applicable federal, state and local laws, rules, and regulations dealing with property rehabilitation and quality standards whether they are presently or subsequently promulgated. The Subrecipient agrees to comply with any and all

CDBG regulations, 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 Subrecipient 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 City's Municipal, Building and Zoning Codes and the New Mexico State Environmental Requirements for rehabilitation of offices and community services spaces.

C. Documentation and Record-Keeping

1. Records to be Maintained

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

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

2. Required Documents for Regular City Submissions:

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

3. Retention and Inspection of Records

- a. The Sub-recipient shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement. Records for

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

- b. The subrecipient agrees to include in first-tier subcontracts under this agreement, a clause substantially the same as paragraph (a) above, "Subcontract," as used in this clause, excludes purchase orders not exceeding \$10,000.00

The periods of access and examination in paragraphs 9A) and (B) above for records relating to appeals, litigation or settlement of claims arising from the performance of the contract to which the City, HUD, or Comptroller General or any of their duly authorized representatives has taken exception shall continue until disposition of such appeals, litigations, claims, or exceptions.

4. Close-Outs

The Sub-recipient's obligation to the City shall not end until all close-out requirements are completed. Activities during this close-out period shall include, but are not limited to: making final payments, submission of Final Report, disposing of program assets (including the return of all unused materials, equipment, unspent cash advances, program income balances, and accounts receivable to the City), and determining the custodianship of records. Notwithstanding the foregoing, the terms of this Agreement shall remain in effect during any period that the Subrecipient has control over CDBG funds, including program income.

5. Audits and Inspections

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

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

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

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

D. Reporting and Payment Procedures

1. Program Income

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

2. Indirect Costs

If indirect costs are charged, the Subrecipient will develop an indirect cost allocation plan for determining the appropriate Subrecipient's share of administrative costs and shall submit such plan to the Grantee for approval, in a form specified by the Grantee.

3. Payment Procedures

The City will make all payments under this program directly to the contracted vendors consistent with any approved budget and City policy concerning payments. Payments will be made for eligible expenses actually incurred by the project, and not to exceed actual cash requirements. Payments will be adjusted by the City in accordance with advance funds and program income balances available (if any) in Subrecipient accounts. In addition, the City reserves the right to liquidate funds available under this Agreement for costs incurred by the City on behalf of the Sub-recipient.

4. Monthly Reports

The Subrecipient shall submit regular Progress Reports by the 15th of each month even if there is no monthly billing. For reports with no payment requested, an indication shall be made in writing "no billing for this month."

E. Procurement

1. Compliance

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

2. Standards

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

3. Travel (Check one)

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

X Travel is NOT included as part of this Agreement.

F. Use and Reversion of Assets

Upon expiration of this Agreement, the subrecipient 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. The Grantee and Subrecipient and Grantee hereby acknowledge that the real property under the Subrecipient's control that has been acquired or improved in whole or in part with CDBG funds meets the national objective criteria at §570.208 (2), Limited Clientele Activities.

VIII. PERSONNEL AND PARTICIPANT CONDITIONSA. Civil Rights1. Compliance

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

2. Non-discrimination/EEO-AA Statement

The Subrecipient agrees to comply with the non-discrimination in employment and contracting opportunities laws, regulations, and executive orders referenced in 24 CFR 570.607, as revised by Executive Order 13279. The applicable non-discrimination provisions in Section 109 of the HCDA are still applicable. Attachment "C" Certification is required of all Sub-recipients as part of the entire Agreement.

3. Land Covenants/ Land Use Restriction Agreement

This contract is subject to the requirements of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and 24 CFR 570.601 and 570.602. In regard to the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this contract, the Subrecipient shall cause or require a covenant running with the land to be inserted in the deed or lease for such transfer, prohibiting discrimination as herein defined, in the sale, lease or rental, or in the use or occupancy of such land, or in any improvements erected or to be erected thereon, providing that the Grantee and the United States are beneficiaries of and entitled to enforce such covenants. The Subrecipient, in undertaking its obligation to carry out the program assisted hereunder, agrees to take such measures as are necessary to enforce such covenant, and will not itself so discriminate. See Attachment "A" of this agreement and made a part hereof.

4. Drug-Free Workplace

The Sub-recipient shall maintain a drug-free workplace and so place signs in appropriate places indicating such to clients, staff, and applicants. See Attachment "B" of this agreement and made a part hereof.

5. Section 504

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

6. Americans with Disabilities Act.a. Contracts to Conduct Programming

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

b. Operational Duties and Responsibilities

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

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

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

B. Affirmative Action1. Approved Plan

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

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

2. Women/Minority Business Enterprises

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

3. Access to Records

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

4. Notifications

The Sub-recipient will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the Sub-recipient's commitments hereunder, and shall post

copies of the notice in conspicuous, easily accessible places available to employees and applicants for employment.

5. Sub-contract Provisions

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

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

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

1. Approvals

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

2. Monitoring

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

3. Content

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

4. Selection Process

The Sub-recipient shall undertake to insure that any sub-contracts let in the performance of this Agreement shall be awarded on a fair and open

competition basis. Executed copies of all sub-contracts shall be forwarded to the City along with documentation concerning the selection process.

C. Employment Restrictions

1. Prohibited Activity

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

2. Labor Standards

- a. The Subrecipient shall comply with all applicable provisions of the Davis-Bacon Act (40 U.S.C. 201, et. Seq.) and its implementing labor regulations at 29 CFR Part 5. The Subrecipient shall also comply with the Contract and Work Hours and Safety Standards Act (40 U.S.C. Section 327-332), Fair Labor Standards Act (29 U.S.C. 201, et seq.) and other Federal laws and regulations pertaining to labor standards and HUD Handbook 1344.2, as applicable.
- b. The Subrecipient shall ensure that the Federal Labor Standards Provision, HUD form 4010, is included in the Bid Documents.
- c. During the duration of construction, the Subrecipient will conduct at least 2 employee interviews monthly and include them with each request for payment to the Grantee.
- d. The Subrecipient is responsible for the collection of the Certified Payrolls from the Prime Contractor. If there are any Sub-Contractors, it is the responsibility of the Prime Contractor to collect all Certified Payrolls and to deliver them to the Subrecipient, who will then deliver them to the Grantee. These payrolls are due no later than 1 week after an employee is paid for a given pay period.
- e. When the Subrecipient receives a pay request from the Prime Contractor, and before payment is made, the Subrecipient must deliver a copy of the request to the Grantee, as well as all currently due Certified Payrolls. At that time, the Grantee, after certifying that the Contractors are in compliance with the Davis Bacon Act, will fax to the Subrecipient a completed Davis Bacon Compliance Certification form. At this time payment can be made to the Prime Contractor. This process is necessary to ensure contractor compliance with the Davis Bacon Act.

3. "Section 3" Clause

The Subrecipient hereby agrees to comply with "Section 3," regulations set forth in 24 CFR 135. The Subrecipient further agrees to comply with the "Section 3" requirements and to include the language of Attachment "D", Sections A, B, and D in all sub-contracts executed under the Agreement. The

Subrecipient certifies and agrees that no contractual or other legal incapacity exists which would prevent compliance with these requirements. Subrecipient shall sign Attachment "D" as a condition of receiving this grant.

4. Copeland "Anti-Kickback" Act:

As applicable, the Subrecipient shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29CFR Part 3.

D. Conduct

1. Assignability

The Subrecipient 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 Subrecipient from the Grantee under this contract 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.

2. Subcontracts

a. Approvals:

The Subrecipient shall not enter into any subcontracts with any agency or individual in the performance of this contract without the written consent of the Grantee prior to the execution of such agreement.

b. Monitoring:

The Subrecipient will monitor all subcontracted services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance.

c. Content:

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

d. Selection Process:

The Subrecipient shall undertake to insure that all subcontracts let in the performance of this Agreement shall be awarded on a fair and open competition basis in accordance with applicable procurement requirements. Executed copies of all subcontracts shall be forwarded to the Grantee along with documentation concerning the selection process.

3. Assignability

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

4. 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.

5. Hatch Act

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

6. Lobbying

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

7. Conflict of Interest

The Subrecipient agrees to abide by the provisions of 24 CFR 84.42 and 570.611 including the acknowledgement of the Conflict of Interest Statement in Exhibit "F" made a part of this Agreement.

8. Copyright

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

9. Religious Organizations

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

10. Federal Changes

The Subrecipient 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 agreement. Subrecipient's failure to so comply shall constitute a material breach of this contract.

IX. ENVIRONMENTAL CONDITIONSA. Air and Water

The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:

- Clean Air Act, 42 U.S.C. , 7401, *et seq.*;
- Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, *et seq.*, as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
- Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

1) Flood Disaster Protection

In accordance with the requirements of the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001), the Subrecipient shall assure that for activities located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, flood insurance under the National Flood Insurance Program is obtained and maintained as a condition of financial assistance for acquisition or construction purposes (including rehabilitation).

X. WAIVER

The Grantee's failure to act with respect to a breach by the Subrecipient does not waive its right to act with respect to subsequent or similar breaches. The failure of the Grantee to exercise or enforce any right or provision shall not constitute a waiver of such right or provision.

XI. ENTIRE AGREEMENT

This agreement constitutes the entire agreement between the Grantee and the Subrecipient for the use of funds received under this Agreement and it supersedes all prior or

contemporaneous communications and proposals, whether electronic, oral, or written between the Grantee and the Subrecipient with respect to this Agreement.

XII. GOVERNANCE AND SEVERABILITY

- A. This agreement shall be governed by the laws of the State of New Mexico.
- B. If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby and all other parts of this Agreement shall nevertheless be in full force and effect.
- C. All attachments are part of this Agreement have the same weight and importance as the initial Sections I through VIII.
- D. All certifications in Attachments "A" through "E" shall be signed by the Subrecipient as part of this Agreement.

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

St. Luke's Healthcare Clinic

Pamela L. Angell, Executive Director

Date

CITY OF LAS CRUCES

Brian Denmark, Assistant City Manager/ COO

Date

APPROVED AS TO FORM:

City Attorney

REQUIRED CERTIFICATIONS FOR EXECUTION AS PART OF THIS AGREEMENT:

1. Attachment A. Improvement Acknowledgement
2. Attachment B. Land Use Restrictions Agreement
3. Attachment C. Drug-Free Workplace.
4. Attachment D. EEO/AA Clause.
5. Attachment E. Section "3" Clause.
6. Attachment F. Certification Regarding Lobbying
7. Attachment G. Required City and Federal Clauses and Certifications:

Protest Procedures

Conflicts of Interest

Breaches and Dispute Resolution/ Rights and Remedies

Contracting with Small and Minority Firms, Women's

Business Enterprise and Labor Surplus Area Firms

Bidder's Certification of Energy Conservation, Air Quality and Clean Water

Compliance

Retention and Inspection of Records

No Government Obligation to Third Parties

False or Fraudulent Statements of Claims

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion

Lower Tier Covered Transactions

Instructions for Certification

Privacy Act

Termination

State and Local Law Disclaimer

Civil Rights Requirements

Age Discrimination Act

Copeland "Anti-Kickback"

Davis-Bacon Act

Contract Work Hours and Safety Standards Act

Improvement Acknowledgement

The City of Las Cruces owns the property at 999 W. Amador. Mesilla Valley Community of Hope Inc., lessee, and St. Luke's Heath Care Clinic, sub-lessee, acknowledge that any improvements made to the property, including the HVAC system, remain with the leased City-owned property at 999 West Amador.

Mesilla Valley Community of Hope

Executive Director

St. Luke's Heath Care Clinic

Executive Director

APPROVED AS TO FORM:

City Attorney

ATTACHMENT "B"

**COMMUNITY DEVELOPMENT BLOCK GRANT
LAND USE RESTRICTION AGREEMENT**

THIS LAND USE RESTRICTION AGREEMENT, dated as of _____ 2015, is by and between the Mesilla Valley Community of Hope, Inc., (the Lessee) and the City of Las Cruces, a New Mexico municipal corporation (Owner).

WITNESSETH:

WHEREAS, the Lessee has sublet Suite A, Building I at 999 W. Amador to St. Luke's whom operates the St. Luke's Healthcare Clinic, a facility (the Project), which is used for healthcare for homeless persons and persons without healthcare insurance, located on lands in the City of Las Cruces, County of Dona Ana, State of New Mexico, more particularly described in Exhibit A hereto; and

WHEREAS, the Sub-Lessee applied with the City of Las Cruces for Community Development Block Grant (CDBG) funds from Program Year 2012 and 2014 in the amount of \$55,000 and \$75,000, respectively, for the project and has made certain representations to the City about the Project, as to the nature of the project, including the number of Low-Income clients to be served and what the property shall be used for, which the City of Las Cruces relied in considering the application and committing funds to the project; and

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

WHEREAS, the Lessee and Owner, under this Agreement, intends, declares and covenants the use and occupancy of the Project shall be and are covenants running with the Project land and shall be binding upon all subsequent owners of the Project for such term until there is a change of use granted following the processes outlined below and the City of Las Cruces has filed a Release of this Agreement with the Office of the County Clerk of Dona Ana County.

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

Representations, Covenants and Warranties of the Owner and Lessee

- (a) The Owner or Lessee or Sub-Lessee may not change the use or planned use of any such property including beneficiaries of such use from that for which the acquisition or improvement was made unless the Owner or Lessee provides, through coordination with the City's Community Development Department, affected citizens with reasonable notice of, and opportunity to comment on, and proposed change, and either:
 1. The new use of such property qualifies as meeting one of the national objectives in §570.208 (formerly §570.901) and is not a building for the general conduct of government; or
 2. The requirements in paragraph (b) of this section are met.
- (b) If the Owner/Lessee determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (a)(1) of this section, it may retain or dispose of the property for the changed use if the City's CBDG program is reimbursed in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of and improvements to, the property.
- (c) If the change in use occurs after closeout, the provisions governing income from the disposition of the real property in §570.504 (b)(4) or (5), as applicable, shall apply to the use of the funds reimbursed.
- (d) Following the reimbursement of the CDBG program in accordance with paragraph (b) of the section, the property no longer will be subject to any CDBG requirements.

Miscellaneous

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

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

To the Lessee: Mesilla Valley Community of Hope, Inc.
 Executive Director
 999 W. Amador
 Las Cruces, NM 88005

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

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

SIGNATURES ON THE NEXT PAGE

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

LESSEE _____

By: _____

Its: _____

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

This instrument acknowledged before me this ____ day of _____, 20__ by
_____ of _____
its _____.

Notary Public

(SEAL)

My commission Expires: _____

CITY OF LAS CRUCES

Brian Denmark
Assistant City Manager/COO

Date

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

(SEAL)

This instrument acknowledged before me this ____ day of _____, 2015 by
_____, of _____.

APPROVED AS TO FORM:

City Attorney

ATTACHMENT "C"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

CERTIFICATION

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

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

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

Name of Sub-recipient: _____

Program Name: _____

Date: _____

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

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

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

By: _____ **Date:** _____

ATTACHMENT "D"

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

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

By: _____ Date: _____

SECTION 3 CLAUSE

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

By: _____ Date: _____

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 subgrants, loans, and cooperative agreement) which exceed \$100,000, and that all such Subrecipients 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__.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

PROTEST PROCEDURES

Protests concerning this proposal can be filed as per Las Cruces Municipal Code Section 24-286 and 24CFR85.36 (b) (12) (i) (ii). A protestor must exhaust all administrative remedies with the City before pursuing protest with a Federal agency. Reviews of protests by the Federal agency will be limited to:

1. Violations of the City's protest procedures for failure to review a complaint or protests.
2. Violations of Federal law or regulations and the standards of 24CFR85.36

Protests received by a Federal agency other than those specified above will be referred to the City.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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CONFLICTS OF INTEREST

Based in part on federal regulations (24CFR 85.36(b)) and Contract agreement between the Owner and HUD, no employee, officer, or agent of the Owner (HUD grantee) 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.

(a) The grantee's or subgrantee's officers, employees or agents will neither solicit nor accept gratuities, favors or anything of monetary value from Proposers, or parties to sub-agreements. Grantees and subgrantee's 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 grantee's and sub grantee's officers, employees, or agents or by Proposers or their agents.

(b) The awarding agency may in regulation provide additional prohibitions relative to real, apparent, or potential conflicts of interest. Neither the Owner nor any of its proposers or their subproposers shall 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 Owner, 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 Owner 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.

- 1. If any such present or former member, officer, or employee of the Owner, 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 Owner and such disclosure is entered upon the minutes of the Owner, the Owner, 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 Owner shall not participate in any action by the Owner relating to such contract, subcontract, or arrangement.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

BREACHES AND DISPUTE RESOLUTION

Applicability to Contracts - All contracts 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 this 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 under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either 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 or 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 the Contract 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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

CONTRACTING WITH SMALL AND MINORITY FIRMS,
WOMEN'S BUSINESS ENTERPRISE AND LABOR SURPLUS AREA FIRMS

(1) The Prime Contractor will 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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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BIDDER'S 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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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RETENTION AND INSPECTION OF RECORDS

A. The Mesilla Valley Community of Hope, 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 Proposer'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.

B. The Proposer 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 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 Purchaser, 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 Proposer 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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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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 Recipient 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

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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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 NSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

- (1) The prospective recipient of Federal assistance funds certifies, by submission of this proposal, 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 prospective recipient of Federal assistance funds is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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INSTRUCTIONS FOR CERTIFICATION

1. By signing and submitting this proposal, the prospective recipient of Federal assistance funds 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 Transportation (DOT) may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549.
5. The prospective recipient of Federal assistance funds agrees by submitting this proposal that, should the proposed 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. The prospective recipient of Federal assistance funds further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligible and Voluntary Exclusion - Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. 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 Nonprocurement Programs.
8. 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.
9. Except for transactions authorized under paragraph 5 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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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TERMINATION

Flow Down

The termination requirements flow down to all contracts in excess of \$10,000, with the exception of contracts with nonprofit organizations and institutions of higher learning.

- 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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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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 Contractor 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 Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements HUD may issue.
- (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 Contractor 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 Contractor 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 Contractor 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 Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor 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 Contractor 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 Contractor agrees to comply with any implementing requirements HUD may issue.
- (3) The Contractor 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.

The Remainder Of This Certification Continues on the Next Page

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AGE DISCRIMINATION ACT

The Contractor 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.

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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COPELAND "ANTI-KICKBACK"

Compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR part 3). (Applies to all contracts and subgrants for construction or repair)

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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DAVIS-BACON ACT

Compliance with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts in excess of \$2000 awarded by grantees and sub-grantees when required by Federal grant program legislation)

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

Compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR part 5). (Construction contracts awarded by grantees and sub-grantees in excess of \$2000, and in excess of \$2500 for other contracts which involve the employment of mechanics or laborers)

Company Name: _____

Title of Person Authorized to Sign this Form: _____

Date: _____

Signature: _____

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