



# City of Las Cruces®

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## Council Action and Executive Summary

Item # 10 Ordinance/Resolution# 10-139 Council District: All City

For Meeting of November 16, 2009  
(Adoption Date)

**TITLE:**

**A RESOLUTION TO ACCEPT AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING (ARRA) FROM THE NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT NON-METRO AREA AGENCY ON AGING FOR MEAL AND NUTRITION SERVICES IN THE AMOUNT OF \$29,937, WHICH REQUIRES A FIFTEEN PERCENT CITY MATCH OF 4,491 AND TO ADJUST THE FISCAL YEAR 2009/2010 BUDGET.**

**PURPOSE(S) OF ACTION:** Acceptance of this ARRA funding from the North Central New Mexico Economic Development District Non-Metro Area Agency on Aging will allow Senior Programs to provide additional meal and nutrition services for Fiscal Year 2009-2010.

Name of Drafter: Shelley Modell		Department: Public Services/Senior Programs		Phone: 528-3000	
Department	Signature	Phone	Department	Signature	Phone
Originating Department	<i>[Signature]</i>	528-3477	Budget	<i>[Signature]</i>	2300
			Assistant City Manager	<i>[Signature]</i>	2271
Legal	<i>[Signature]</i>	542-2128	City Manager	<i>[Signature]</i>	2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

As a result of the economic downturn, the North Central New Mexico Economic Development District Non-Metro Area Agency received American Recovery and Reinvestment Act (ARRA) funding for meal and nutrition services.

Of the total appropriation in the amount of \$34,428, which includes a City match of fifteen percent (15%), \$23,525 will be budgeted for congregate meals and \$6,412 for home delivered meal services for Fiscal Year 2009/2010.

The City of Las Cruces must comply with all the restrictions and requirements of the ARRA.

A budget adjustment to the Fiscal Year 2009/2010 City budget is needed to reflect the award amount.

**SUPPORT INFORMATION:**

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Federal Stimulus Operating/Congregate/ 2900-29200010-3060A-Revenue 2900-29205010-3060A-Expenditure	\$27,054	\$ 27,054
Federal Stimulus Operating/Home Delivered 2900-29200010-3060B-Revenue 2900-29205010-3060B-Expenditure	\$7,374	\$7,374

1. Resolution.
2. Exhibit "A"—North Central New Mexico Economic Development District Non-Metro Area Agency on Aging American Recovery and Reinvestment Act Nutrition Contract No. 2009-10-64014.
3. Exhibit "B"—Budget Adjustment.

**OPTIONS / ALTERNATIVES:**

1. If approved, the funding will be applied directly to the purchase of food for the Senior Nutrition Program.
2. If not approved, the Senior Nutrition Program will operate at a reduced level of service and/or suspend meal services for congregate and home delivered meals program participants.
3. Council may direct modification of the contracts and/or provide staff with alternate direction.

RESOLUTION NO. 10-139

**A RESOLUTION TO ACCEPT AMERICAN RECOVERY AND REINVESTMENT ACT FUNDING (ARRA) FROM THE NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT NON-METRO AREA AGENCY ON AGING FOR MEAL AND NUTRITION SERVICES IN THE AMOUNT OF \$29,937, WHICH REQUIRES A FIFTEEN PERCENT CITY MATCH OF \$4,491 AND TO ADJUST THE FISCAL YEAR 2009/2010 BUDGET.**

The City Council is informed that:

**WHEREAS**, as a result of the economic downturn, the North Central New Mexico Economic Development District Non-Metro Area Agency received American Recovery and Reinvestment Act (ARRA) funding for meal and nutrition services; and

**WHEREAS**, of the total appropriation in the amount of \$34,428, which includes a City match of fifteen percent (15%), \$23,525 will be budgeted for congregate meals and \$6,412 for home delivered meal services for Fiscal Year 2009/2010; and

**WHEREAS**, a budget adjustment to the Fiscal Year 2009-2010 City budget is needed to reflect the contract award.

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

(1)

**THAT** the Mayor is authorized to sign the Nutrition Contract No. 2009-10 64014 from the North Central New Mexico Economic Development District Non-Metro Area Agency on Aging for Fiscal Year 2009-2010 designated as Exhibit "A," attached hereto and made a part of this Resolution.

(II)

**THAT** the City of Las Cruces Fiscal Year 2009-2010 City budget is hereby adjusted as designated in Exhibit "B," attached hereto and made a part thereof.

(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 \_\_\_\_\_, 2009.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

VOTE:

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

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

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

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

Councillor Pedroza: \_\_\_\_\_

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

Councillor Sorg: \_\_\_\_\_

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

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

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

APPROVED AS TO FORM:

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

**Contract No. 2009-10 64014**

NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT  
NON-METRO AREA AGENCY ON AGING

**American Recovery and Reinvestment Act (ARRA)  
Nutrition Contract**

This agreement is made and entered into this 1<sup>st</sup> day of July, 2009 by and between the North Central New Mexico Economic Development District, hereinafter referred to as "Agency," and City of Las Cruces, hereinafter referred to as the "Contractor."

This Agreement is made in view of the following facts which the parties acknowledge to be true:

- A. This Agreement is made pursuant to and in accordance with the Older Americans Act of 1965 (OAA), as amended, and the New Mexico General Appropriate Act (NMGAA), as provided by the State of New Mexico, Aging & Long Term Services Department.
- B. The Agency is a party to Contract No. 10-624-4000-0087 with the State of New Mexico, Aging & Long Term Services Department, wherein the Agency has agreed to administer and monitor the provision of services in accordance with the Area Plan incorporated therein.
- C. The Contractor is a political subdivision of the State of New Mexico, duly organized and existing, and the person(s) executing this Agreement on behalf of the Contractor has full and requisite authority to bind the Contractor as herein provided.

OR

- D. The Contractor is a not for profit corporation, duly organized and existing pursuant to the laws of the State of New Mexico, duly recognized by the Internal Revenue Service as being exempt from taxation pursuant to §501(c)(3) of the Internal Revenue Code, and the person(s) executing this Agreement on behalf of the Contractor has full and requisite authority to bind the Contractor as herein provided.
- E. The Agency and the Contractor wish to enter into this Agreement and be bound by the terms and provision herein provided.

Now, therefore, in consideration of the mutual promises and covenants contained herein, the Agency and the Contractor agree as follows:

## 1. SCOPE OF WORK.

The Contractor agrees to administer and monitor the following services described below:

A. Services: Congregate and home delivered meals services for the elderly as allowed by Title III-C1 and C2 of the OAA

**Congregate Meals** – A hot or other appropriate meal served to an eligible person which meets one-third (1/3) of the dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the most recent Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and which is served in a congregate setting 5 or more days per week. There are two types of congregate meals:

- Standard meal – A regular meal from the standard menu that is served to the majority of the participants.
- Therapeutic meal or liquid supplement – A special meal or liquid supplement that has been prescribed by a physician and is planned specifically for the participant by a dietician (e.g., diabetic diet, renal diet, tube feeding).

**Home Delivered Meals** – Hot, cold, frozen, dried, canned or supplemental food (with a satisfactory storage life) which provides a minimum of one-third (1/3) of the dietary reference intakes (DRI) as established by the Food and Nutrition Board of the Institute of Medicine of the National Academy of Sciences and complies with the Dietary Guidelines for Americans, published by the Secretary and the Secretary of Agriculture, and is delivered to an eligible person in the place of residence. The objective is to assist the recipient sustain independent living in a safe and healthful environment 5 or more days per week. Home delivered meals may be served as breakfast, lunch, dinner or weekend meals.

B. Data, program narrative and accomplishments, fiscal reports and reimbursement requests as specified by the Agency that include but are not limited to, timely quarterly reports.

## 2. TERM OF AGREEMENT

The term of this Agreement (the "Term") shall commence on July 1, 2009 (the "Effective Date") and terminate on June 30, 2010, unless sooner terminated as herein provided.

### 3. PAYMENT FOR SERVICES.

A. For the services to be provided hereunder, the Agency shall pay the Contractor during the Term an aggregate amount not to exceed **\$29,937** said aggregate amount to be derived from the following sources:

1. **\$23,525** from Title III-C1 of the OAA;
2. **\$6,412** from Title III-C2 of the OAA;

B. For the services to be provided hereunder, the Contractor shall be paid by the Agency in accordance with the following:

1. A Service Plan, submitted by the Contractor, outlining specific services to be provided, has been approved by the Agency. A specific budget for ARRA funds, submitted by the Contractor, has been approved by the Agency. The attached Notification of Grant Award (NGA) representing the ARRA funds budget is incorporated herein.
2. The Contractor shall submit timely and accurate consumer/client tracking service documentation (rosters and transmittals) as required by the AAA by the close of business on the 2nd day of each month following the last day of the month in which services were provided. If the 2nd day falls on a weekend or AAA holiday, the information shall be delivered by the close of business on the proceeding business day.
3. Submit timely and accurate consumer/client assessment and reassessment documentation (including transmittals) on the day conducted.
4. By the 7th working day, submit official monthly revenue and expenditure reports with current year to date information. Submit Quarterly Trial Balance and or Profit and Loss statements.
5. Expenditures must be consistent with all applicable federal and state laws and regulations.
6. Payments to the Contractor will be made subsequent to receipt of federal funds by the Agency. Any expenditure made prior to receipt of federal funds or pending the Department approval shall be made at the Contractor's own risk, and the Agency shall not be liable for such expenditures.
7. In no event shall the Contractor make any assessment or charge against the Agency for unapproved fees, interest, penalties, or late charges. All payments by the Agency hereunder are expressly contingent upon the Contractor's full and complete compliance with all terms, provisions, and conditions of this Agreement.

8. The Agency reserves the right to withhold and/or deny payment of all or any portion of an amount determined by the Agency to be excessive, unwarranted, unauthorized, unsubstantiated, or not in compliance with the terms of this Agreement. The Contractor agrees to hold the Agency harmless from and against any audit exceptions arising from the Contractor's violation of the terms of this Agreement and shall promptly make restitution to the Agency of such amounts determined by the Agency to have been paid to the Contractor in error.
9. The total payments for services rendered by the Contractor under the terms and conditions of this Agreement shall not exceed those listed in the NGA.

#### 4. ASSURANCES:

- A. *Americans with Disabilities Act of 1990* –  
The Contractor shall comply with the requirements established under the Americans with Disabilities Act in meeting statutory deadline under the Act as they pertain to operation for employment, public accommodations, transportation, state and local government operations and telecommunications.
- B. *Section 504 of the Rehabilitation Act of 1973* –  
The Contractor shall provide that each program activity, when viewed in its entirety is readily accessible to and usable by persons with disabilities in keeping with 45 CFR, Part 84.11, et. Seq., and as provided for in Section 504 of the Rehabilitation Act of 1974, as amended. When structural changes are required, these changes shall be in keeping with 45 CFR, Part 74. The Contractor shall ensure that benefits and services available under the agreement are provided in a non-discriminatory manner as required by the Title VI of the Civil Rights Act of 1964, as amended.
- C. *Age Discrimination in Employment Act of 1967* –  
The Contractor shall comply with Age Discrimination in Employment Act of 1967 (29 USC 621, et. Seq.).
- D. *Drug Free Workplace*  
The Contractor shall comply with the Drug-Free Workplace Act of 1988.
- E. *Certification Regarding Debarment*  
45CFR 92.35 Sub awards to debarred and suspended parties; this document is required annually as long as this agreement is in effect.

F. *Independent Audit*

The Contractor will provide a financial and compliance audit report to the Agency covering the period of July 1, 2009 through June 30, 2010. The audit reports provided to the Agency must include a copy of the Auditor's management letter. This audit shall be conducted in accordance with generally accepted auditing standards and shall encompass the following provisions:

1. The Contractor, expending \$500,000 or more in combined federal funds, shall have an audit conducted in accordance with Revised Circular A-133, which incorporates the 1996 Single Audit Act amendments. A fair allocation of the audit costs may be charged to both federal and state funds under this Agreement. A copy of the complete report package as required to be submitted by A-133 to the designated clearinghouse shall also be provided to the Agency. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, etc.), which facilitates a reconciliation of audited costs to the final report. The NCNMEDD, Non-Metro AAA further requires the inclusion of the final units of services provided and final number of persons served. This information may be included within the supplementary section of the audit report.
2. Governmental type Contractors expending less than \$500,000 in combined federal awards shall be continue to follow the guidance of the New Mexico State Auditor. Since a full scope audit will continue to be required by the State Auditor, only a fair allocation of state funds within this Agreement may be expended for such audit costs. The audit report shall include a schedule of administrative and program expenses for each separate federal title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title IIIE, etc.) which facilitates a reconciliation of these audited costs to the final report. The NCNMEDD Non-Metro AAA further requires the inclusion of the final units of services provided and final number of persons served by this Agreement. This information may be included within the supplementary section of the audit report.
3. Non-governmental Contractors expending between \$25,000 in federal and state funds combined less than \$500,000 in federal funds, shall have an audit conducted in accordance with the GAO Government Auditing Standards. A fair allocation of the audit costs may be charged to the state funds awarded under the Agreement. Federal funds shall not be charged for audit costs under this section. The audit report shall include a schedule of administrative and program expenses for each separate title or program (Title IIIB, Title IIIC-I, Title IIIC-II, Title IIID, Title

IIIE, etc.), which facilitates a reconciliation of these audited costs to the final report. The NCNMEDD Non-Metro AAA further requires the inclusion of the final units of services provided and final number of persons served by this agreement. This information may be included within the supplementary section of the audit report.

4. For those Contractors that expend less than \$15,000 in federal and state dollars, no audit is required. The close out of this grant will be based on information required by the Non-Metro AAA such as financial reports (trial balances, general ledgers, etc.), monitoring efforts and final numbers of services provided and final number of individuals served.
5. Submittal of the audit report for government entities shall be within ten (10) working days after releases by the New Mexico State Auditor's Office. For non-governmental entities, the audit report is due four (4) months after the end of the entity's fiscal year.
6. The Contractor's independent auditor shall be made aware of Office of Management and Budget Circular (OMB) A-87, Cost Principles for State, Local and Indian Tribal Governments, and OMB Circular A-122, Cost Principles of Nonprofit Organizations in determining the allowability of costs.
7. Audit reports shall be in compliance with all provisions of ARRA, if applicable.

G. *Equal Opportunity Compliance.*

The Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

H. *Compliance with Aging and Long-Term Services Department Functions.*

The Contractor shall perform in accordance with the OAA and directives of the U.S. Administration on Aging; the rules, regulations, policies and procedures established by the Department of Aging and Long-Term

Services Department for the provision of services and administration of programs funded under the OAA and the New Mexico State Legislature; the approved Area Plan; and the terms and conditions of this Agreement.

I. *Non-Discrimination Service Delivery.*

The Contractor will not, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap:

a. Deny any individual receiving services under this Agreement any service or other benefits provided under the program;

b. Provide any services or other benefits to an individual which is different than those funded under this Agreement;

c. Subject any individual to segregation or separate treatment in any manner related to his/her receipt of any services or other benefits provided under the funding for this program;

d. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any services or other benefits provided under this program;

e. Treat an individual differently from others in determining whether he satisfies any eligibility or other requirements or condition which individuals must be in order to receive any aid, care, services, or other benefits provided under the funding for this program;

f. Deny any individual an opportunity to participate in the program through the provision of services or otherwise afford him an opportunity to do so which is different from that afforded others under the program;

g. The Contractor, in determining (1) the services or other benefits provided under this Agreement, (2) the class of individuals to whom, or situation in which such services or other benefits will be provided under this program, or (3) the class of individuals to be afforded an opportunity to participate in the program, will not utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program in respect to individuals of a particular race, religion, color, national origin, ancestry, sex, sexual preferences, age or handicap.

**5. CANCELLATION/TERMINATION.**

This Agreement may be terminated by the Agency without cause upon written notice delivered to the Contractor at least thirty (30) days prior to the intended date of

termination. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. This Agreement may be terminated immediately upon written notice to the Contractor if the Contractor becomes unable to perform the services contracted for, as determined by the Agency, or if, during the term of this Agreement, the Contractor or any of its officers, employees or agents is indicted for fraud, embezzlement or other crime due to misuse of state funds or due to the Appropriations paragraph herein, or if the Contractor fails to comply with any of the terms contained herein or is in breach of this Agreement as set forth in Paragraph VI, below. This provision is not exclusive and does not waive the Agency's other legal rights and remedies caused by the Contractor's default or breach of this Agreement. This Agreement also may be terminated by the Contractor upon thirty (30) days written notice to the Agency.

#### **6. APPROPRIATIONS.**

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by Congress or the Legislature of New Mexico and utilized by the Agency for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by the Agency to the Contractor. The Agency's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. If the Agency proposes an amendment to the Agreement to unilaterally reduce funding, the Contractor shall have the option to terminate the Agreement or agree to the reduced funding, within thirty (30) days of receipt of the proposed amendment.

#### **7. STATUS OF CONTRACTOR.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the Agency. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of Agency vehicles, or any other benefits afforded to employees of the Agency as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are personally reportable by it for income tax purposes as self-employment or business income and are reportable for self-employment tax.

#### **8. ASSIGNMENT.**

The Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the Agency.

#### **9. SUBCONTRACTING.**

The Contractor shall not subcontract any portion of the services to be performed under this Agreement without the prior written approval of the Agency.

**10. RELEASE.**

The Contractor's acceptance of final payment of the amount due under this Agreement shall operate as a release of the Agency, its officers and employees from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the Agency unless the Contractor has express written authority to do so, and then only within the strict limits of that authority.

**11. CONFIDENTIALITY.**

Any confidential information provided to or developed by the Contractor in the performance of this Agreement shall be kept confidential and shall not be made available to any individual or organization by the Contractor without the prior written approval of the Agency. Disclosure of confidential information shall only be made in accordance with the Inspection of Public Records Act or the applicable state or federal law or regulations. Contractor shall establish a method to guarantee the confidentiality of all information relating to clients in accordance with applicable federal, state and local laws, rules and regulations, as well as the terms of this Agreement. However, this provision shall not be construed as limiting the rights of the Agency or any other federal or state authorized representative to access client case records or other information relating to clients served under this Agreement.

**12. PRODUCT OF SERVICE – COPYRIGHT.**

All materials developed or acquired by the Contractor under this Agreement shall become the property of the Agency and shall be delivered to the Agency no later than the termination date of this Agreement. Nothing produced, in whole or in part, by the Contractor under this Agreement shall be the subject of an application for copyright or other claim of ownership by or on behalf of the Contractor.

**13. CONFLICT OF INTEREST.**

The Contractor warrants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance or services required under the Agreement. The Contractor certifies that the requirements of the Governmental Conduct Act, Sections 10-16-1 through 10-16-18, NMSA 1978, regarding contracting with a public officer or state employee or former state employee have been followed.

**14. AMENDMENT.**

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

**15. MERGER.**

This Agreement incorporates all the agreements, covenants and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, oral or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

**16. PENALTIES.**

The Procurement Code, Sections 13-1-28 through 13-1-199, NMSA 1978, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for illegal bribes, gratuities and kickbacks.

**17. APPLICABLE LAW.**

The laws of the State of New Mexico shall govern this Agreement.

**18. WORKERS COMPENSATION.**

The Contractor agrees to comply with state laws and rules applicable to workers compensation benefits for its employees. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, this Agreement may be terminated by the Agency.

**19. RECORDS AND FINANCIAL AUDIT.**

The Contractor shall maintain detailed time and expenditure records, including, but not limited to, client records, books, supporting documents pertaining to services provided, that indicate the date; time, nature and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by the Agency, the Department of Finance and Administration and the State Auditor. The Agency shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of the Agency to recover excessive or illegal payments. If, pursuant to this Agreement, the Contractor receives federal funds subject to the Single Audit Act, the Contractor shall submit to the Agency an audit conducted by a certified public accountant in compliance with the Single Audit Act.

**20. INDEMNIFICATION.**

Contractor shall fully indemnify and defend Agency from any and all claims, costs, fees (including reasonable attorney's fees), obligations, fines, and liabilities resulting from conduct of Contractor, its employees, officers, directors, and agents, performed in relation to this Agreement.

**21. NOTICES.**

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

**AGENCY:**

NCNMEDD  
Attn: Nancy Arias  
P.O. Box 5115  
Santa Fe, NM 87502

**CONTRACTOR:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**22. INSURANCE.**

The Contractor shall secure and maintain during the term of this Agreement, at its own expense, comprehensive and general public liability insurance and/or other types of insurance as the Agency may require. The Contractor shall secure and maintain during the term of this Agreement, at its own expense, worker's compensation insurance in the amounts required by the applicable laws of the State of New Mexico covering the Contractor's employees. All policies of liability insurance that Contractor is obligated to maintain according to this Agreement, except for any policy of workmen's compensation insurance, shall name Agency as an additional insured. The Contractor shall furnish to the Agency a memorandum or certification of both the comprehensive and general liability insurance, as well as the worker's compensation insurance, before the payment of any monies as consideration for the services rendered hereunder shall be made. Upon such certificates and/or memoranda being furnished to the Agency, the same shall be annexed to this Agreement and by reference made a part hereof.

**23. REPORTING REQUIREMENTS.**

Contractor agrees to abide by the reporting requirements of the American Recovery and Reinvestment Act (ARRA) as defined by Agency to include, but not limited to, timely monthly reports and as otherwise consistent with this Agreement. Receipt of funds pursuant to ARRA is contingent upon agreement that these reporting requirements will be met. These reporting requirements shall include, but not necessarily be limited to, the following, as applicable:

- a. Contractor shall acquire or update their DUNS number and register with the Central Contractor Registration, if applicable;
- b. Contractor shall report the total amount of funds received;
- c. Contractor shall report the amount of funds received that were expended or obligated to projects or activities, including unobligated balances to facilitate reconciliations;
- d. Contractor shall report a detailed list of all projects or activities for which funds were expended or obligated, including:

1. The name of the project or activity;
2. A description of the project or activity;
3. An evaluation of the completion status of the project or activity; and
4. An estimate of the number of jobs created and the number of jobs retained by the project or activity.

Contractor shall also report on any subcontracts awarded pursuant to this Agreement and in accordance with Paragraph 9 of this Agreement, such reporting to comply with the Federal Funding Accountability and Transparency Act. The data elements required for compliance with the Federal Funding Accountability and Transparency Act are as follows:

- a. The name of the subcontractor receiving a subcontract;
- b. The amount of the subcontract agreement;
- c. Information on the subcontract agreement including the transaction type, funding agency, program source, and an agreement title descriptive of the purpose of each funding action;
- d. The location of the subcontractor receiving the subcontract agreement and the primary location of performance under the subcontract, including the city, state, congressional district, and country;
- e. A unique identifier of the subcontractor and of the Contractor (the DUNS number) should the subcontractor be owned by another entity; and
- f. Any other information specified by the Federal Office of Management and Budget (OMB) or the Federal awarding Agency, if applicable.

The Agency shall work with the Contractor to assist in these reporting obligations. **ARRA funds may be used in conjunction with other funds to perform the Scope of Work under this Agreement, but tracking and reporting must be done separately to meet the reporting requirement of ARRA and the OMB Guidance.**

#### **24. ADDITIONAL AUDIT REQUIREMENTS.**

- A. If any part of this Agreement is funded pursuant to the ARRA, Contractor agrees to abide by the following:
1. Allow access by any appropriate Federal entity, including an inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 to examine any records of the Contractor and any subcontractor pursuant to this original Agreement that pertain to, and involve transactions relating to, this Agreement or any subcontract pursuant to this Agreement; and
  2. To allow any appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 to interview any officer or employee of the Contractor or any subcontractor pursuant to this original Agreement regarding such transactions.
  3. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.

B. If any part of this Agreement is funded pursuant to the ARRA, Contractor agrees to abide by the following:

1. Allow access by the Comptroller General and his representatives to examine any records of the Contractor and any subcontractor pursuant to this original Agreement that pertain to, and involve transactions relating to, this Agreement or any subcontract pursuant to this Agreement; and
2. Allow the Comptroller General and his representatives to interview any officer or employee of the contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
3. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Any subcontract agreement entered into by the Contractor pursuant to this original Agreement shall contain such language as is necessary to provide for the agreement of the subcontractor to the requirements of Sections 23, 24, 25, and 26 of this Agreement.

#### **25. ADDITIONAL ARRA REQUIREMENTS.**

The Contractor understands and hereby acknowledges that any funding provided pursuant to ARRA is one-time funding and subject to the provisions and requirements of ARRA and this Agreement.

#### **26. MANDATORY REPORTING.**

Any entity awarded funds made available under ARRA is required to promptly refer to an appropriate inspector general any credible evidence that principal, employee, agent, contractor, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving such ARRA funds.

#### **27. WHISTLEBLOWER PROTECTIONS OF EMPLOYEES UNDER ARRA.**

Agency and Contractor agree and acknowledge that an employee of any non-Federal employer receiving funds pursuant to ARRA may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Recovery Accountability and Transparency Board, an Inspector General, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency (such as the New Mexico Attorney General's Office), a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discover, or terminate misconduct), a court or grand jury, the head of a Federal agency or their representative, information that the employee reasonably believes is evidence of:

1. Gross mismanagement of an agency contract or grant relating to ARRA funds;

- 2. A gross waste of ARRA funds;
- 3. A substantial and specific danger to public health or safety related to the implementation or use of ARRA funds;
- 4. An abuse of authority related to the implementation or use of ARRA funds; or
- 5. A violation of law, rule, or regulation related to an agency contract (including the competition or negotiation of a contract) or grant, awarded or issued, relating to ARRA funds.

Any employer, including Contractor, receiving funds pursuant to ARRA shall post notice of the rights and remedies provided under this section.

**28. SIGNATURES.**

For the faithful performance of the terms of this agreement, the parties affix their signatures and bind themselves effective July 1, 2009.

**City of Las Cruces**

*Legal Name of Contractor/Contractor*

**NCNMEDD – Non Metro AAA**

*Name of Area Agency on Aging*

*Signature*

*Signature*

Ken Miyagishima, Mayor

*Printed/Typed Name of Signatory*

Barbara Deaux, Executive Director

*Printed/Typed Name of Signatory*

*Date*

*Date*

September 25, 2009

NORTH CENTRAL NEW MEXICO ECONOMIC DEVELOPMENT DISTRICT  
 NOTIFICATION OF GRANT AWARD (NGA)  
 AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA) - NUTRITION PROGRAM

GRANTEE: City of Las Cruces		APPROVED BUDGET PERIOD				Grant/Action		NGA DATE
ADDRESS:		FROM: 7/1/2009				New/Cont: <input checked="" type="checkbox"/>		7.1.09
PHONE:		TO: 6/30/2010				Revision: <input type="checkbox"/>		
						BAR: <input type="checkbox"/>		
						Other: <input type="checkbox"/>		
DESCRIPTION		FEDERAL	STATE	LOCAL	IN-KIND	PROJ. INC.	TOTAL	
AAA Administration	Title IIIB	0	0	0	0	0	0	
	Title IIIC1	0	0	0	0	0	0	
	Title IIIC2	0	0	0	0	0	0	
	Title IIID	0	0	0	0	0	0	
	Title IIIE	0	0	0	0	0	0	
Subtotal		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Title IIIB	Access	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	In-Home	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Community All Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Subtotal		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Title IIIC1	Meal Costs	\$ 23,525	\$ -	\$ 3,529	\$ -	\$ -	\$ 27,054	
Subtotal		\$ 23,525	\$ -	\$ 3,529	\$ -	\$ -	\$ 27,054	
Title IIIC2	Meal Costs	\$ 6,412	\$ -	\$ 962	\$ -	\$ -	\$ 7,374	
SubTotal		\$ 6,412	\$ -	\$ 962	\$ -	\$ -	\$ 7,374	
Title IIID	Health Promotion	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Title IIIE	Alzheimer	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Care Giver Support	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
DEMONSTRATON DEMO GRANT								
ALZHEIMER	Respite Care	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
ALL STATE OTHER		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
Sub Total		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
SUB TOTALS	Title IIIB	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Title IIIC1	\$ 23,525	\$ -	\$ 3,529	\$ -	\$ -	\$ 27,054	
	Title IIIC2	\$ 6,412	\$ -	\$ 962	\$ -	\$ -	\$ 7,374	
	Title IIID	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Title IIIE	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	Alzheimer Respite Care	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
	All State Other	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	
GRAND TOTAL		\$ 29,937	\$ -	\$ 4,491	\$ -	\$ -	\$ 34,428	
COMPUTATION OF GRANT		8. Federal/State Shares will be comprised of:						
1. Estimated Total Cost.....	\$ 34,428	a. Federal/State		FY 20 __	Federal			
2. LESS Anticipated Proj. Inc.	\$ -	grant unearned			State			
3. Estimated Net Cost.....	\$ 34,428	in previous project year(s)						
4. Non-federal and Non-state Share of Net Cost.....		b. Carry Over		FY 20 __	Federal			
5. Proj. Inc. (Used as Match).....	\$ -				State			
6. Federal Share of Net Cost.....	\$ 29,937	c. New Obligational		FY-	Federal		\$ 29,937	
7. State Share of Net Cost....	\$ -	Authority Herein Awarded			State		\$ -	

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REMARKS: In addition to the conditions contained in the agreement on the application form, the conditions below apply to this grant:

- X 1. Unless revised, the amount of lines 6 and 7 (Computation of Grant) will constitute a ceiling for federal and/or state participation in the approved cost.
- X 2. The federal and/or state share of the project cost is earned only when the cost is accrued and the non-federal and/or non-state share of the cost has been contributed. Receipt of federal and/or state funds (either through advance or reimbursement) does not constitute earning of these funds.
- X 3. If the actual net cost is less than the amount on line 3 (Computation of Grant) the non-federal and/or non-state share, the federal share, and the state share will meet the percentages indicated on Page 1 of the NGA.
- X 4. As shown in the Computation of Grant (assuming satisfactory progress, adequate justification and the availability of funds), the federal and state shares shall meet the amounts shown on lines 6 and 7 of the estimated net project cost shown on line 3.
- X 5. Funds herein awarded will remain available during the length of the project period, however, state and/or federal funds are dependent upon availability.
- X 6. Other: Percentages indicated on this notification of Grant Award are adjustable at year end based on the amount of program income earned and expended. All program income must be expended within the program period indicated on page 1.
- X 7. Programs must meet the units of services projected to be reimbursed or submit an amended plan detailing reasons why approve units are not being met which must be approved by the NCNMEDD Area Agency on Aging.

THE GRANTEE ORGANIZATION IS RESPONSIBLE FOR RETAINING RECORDS OF ALL FEDERAL AND/OR STATE ACCOUNTS AS FOLLOWS:

All accounting records are to be kept in accordance with federal and state policy and readily available for examination by Area Agency on Aging personnel or other federal and/or state officials authorized to examine any or all financial and programmatic records. Such records shall be retained in accordance with the following:

- 1. Keep adequate and complete financial records, and to report promptly and fully to the Area Agency.
- 2. If a federal and/or state audit has not been made within three (3) years after project termination, project records may then be destroyed, on approval of the Area Agency.
- 3. In all cases, an over-riding requirement exists to retain records until resolution of any audit questions relating to individual grants.
- 4. Non-federal resources must be contributed equally to the percentage of the non-federal share of actual net costs for a project year. If a Grantee reports federal and/or state cash received but unearned on the final project report for a project year, the Grantee then owes the State Agency this amount. This amount may constitute a cash advance on any funds awarded to the Grantee by the Area Agency for the following project year.
- 5. The disposition of unearned portions of federal and/or state funds at the end of the project year shall be made in accordance with current state policies.
- 6. Unearned federal and/or state cash at the time the project is terminated shall be returned in full to the State Agency.
- 7. All obligations will be liquidated within 30 days after the end of the project year and before final program and financial reports are submitted.
- 8. Inventory of project equipment will be maintained and submitted as requested.

Project records will be preserved and kept available to federal and state auditors at the following address: \_\_\_\_\_

NCNMEDD Area Agency on Aging Authorizing

Barbara Deaux, Executive Director

\_\_\_\_\_

We, the undersigned officers of the Grantee organization, certify that we are in agreement with the terms and conditions of this award.

Signature: \_\_\_\_\_

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

Signature: \_\_\_\_\_

Date: 10/20/09

Signature: \_\_\_\_\_

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

CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2009/2010

FUND	DIVISION		FUND TYPE	
Federal Stimulus Operating Grants Fund 2900	Various		Special Revenue	
	FY 2008/09 Projected*	FY 2009/10 Adopted	Adjustment	FY 2009/10 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ 0	0		0
<b>REVENUES</b>				
Byrne Memorial Recovery Act-CLC	\$ 0	281,558		281,558
Byrne Memorial Recover Act-DAC	0	166,312		166,312
Cops Hiring & Retention Prog (CHRP) Recovery Act 09	0	1,518,784		1,518,784
NMEDDDNM AAA - Congregate Meals	0	0	23,525	23,525
NMEDDDNM AAA - Home Delivered Meals	0	0	6,412	6,412
<b>Total Revenues</b>	\$ 0	1,966,654	29,937	1,996,591
<b>Total Resources</b>	\$ 0	1,966,654	29,937	1,996,591
<b>EXPENDITURES</b>				
Byrne Memorial Recovery Act-CLC	\$ 0	281,558		281,558
Byrne Memorial Recover Act-DAC	0	166,312		166,312
Cops Hiring & Retention Prog (CHRP) Recovery Act 09	0	1,518,784		1,518,784
NMEDDDNM AAA - Congregate Meals	0	0	23,525	23,525
NMEDDDNM AAA - Home Delivered Meals	0	0	6,412	6,412
<b>Total Expenditures</b>	\$ 0	1,966,654	29,937	1,996,591
<b>ENDING BALANCE</b>	\$ 0	0	0	0

\*Projected based on 8 months actual through February 28, 2009 and 4 months projected.