

2009 AGREEMENT TO USE THE ACCOUNT FOR LOW-INCOME HOUSING
(TRUST FUND)
FUNDS BY LAS VEGAS

WHEREAS, the Housing Division, Department of Business and Industry, State of Nevada, hereinafter called "NHD", is the administering agency for the Account for Low-Income Housing hereinafter called "Trust Fund"; and

WHEREAS, NHD, is responsible for the planning, administration, implementation, and evaluation of the program; and

WHEREAS, City of Las Vegas, hereinafter called "Las Vegas", is a political subdivision of the State of Nevada; and

WHEREAS, NHD desires to assist Las Vegas by providing Trust Funds to assist with qualified projects under NRS Chapter 319, and NAC 319; and

NOW, THEREFORE, in consideration of the foregoing premises, that the use of Trust Funds be conveyed to Las Vegas by NHD, subject to the following conditions and limitations:

I. Scope of Services

A. NHD will provide funds not to exceed the total of \$1,290,346.00 in Trust Funds to Las Vegas to assist with qualified Trust Fund projects or activities hereinafter referred to as "Projects."

B. Las Vegas agrees that any program costs, unless otherwise specified, exceeding the \$1,290,346.00 in Trust Funds provided by NHD pursuant to this Agreement, will be the responsibility of Las Vegas. Any ongoing project costs, such as maintenance and operations, shall be the sole responsibility of Las Vegas.

C. Before disbursing Trust Funds to any recipient, Las Vegas agrees to enter into a written agreement with the recipient requiring compliance with the regulations set forth in NRS Chapter 319, and NAC 319. Fifteen percent of all program units must serve families at poverty level.

D. Changes in the Scope of Services as outlined herein must be in accordance with and approved by both parties. Any such changes must not jeopardize the Trust Fund program.

II. NHD General Conditions

A. Las Vegas has requested the financial support of NHD that is provided for in this Agreement in order to enable Las Vegas to provide affordable housing assistance. NHD shall have no relationship whatsoever with the services provided, except the provision of financial support, monitoring, and the receipt of such reports as are provided for herein. To the extent, if at all, that any relationship to such services on the part of NHD may be claimed or found to exist, Las Vegas shall be an independent contractor only.

B. Las Vegas shall obtain, or require any subgrantee to obtain, any and all federal, state, and local permits and licenses required to execute any individual project as described in this Agreement's Scope of Services. Las Vegas further agrees to abide by, and shall require all subgrantees to abide by, all applicable federal, state, and local codes, regulations, statutes, ordinances, and laws.

C. Las Vegas will provide NHD with client usage records per project on an annual basis during the period of this Agreement. These records will contain, but are not limited to, the following data:

1. Total clients served;
2. Racial breakdown of clients served including Black, White, Hispanic, American Indian/Alaskan and Asian/Pacific Islander;
3. Number and percentage of low- and very low-income clients.
4. Number of handicapped clients served;
5. Number of senior citizens served;
6. Number of female head-of-households served;
7. Name of each head of household served;
8. Number of persons in each household served; and
9. Rent charged each household served.

D. Las Vegas will not use any portion of the allocated Trust Funds for other than Trust Fund qualified projects, as defined in NRS 319, and NAC 319. Any recipient or subgrantee must meet program requirements and serve eligible low-income residents.

E. For each qualified project receiving funds pursuant to this agreement, Las Vegas shall establish the term of affordability as either the minimum established by the Nevada Administrative Code or the term of the loan, whichever is longer.

F. If the qualified projects or activities, or any portion thereof, are converted to non-qualified Trust Fund projects or activities without the prior written approval of NHD, Las Vegas shall, upon the request of NHD, repay to NHD, without interest, the amount of Trust Funds expended on the non-qualified project. Las Vegas

shall require reasonable assurances of security for such repayments in the form of a recorded deed of trust for such property and Las Vegas shall require execution as part of providing applicable assistance. A sale, transfer, or other conveyance of the assisted property is subject to the requirement that the amount of Trust Funds previously invested in the property be returned to Las Vegas to be reinvested in other affordable housing units.

G. Las Vegas, or any subgrantee, shall not allow assisted properties to be attached in any manner, including any liens or other encumbrances or any mortgages or other security interest during the Period of Affordability without the prior written consent of NHD.

H. Las Vegas may not assign or delegate any of its rights, interests or duties under this Agreement without the prior written consent of NHD. Any such assignment or delegation made without the required consent shall be voidable by NHD, and may, at the option of NHD, result in the forfeiture of all financial support provided herein.

I. Las Vegas shall carry, or require any subgrantee to carry, Comprehensive Fire and Hazard insurance covering the full replacement costs of an assisted project.

J. Las Vegas shall allow duly authorized representatives of NHD to conduct such occasional reviews, audits and on-site monitoring of projects as NHD deems to be appropriate in order to determine:

1. Whether the objectives of the program are being achieved;
2. Whether the program is being conducted in an efficient and effective manner;
3. Whether management control systems and internal procedures have been established to meet the objectives of the program;
4. Whether the financial operations of the program are being conducted properly;
5. Whether the periodic reports to NHD contain accurate and reliable information; and
6. Whether all of the activities of the program are conducted in compliance with the provisions of Federal and State laws and regulations and this Agreement.

K. Visits by NHD to Projects shall be announced to Las Vegas in advance of those visits and shall occur during normal operating hours. The representatives of NHD may request, and, if such a request is made, shall be granted, access to all of the records of Las Vegas which relate to the program. The representatives of NHD may, from time to time, interview recipients of the housing services of the program who volunteer to be interviewed.

L. At any time during normal business hours, Las Vegas records with respect to the program shall be made available for audit, examination and review by NHD, the Attorney General's Office, contracted independent auditors, HUD, the Comptroller General of the United States, or any combination thereof.

M. Subject to NRS Chapter 41, Las Vegas will protect, defend, indemnify, and save and hold harmless NHD from and against any and all liability, damages, demands, claims, suits, liens, and judgments of whatever nature including but not limited to claims for contribution or indemnification for injuries to or death of any person or persons, caused by the negligence, gross negligence or intentional act of Las Vegas or its agents pursuant to this Agreement.

N. Las Vegas will not use any funds or resources which are supplied by NHD in litigation against any person, natural or otherwise, or in its own defense in any such litigation and also agrees to notify NHD of any legal action which is filed by or against it.

O. This Agreement will commence upon its approval and signature by all parties. Funds allocated by NHD to Las Vegas under this Agreement must be committed by Las Vegas to specific projects prior to May 31, 2010 and used prior to June 30, 2012.

P. In the event that Las Vegas and/or NHD anticipate the total amount of funds allocated for this Agreement will not be expended in the time and manner prescribed in this Agreement, NHD reserves the right to extract that portion for other projects/programs operated under NHD's Trust Fund program.

Q. Las Vegas agrees that no officer or employee of Las Vegas may seek or accept any gifts, service, favor, employment, engagement, emolument or economic opportunity which would tend improperly to influence a reasonable person in that position to depart from the faithful and impartial discharge of the duties of that position.

R. Las Vegas agrees that no officer or employee of Las Vegas may use his or her position to secure or grant any unwarranted privilege, preference, exemption or advantage for himself or herself, any member of his or her household, any business entity in which he or she has a financial interest or any other person.

S. Las Vegas agrees that no officer or employee of Las Vegas may participate as an agent of Las Vegas in the negotiation or execution of any contract between Las Vegas and any private business in which he or she has a financial interest.

T. Las Vegas agrees that no officer or employee of Las Vegas may suppress any report or other document because it might tend to affect unfavorably his or her private financial interests.

U. Las Vegas, and any subgrantee, shall keep and maintain in effect at all times any and all licenses, permits, notices and certifications which may be required by any City ordinance or state or federal statute.

V. Las Vegas, and any subgrantee, shall be bound by all City ordinances and state and federal statutes, conditions, regulations and assurances which are applicable to the entire Trust Fund Program or are required by HUD, NHD, or any combination thereof.

W. Any material breach of this section may in the discretion of NHD, result in forfeiture of all unexpended Trust Funds received by Las Vegas pursuant to this Agreement, or any part thereof.

X. No officer, employee or agent of NHD shall have any interest, direct or indirect, financial or otherwise, in any contract or subcontract or the proceeds thereof, for any of the work to be performed pursuant to the project during the period of service of such officer, employee or agent, for one year thereafter.

Y. Upon the expiration or revocation of this Agreement, Las Vegas shall transfer to NHD any Trust Funds on hand at the time of expiration or revocation and any accounts receivable attributable to the use of Trust Funds, unless waived in writing by NHD.

III. Financial Management

A. Las Vegas agrees, and shall require any subgrantee to agree, that all costs of any project receiving funds pursuant to this agreement, shall be recorded by budget line items and be supported by checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents evidencing in proper detail the nature and propriety of the respective charges, and that all checks, payrolls, time records, invoices, contracts, vouchers, orders or other accounting documents which pertain, in whole or in part, to the project shall be thoroughly identified and readily accessible to NHD.

B. Las Vegas agrees that excerpts or transcripts of all checks, payrolls, time records, invoices, contracts, vouchers, orders and other accounting documents related to or arguably related to the project will be provided upon request to NHD.

C. Las Vegas agrees that it may not request disbursement of funds under this Agreement until the funds are needed for payment of eligible costs. The amount of each request must be limited to the amount needed.

D. Las Vegas shall comply with the Single Audit Act and Circular A-133 and shall provide NHD with a copy of the complete audit report.

When complying with the Single audit Act and Circular A-133, the audit must include funds that were disbursed from the Account For Low-Income Housing (Trust Fund) and require all recipients who must comply with the Single Audit Act to include Trust Funds.

IV. Modification or Revocation of Agreement

A. NHD and Las Vegas will amend or otherwise revise this Agreement should such modification be required by NRS Chapter 319 or NAC 319.

B. In the event that any of the Trust Fund Program funds for any reason are terminated or withheld from NHD or otherwise not forthcoming, NHD may revoke this Agreement.

C. NHD may suspend or terminate this Agreement if Las Vegas fails to comply with any of its terms.

D. This Agreement may be terminated at the convenience of NHD.

E. This Agreement constitutes the entire Agreement between the parties and may only be modified by a written amendment signed by the parties, or as otherwise set forth in the terms of the Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and intend to be legally bound thereby, this _____ day of _____, 2008.

CITY OF LAS VEGAS

NEVADA HOUSING DIVISION

Oscar B. Goodman
Mayor

Charles L. Horsey, III
Administrator

Attest:

State of Nevada)
Carson City)

Beverly K. Bridges, CMC, City Clerk

State of Nevada)
County of Clark)

On this _____ day of _____, 2008, before me, a Notary Public, personally appeared Charles L. Horsey, III, who did say that he is the Administrator of the Nevada Housing Division, named in the foregoing instrument, and acknowledged that he executed the same.

On this _____ day of _____, 2008, before me, a Notary Public, personally appeared Oscar B. Goodman, who did say that he is the Mayor of the City of Las Vegas, named in the foregoing instrument, and acknowledged that he executed the same.

Notary Public

Notary Public

APPROVED AS TO FORM ONLY

By: Robert S. Zylman 8-8-08
City Attorney