



94
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 6 Ordinance/Resolution# 10-170 Council District:

For Meeting of January 4, 2010
 (Adoption Date)

TITLE: A RESOLUTION TO ALLOW THE CITY MANAGER OR ASSISTANT CITY MANAGER TO ACCEPT AND SIGN ALL NEW MEXICO GRANT CONTRACT EXTENSIONS RELATED TO THE CAPITAL APPROPRIATION REALLOCATION REVIEW.

PURPOSE(S) OF ACTION: The administration is requesting that the City Manager or Assistant City Manager be authorized to accept and sign for the grant agreement extensions so they can be returned to the State of New Mexico for execution. Until the State's execution of the grant agreement extension, there can be no reimbursement to the local government for project expenses.

Name of Drafter: Auguie Henry III		Department: Finance/Grants Administrative Office		Phone: (575) 541-2281	
Department	Signature	Phone	Department	Signature	Phone
Finance Department		(575) 541-2050	Budget		(575) 541-2300
			Assistant City Manager		(575) 541-2271
Legal		(575) 541-2128	City Manager		(575) 541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In accordance with the directive from Governor Bill Richardson, all capital project legislative appropriations contracts between the State of New Mexico and local governments were terminated effective October 30, 2009. The State then requested documentation to substantiate third party contracts in existence as-of October 30, 2009 between the local governments and vendors working on projects funded through legislative appropriations.

State staff are evaluating the third party contracts and issuing legislative appropriation extension agreements for the balances of the previously executed third party contracts.

If the grant agreement extension is accepted by the local government, the signed document must be returned to the State for their execution. Once executed, the local government can request reimbursement for allowable expenses incurred after October 30, 2009.

All of the projects that may have a grant agreement extension awarded, have already been reviewed and accepted by Council Resolution in prior years and incorporated into the City's current budget. The only possible change could be the amount of the grant agreement extension.

(Continue on additional sheets as required)

When all the grant agreement extensions have been completed and executed by the State of New Mexico, the City will provide an additional CAES to the City Council for the budget adjustment.

NOTE: These grant agreement extensions are not all arriving at local governments in a single batch. They will be arriving intermittently as the State reviews the 3rd party agreements. As an example, the City received 26 of a possible 195 grant agreement extensions. The remainder will be arriving sometime between now and after the legislative session. The 2010 Legislative Session will have their own review of capital projects and may determine if any additional reallocations are to be made in their final budget proposal, February 2010.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Various Legislative Capital Funds	TBD	TBD

1. Resolution
2. Exhibit "A" Letter from Robert Apadoca, Director, Department of Finance & Administration
3. Exhibit "B" Example of grant agreement extension for Project 08-L-G-5167 Note: all individual grant agreement extensions received are identical except for Article I – Implementation of Projects, Section A (individual project descriptions).

OPTIONS / ALTERNATIVES:

1. Accept the resolution as described allowing the administration the ability to return the grant agreement extensions as quickly as possible, allowing for a quick turn-around of execution of the project which in turn allows the reimbursement process to begin again with an effective date of October 30, 2009.
2. Disapprove of the resolution as presented. This would then require that all individual grant agreement extensions would have to be individually scheduled for Council approval. This could extend the execution of projects into the first quarter of 2010 with the City liable for all costs incurred by vendors until such time as reimbursement can be reinstated.
3. Amend the current proposal and adopt said changes.

(Continue on additional sheets as required)

RESOLUTION NO. 10-170**A RESOLUTION TO ALLOW THE CITY MANAGER OR ASSISTANT CITY MANAGER TO ACCEPT AND SIGN ALL NEW MEXICO GRANT CONTRACT EXTENSIONS RELATED TO THE CAPITAL APPROPRIATION REALLOCATION REVIEW.**

The City Council is informed that:

WHEREAS, under the directive from the Office of the Governor, all capital project legislative appropriation contracts between the State of New Mexico and local governments were terminated effective October 30, 2009; and

WHEREAS, the State of New Mexico requested documentation to substantiate third party agreements in existence on October 30, 2009 between the local governments and vendors working on capital projects funded through legislative appropriations; and

WHEREAS, the State of New Mexico has made a determination based on its criteria to fund only the balance of third party contracts already in existence on October 30, 2009; and

WHEREAS, the State of New Mexico will provide to the City of Las Cruces individual contracts to reinstate some of the funding terminated on October 30, 2009.

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

(I)

THAT, the City Manager or the Assistant City Manger can accept and sign all State of New Mexico grant contract extensions related to the capital appropriation reallocation review.

(II)

THAT, when all grant contract extensions have been executed by the State of New Mexico relative to the City of Las Cruces, the Grants Administrative Office will prepare a new Council Action and Executive Summary for any budgetary adjustments as dictated by the new agreements.

(III)

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

DONE AND APPROVED this 4th day of January, 2010.

(SEAL)

Mayor

ATTEST:

VOTE:

City Clerk

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

(SEAL)

Moved by: _____

Seconded by: _____

Approved as to Form:


City Attorney



BILL RICHARDSON
GOVERNOR

99
STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
Bataan Memorial Building, Ste 201 • Santa Fe, New Mexico 87501
Phone: (505) 827-4950 • FAX (505) 827-4948
www.nmdfa.state.nm.us

Exhibit A
K OCT 30 2009 U
BY: GAO [Signature]

KATHERINE B. MILLER
CABINET SECRETARY

ROBERT M. APODACA
DIRECTOR

October 30, 2009

TO: ***ALL CITY, COUNTY, LOCAL PUBLIC GOVERNMENTS OR OTHER SUB
RECIPIENT OF STATE CAPITAL OUTLAY FUNDS – HEREINAFTER
REFERRED TO AS “PUBLIC ENTITY”***

As you are aware, the State is experiencing a fiscal crisis and is projecting a budget deficit for Fiscal Year 2010 (“FY 2010”) of approximately \$650 million dollars. The Governor and the Legislature ended a Special Session of the Legislature on October 23, 2009 where laws were passed as part of the State of New Mexico solvency plan. HB 17, as amended, was part of the solvency bills. It mandated that the Legislative Council Service, the Legislative Finance Committee, and the Department of Finance and Administration (“DFA”) identify a minimum of \$150 million of voidable capital outlay projects.

To that end, and based upon Governor Richardson’s October 26, 2009 directive ordering a freeze on all capital outlay projects, this State Agency hereby, terminates all grant or other forms of inter-governmental agreements that were entered into between this State Agency and your Public Entity utilizing state general or severance tax bond funds for capital projects¹.

The termination is effective October 30, 2009. If your Public Entity can satisfactorily demonstrate to this State Agency, by November 15, 2009, that there are in effect legally binding written agreements with a contractor, a third party or vendor to purchase professional services, non-professional services or items of tangible personal property (hereinafter referred to as “Third Party Contracts”) this State Agency will initiate a new grant or other form of inter-governmental agreement up to the amount encumbered by such Third Party Contract(s), on or before October 30, 2009.¹ This new grant or other form of inter-governmental agreement will be retroactively approved to October 30, 2009 so that there will no interruption in reimbursements.

We are aware this will impact your ongoing capital projects that have binding Third Party Contracts entered into based upon these terminated grant or other forms of inter-governmental agreements. We are not “voiding” the legislative appropriation, but we are, as of October 30, 2009, terminating existing grant or other forms of inter-governmental agreements to address the solvency issues for FY 2010. This will allow the

¹ This termination letter does NOT affect any federal ARRA funds or any other funds other than state general or severance tax bond funds appropriated for capital projects.

State to identify those projects that have legitimate Third Party Contracts and to initiate new grants or other forms of inter-governmental agreements for projects that are viable up to the total amount of all Third Party Contracts. If your Public Entity makes any expenditures against the terminated grant or other inter-governmental agreement after October 30, 2009, your Public Entity may or may not be reimbursed, depending on whether your Public Entity sufficiently proves to this State Agency that a Third Party Contract exists that meets all (4) requirements below. As previously stated, we intend to honor all Third Party Contracts, entered into on or before October 30, 2009, up to the amount of the contract(s), if they meet all the following (4) requirements:²

- (i) the work to be performed is in accordance with the appropriation language;
- (ii) Public Entity can demonstrate the Third Party Contract was procured in accordance with the New Mexico Procurement Code or other applicable governing procurement regulation;
- (iii) the Third Party Contract complies with all applicable state laws and regulations, including, but not limited to the "anti-donation clause" of the New Mexico Constitution; and
- (iv) the Third Party contract was entered between your Public Entity and the Third Party Contractor on or before October 30, 2009.

As stated above, if Public Entity submits to this State Agency a Third Party Contract(s) that meet all of these (4) requirements, on or before November 15, 2009, then this State Agency will issue a new grant or other inter-governmental agreement in an amount not to exceed the total of all Third Party Contracts that meet all (4) requirements.

Any capital project funds that were appropriated to Public Entity but not committed by entrance into a Third Party Contract(s) will be identified as potential "voidable" projects and "voidable" amounts of capital outlay funding. This list of "voidable" capital outlay funding will be transmitted by DFA to the Legislative Council Service and the Legislative Finance Committee, in compliance with the mandate of HB 17, as amended.

This process is a critical piece of the State's solvency plan and, if we work together, we can make steps toward solving the State's fiscal crisis by identifying voidable capital projects and voidable capital funds.

Sincerely,



Robert M. Apodaca, Director
Local Government Division

² For required documentation, see attached certification/checklist that shall accompany the response by the Public Entity to this letter attaching all Third Party Contracts.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION
GF FUND APPROPRIATION PROJECT

Laws of 2009 Special Session

GRANT AGREEMENT NO. 02883

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2009, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the Division or DFA, and City of Las Cruces, hereinafter called the Grantee.

RECITALS

WHEREAS, in the Laws of 2008, Chapter 83, the Legislature made an appropriation to the Division, funds from which the Division desires to make available to the Grantee pursuant to this Agreement; and

WHEREAS, the Division desires to grant to Grantee, and the Grantee desires to accept the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I - IMPLEMENTATION OF PROJECTS

A. The project that is subject to this agreement is described as follows:

08-L-G-5167 \$51,900.00 PROJECT EXPIRATION DATE: 30-JUN-11
Laws of 2008, Chapter 83, Section 195, Fifty-One Thousand Nine Hundred Dollars (\$51,900.00)
The unexpended balance of the appropriation to the office of the state engineer in Subsection 2 of Section 20 of Chapter 2 of Laws 2007 for purchasing water rights in Selden Canyon in Dona Ana county shall not be expended for the original purpose but is changed to plan, design and construct a kitchen for meal preparation and delivery in Las Cruces in Dona Ana county.

This project is referred to throughout the remainder of this Agreement as the "Project". The information contained in the preceding sentence is referred to collectively throughout the remainder of this Agreement as the "Project Description". The Grantee shall reference the Project's number in all correspondence with and submissions to the Division concerning the Project, including, but not limited to, requests for payment and reports.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the project, including all Project overruns.

C. The permissible purposes listed in the Project Description are intended to be identical to the corresponding appropriation in law. In the event of a conflict between the permissible purposes in the Project Description and the actual language of the appropriation in Law, the Language of the appropriation in law shall control.

D. Project funds shall not be used for purposes other than those permissible purposes specified in the Project Description.

E. If Project funds are insufficient to meet all of the permissible purposes included in the Project Description, Project funds may be expended for any portion of the specified permissible purposes, to the extent allowed by applicable law.

F. Unless specifically allowed by law, project funds cannot be used to reimburse Grantee for indirect project costs.

ARTICLE II - REVERSION DATE; TERM AND TERMINATION DATE OF AGREEMENT, TERMINATION FOR CAUSE, EARLY TERMINATION

A. Reversion Date: Applicable law establishes a date by which Project funds must be expended by Grantee, which date is referred to throughout the remainder of this Agreement as the Reversion Date. The Project Description contains the Division's estimate of the Project's Reversion Date. In the event of a conflict between the Division's estimated Reversion Date and the Reversion Date specified by law, the Reversion Date specified by law shall control.

B. Termination Date: Upon being duly executed by both parties, this Agreement shall be effective retroactive to October 31, 2009. It shall terminate on **29-AUG-11**, (hereinafter referred to as the "Termination Date") which is 60 days after the Division's calculation of the Project's Reversion Date, unless terminated soon

C. Termination for Cause: In addition to termination as provided in Article XIV, Appropriations, - and Article II(D), Early Termination for Convenience, DFA has the right to terminate this Agreement if, in the judgment of DFA, the terms of the Agreement have been violated, including, but not limited to, if DFA deems that the Project is not progressing satisfactorily. Any termination must be in writing. Termination for Cause, shall be effective fourteen (14) days after Grantee's receipt of the written notice of termination or such later date (if any) set forth in the termination notice.

D. Early Termination for Convenience: Except as provided in Article XIV, Appropriations, either the Division or Grantee may terminate this Agreement by providing the other party with a minimum of thirty (30) days advance, written notice of the termination.

E. Liability in the Event of Early Termination. In the event of early termination of this Agreement by either party, the Division's sole liability shall be to reimburse Grantee in accordance with this Agreement for qualifying expenditures that were:

- i) incurred pursuant to a legally binding agreement entered into by Grantee before Grantee's receipt of the Division's notice of early termination or the issuance by the Grantee of a notice of early termination;
- ii) incurred on or before the termination date and the reversion date;
- iii) for permissible purposes under this Agreement's Project Description and procured and executed in accordance applicable law; and
- iv) the subject of a request for payment properly and timely submitted in accordance with Article V of this Agreement.

By way of emphasis, Grantee acknowledges and agrees that, in the event of Early Termination prior to the Termination Date, the Division shall have no obligation to reimburse Grantee for any expenditure incurred under a contract that was entered into or executed after the issuance of the Division's notice of early termination or the issuance by the Grantee of a notice of early termination.

ARTICLE III - AMENDMENT

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

B. The Project Descriptions shall be amended to correct any discrepancy between the Project Description and the corresponding appropriation in law or in the event the Legislature reauthorizes or otherwise amends the corresponding appropriation in law.

ARTICLE IV - REPORTS

A. Periodic Reports.

1. In order that the Division may adequately monitor Project activity, the Grantee shall submit to the Division Periodic Reports for the Project. Periodic Reports shall be submitted on a form proscribed by the Division and contain such information as the Division may from time to time require. The initial Periodic and Final Report form is attached hereto as Exhibit B. The Division shall provide the Grantee with a minimum of ninety (90) days advance written notice of any change to the Periodic Report format or content.

2. The Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Division and ending upon the submission of a Final Report for the Project. The Division may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of ninety (90) days advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

B. Final Report. The Grantee shall submit to the Division a Final Report for the Project. The Final Report shall be submitted on a form provided by the Division and contain such information as the Division may from time to time require. The Division shall provide Grantee with a minimum of ninety (90) days advance, written notice of any change to the Final Report format or content. The Final Report must be submitted with the final payment request for the Project or within 30 days after the Project's Reversion Date, which ever first occurs.

C. Paperless Reporting. In lieu of the paper reports described in subparagraphs A and B of this Article, the Division may, in its discretion, require Grantee to report periodic and final Project activity by entering such Project information as the Division may from time to time require directly into a database maintained by the Division. The Division shall give Grantee a minimum of ninety (90) days advance, written notice of the switch to or from paperless reporting. The Division shall also give Grantee a minimum of ninety (90) days advance written notice of any changes to the information the Grantee is required to report on a paperless basis.

D. Requests for Additional Information/Project Inspection. At any time during the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VII, the Division may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Division. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this article.

ARTICLE V - PAYMENT PROCEDURES AND DEADLINES

A. The Division shall reimburse Grantee for qualifying Project expenditures in a total not to exceed Fifty-One Thousand Nine Hundred dollars (\$51,900.00);

B. The Grantee shall request payment by submitting a Request for Payment in such format and containing such information as the Division from time to time may require. The initial Request for Payment form is annexed hereto as Exhibit C. The Division shall provide Grantee with a minimum of ninety (90) days advance, written notice of any change to the Final Report format or content. Payment requests are subject to the following

1. The Grantee must submit one original and two copies of each Request for Payment.
2. Each Request for Payment must contain proof of payment in the form of a notarized certification from an authorized signatory that the expenditures are valid or actual receipts.

The Grantees failure to abide by these rules may result in the denial of its payment requests or delay their processing.

C. The Project's funds must be expended by the Reversion Date for the Project. It is not sufficient to encumber Project funds by the Project's Reversion Date.

D. Grantee must submit payment requests for all outstanding expenditures no later than the earlier of (i) 25 days after the end of the fiscal year in which Grantee incurred the expenditure or (ii) 25 days after the date of early termination pursuant to Article II or Article XIV of this Agreement or (iii) 25 days after the Termination Date pursuant to Article II(B) of this Agreement. By way of emphasis and example, regardless of the Project's Reversion Date and assuming no Early Termination for Convenience or early Termination for Cause or termination due to non-appropriation, Grantee must submit to the Division Request(s) for Payment for all expenditures incurred in fiscal year 2010 by July 25, 2010. The Division shall revert to the appropriate fund funds unexpended as of the Reversion Date and those for which a timely payment request has not been made.

E. The Division has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the payment request are for valid permissible purposes within the Project Description and that the expenditures and the Grantee are otherwise in compliance with all the terms and conditions of this Agreement. The Division's ability to reject payment requests is in addition to, and not in lieu of, any other legal or equitable remedy available to the Division due to Grantee's violation of this Agreement.

ARTICLE VI - PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

1. The Project's funds must be spent in accordance with applicable laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
2. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called Anti-Donation Clause.
3. No member, officer, or employee of the Grantee (or its designees or its agents), no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or responsibilities with respect to the Project during his/her tenure (or for one year thereafter) shall have any interests (direct or indirect) in any contract or subcontract for work to be performed on the Project. The Grantee shall incorporate this or a substantively identical provision into all contracts or subcontracts involving the expenditure of the Project's funds.
4. The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Division's express, advance, written approval.

B. The grantee hereby represents and warrants that:

1. It has the legal authority to receive and expend the Project's funds.
2. This agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
3. This Agreement and the Grantee's obligations hereunder do not conflict with any law applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
4. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and reversion date is consistent with the underlying appropriation in law.

ARTICLE VII - STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. For a period of six (6) years following a Project's completion, the Grantee shall maintain all project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Division shall prescribe.

- B. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds.
- C. The Grantee shall make all project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request.

ARTICLE VIII - SURPLUS FUNDS

If, upon the reversion date for a Project or the early termination date of this Agreement, whichever is earlier, any surplus Project funds for a Project are possessed by the Grantee, the Grantee shall return such surplus funds to the Division for disposition in accordance with law.

ARTICLE IX - LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE X - GRANTEE REPRESENTATIVE

The Grantee hereby designates the person listed below as its official representative concerning all matters related to this Agreement:

Name: <u>Auguie Henry</u>	Title: <u>Grant Administrator</u>
Address: <u>P.O. Box 20000 Attn:</u>	Email: _____
_____	Telephone: <u>541-2281</u>
<u>Las Cruces, NM 88004</u>	FAX: _____

The Grantee agrees that the Division may send all notices, decisions, or other matters related to this Agreement to the above named person by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given/received upon the date of Grantee's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given/received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given/received on the date reflected on the delivery receipt of email.

ARTICLE XI - EQUAL EMPLOYMENT OPPORTUNITY

The Grantee agrees to abide by all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

ARTICLE XII - SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XIII - GRANTEE'S VIOLATION OF THIS AGREEMENT

In the event that the Division determines that Grantee violated this Agreement, the Division shall notify Grantee of its determination in writing. The Division may, but shall not be obligated to, require the Grantee to develop and implement a corrective action plan to remedy the violation(s). Such corrective action plan must be approved by the Division and be signed by the Grantee. Alternatively, or if the Grantee fails to develop and implement a Division-approved corrective action plan, the Division may require the Grantee to repay the Division all funds provided to the Grantee for the Project as to which the violation(s) relate. This is in addition to, and not in lieu of, any other equitable or legal remedy available to the Division for Grantee's breach of this Agreement.

ARTICLE XIV – APPROPRIATIONS

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Division may *immediately* terminate this Agreement, in whole or in part, regardless of any existing legally binding third party contracts entered into by or between Grantee and a third party, by giving Grantee written notice of such early termination. The Division's decision as to whether sufficient appropriations are available shall be accepted by the Grantee and shall be final. The Grantee shall include a substantively identical clause in all contracts between it and third parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into between the effective date of this Agreement and the Termination Date or early termination date.

ARTICLE XV – REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee shall include the following or a substantially similar termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

“This contract is funded in whole or in part by funds made available under a Department of Finance and Administration Local Government Division (Division) grant agreement. Should the Division terminate the grant agreement, the [County/City] may terminate this contract by providing contractor written notice of such termination in accordance with the notice provisions in this contract. In the event of termination pursuant to this paragraph, the [County/City’s] only liability shall be to pay contractor for acceptable goods and/or services delivered and accepted prior to the termination date.”

ARTICLE XVI – SEVERANCE TAX BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from DFA. Prior to the execution of this Agreement, the Division provided Grantee with copies of all conditions imposed on the Project by the BOF of which the Division was aware. Grantee acknowledges and agrees that (i) it is Grantee’s sole responsibility to determine through BOF Division staff what (if any) conditions are currently imposed on the Project; (ii) the Division’s failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to DFA funds subject to the condition(s); (vi) DFA’s obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied; and (vii) that all then current BOF conditions must be satisfied by the Reversion Date for the Project in order for Grantee to be reimbursed for eligible expenditures for which it has not been previously reimbursed.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF’s Bond Project Disbursements rule, NMAC 2.61.6, as such may be amended or re-codified from time to time.

THIS SPACE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Division.

GRANTEE

Signature of Official with Authority to Bind Grantee

By: Terrence R. Moore
(Type or Print Name)

Its: City Manager
(Type or Print Title)

January 4, 2010
Date

APPROVED as to form:



City Attorney

**DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION**

By: Robert Apodaca
Its: Director

Date

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**STATE OF NEW MEXICO
SPECIAL APPROPRIATION PROJECTS
Periodic/Final Report Form
EXHIBIT "B"**

PERIODIC REPORT

FINAL REPORT

(Complete one report form for each project included in the Agreement)

Grantee: City of Las Cruces

Project Number: _____

Reporting Period: _____

1. Please provide a detailed status report of project referenced above.

A. Contracts (provide contract #, vendor name, dates entered and termination)

Contract # _____ Vendor _____

Contract Amount _____ Date executed _____ Termination _____

B. Project Phase

Bonds Sold Plan/Design Bid documents Construction phase

(provide anticipated date of commencement and completion for each phase)

1. Please provide a detailed status of the project and what phase the project is in

2. Project Amount: _____

Expended to date: _____

Project Balance: _____

PERIODIC REPORT

I hereby certify that the aforementioned Special Appropriations Project Funds are being expended in accordance with the Project description (Exhibit "A") of the Grant Agreement, and in compliance with all other applicable state statutory and regulatory requirements.

FINAL REPORT

I hereby certify that the aforementioned Special Appropriations project funds have been completed and funds were expended in accordance with the Project description (Exhibit "A") of the Grant Agreement, and in compliance with all other applicable state statutory and regulatory requirements.

Name/Title

Date

STATE OF NEW MEXICO SPECIAL APPROPRIATIONS PROJECTS Request for Payment Form EXHIBIT "C"

I. Grantee Information

A. Grantee: _____
 B. Address: _____
Complete mailing, including Suite, if Applicable

City State Zip
 C. Phone No.: () _____
 D. Project No.: _____
 E. Project Title: _____
 F. Reversion Date: _____

II. Payment Computation

A. Project Amount: _____
 B. AIPP Amount (If Applicable): _____
 C. Funds Received to Date: _____
 D. Amount Requested this Payment: _____
 E. Project Balance: _____
 F. General Fund STB (Attach Wire if 1st draw)
 G. Payment Request No. _____

III. Report Period Ending: _____

IV. CERTIFICATION: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

/s/ _____
 Grantee Fiscal Officer

/s/ _____
 Grantee Representative

 Printed Name
 Date: _____

 Printed Name
 Date: _____

SWORN TO AND SUBSCRIBED
 before me on this _____
 day of _____, _____

SWORN TO AND SUBSCRIBED
 before me on this _____
 day of _____, _____

Notary Public _____
 My commission expires _____

Notary Public _____
 My commission expires _____

(DFA/Local Government Division Use Only)

Vendor Code _____

Fund No. _____

Loc No. _____

Division Fiscal Officer **Date**

I certify that the Local Government financial and vendor file information agree with the above submitted information

Division Project Manager **Date**

I certify that the Local Government records and related appropriation laws agree with the above submitted information