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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 6 Ordinance/Resolution# 10-308 Council District:     

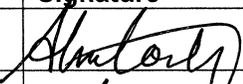
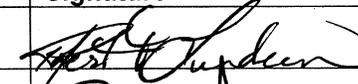
For Meeting of June 21, 2010  
 (Adoption Date)

**TITLE:**

**RESOLUTION TO ACCEPT GRANT FUNDING IN THE AMOUNT OF \$31,000.00 FROM NEW MEXICO LITTER CONTROL & BEAUTIFICATION ACT, NEW MEXICO DEPARTMENT OF TOURISM 2010 AND RATIFY THE CITY MANAGER'S PRIOR APPROVAL OF ACCEPTANCE TO MEET THE REQUIRED DEADLINE.**

**PURPOSE(S) OF ACTION:**

To accept the funding provided by the New Mexico Department of Tourism 2010, Litter Control & Beautification Act.

|   |   |                                   |                        |  |                |
|---|---|-----------------------------------|------------------------|--|----------------|
| <b>Name of Drafter:</b><br>Auguie Henry III |   | <b>Department:</b><br>Finance/GAO |                        | <b>Phone:</b><br>(575) 541-2281  |                |
| <b>Department</b>                           | <b>Signature</b>  | <b>Phone</b>                      | <b>Department</b>      | <b>Signature</b>   | <b>Phone</b>   |
| Codes Enforcement                           |  | (575) 528-4506                    | Budget                 |  | (575) 541-2300 |
| Grants Administration Office                |  | (575) 541-2281                    | Assistant City Manager |  | (575) 541-2271 |
| Legal                                       |  | (575) 541-2028                    | City Manager           |  | (575) 541-2076 |

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

The New Mexico Department of Tourism, New Mexico Litter Control and Beautification Act 2010 a New Mexico Clean & Beautiful program awards funding to incorporate municipalities, counties, and tribal governments in order to reduce litter by involving the public during local community and statewide events, programs and projects.

Keep Las Cruces Beautiful (KLCB) is dedicated to engaging citizens to take greater responsibility for improving their local community environments by: 1) litter eradication; 2) beautification and weed eradication; 3) education; 4) recycling; and 5) graffiti eradication.

Per City Manager's Policy 2.2, the City Manager is authorized to approve/accept on behalf of the City of Las Cruces grant funds not to exceed \$50,000.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

| <b>Fund Name / Account Number</b> | <b>Amount of Expenditure</b> | <b>Budget Amount</b> |
|-----------------------------------|------------------------------|----------------------|
| 24147170-Various                  | \$31,000.00                  | \$31,000.00          |

1. Resolution
2. Exhibit A – Litter Control & Beautification Grant Agreement No. 11-418-6000-0029
3. Exhibit B - Grant Application Package

**OPTIONS / ALTERNATIVES:**

1. Accept the grant award and ratify the City Manager's approval to accept funding.
2. Do not authorize Code Enforcement to accept the funding and funds will revert back to the Department of Tourism.
3. Amend the resolution.

(Continue on additional sheets as required)

**RESOLUTION NO. 10-308****RESOLUTION TO ACCEPT GRANT FUNDING IN THE AMOUNT OF \$31,000.00 FROM NEW MEXICO LITTER CONTROL & BEAUTIFICATION ACT, NEW MEXICO DEPARTMENT OF TOURISM 2010 AND RATIFY THE CITY MANAGER'S PRIOR APPROVAL OF ACCEPTANCE TO MEET THE REQUIRED DEADLINE.**

The City Council is informed that:

**WHEREAS**, the Las Cruces, Code Enforcement, Keep Las Cruces Beautiful Program has been awarded a grant in the amount of \$31,000.00 from the New Mexico Department of Tourism, New Mexico Litter Control and Beautification Act 2010; and

**WHEREAS**, the City of Las Cruces, City Manager's Office, according to the City Manager's Policy 2.2, authorized acceptance to ensure deadline requirements per the New Mexico Department of Tourism; and

**WHEREAS**, there is no match requirement for the City of Las Cruces; and

**WHEREAS**, these funds will be used in conjunction with a previously awarded grant to the City from the New Mexico Clean & Beautiful program of the New Mexico Department of Tourism; and

**WHEREAS**, the City of Las Cruces will comply with the requirements of the Grant Award Acceptance Contract.

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

**(I)**

**THAT** the City Manager of the City of Las Cruces was authorized to accept the grant for and on behalf of the City of Las Cruces; and

(II)

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

DONE AND APPROVED this Day, June 21, 2010.

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

VOTE:

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

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

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

Approved as to Form:

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

Grant No.: 11-418-6000-0029**LITTER CONTROL & BEAUTIFICATION  
GRANT AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2010, by and between the STATE OF NEW MEXICO, NEW MEXICO DEPARTMENT OF TOURISM, hereinafter referred to as "Department" and the City of Las Cruces hereinafter referred to as "Public Entity".

**RECITALS**

WHEREAS, the purpose of the "New Mexico Litter Control and Beautification Act," NMSA 1978, Sections 67-16-1 to 67-16-14, as amended, hereinafter referred to as the "Act," is to accomplish litter control by vesting in the Department authority to eliminate litter from the state to the maximum practical extent through a state coordinated plan of education, control, prevention, and elimination; and

WHEREAS, Section 67-16-12.B (3) of the Act provides that the Department allocate funds generated by the Act in the percentage amount of not more than fifty (50) percent of fees received in a year to local governments to establish and help continue local keep America beautiful system programs; and

WHEREAS, Section 67-16-12.B (4) of the Act provides that no more than sixty (60) percent of fees received in a year be allocated to local governments to establish a youth employment program to aid in litter control and beautification projects; and

WHEREAS, the parties hereto intend to provide for the allocation of funds generated by the Act to Public Entity to fulfill requirements of the Act.

NOW, THEREFORE, in consideration of the covenants contained herein and pursuant to the Act, the parties agree as follows:

SECTION ONE - DEPARTMENT AGREES:

Upon its approval of a grant application for the program resources funds and/or youth employment funds:

1. To allocate funds generated by the Act and pay to Public Entity an amount not to exceed the sum of **\$31,000** for Public Entity to establish and help continue a local keep America beautiful system program, pursuant to Section 67-16-12.B (3) of the Act; and for a youth employment program to aid in litter control and beautification projects pursuant to Section 67-16-12. B (4) of the Act. The Department will reimburse funds on a quarterly basis. For the purpose of this contract the quarters are designated as: first quarter is July through September; second quarter is October through December; third quarter is January through March; and fourth quarter is April through June.

2. To allow the public entity to request, in writing, reallocation of funds from the program resources allocation to the youth employment allocation based on the need to support local youth interests. Requests for reallocation of funds must be in writing and are not valid without prior written approval of the Department.

3. To allow the public entity to request, in writing, reallocation of funds from the youth employment allocation to the program resources allocation based on the need to implement programs and projects. Requests for reallocation of funds must be in writing and are not valid without prior written approval of the Department.

SECTION TWO - PUBLIC ENTITY AGREES:

1. To perform and complete the Litter Control, Graffiti, Beautification, Recycling, and related community programs and tasks as agreed upon by both parties, in furtherance of the statewide keep America beautiful system programs, pursuant to the Act.
2. To establish a youth employment program to aid in litter control and beautification projects, pursuant to the Act.
3. To commence performance of Litter Control, Graffiti, Beautification, Recycling, and related community programs and to continue performing the same with due diligence and progress as to each of all components of the comprehensive program and described tasks. Failure to commence the program activities or to comply with expenditures by Public Entity as agreed upon herein may result in cancellation of the allocated funds.
4. To spend the funds allocated herein as required by, and according to, the provisions of the Act and the applicable rules and regulations of the Litter Control Council and the Department. Requests for reimbursement must be post marked on or before the fifteenth (15) day after the end of each quarter, except for the fourth quarter ending June thirtieth (30), final request for reimbursement must be postmarked no later than the fifth (5th) day after the end of that quarter, which is the termination date of this agreement, as specified in SECTION SEVEN, paragraph 1 of this agreement, or upon specified written termination by the Department. Failure to adhere to these requirements will result in a penalty assessed on the invoice equal to 10% of the total

invoice submitted for that quarter. The request for reimbursement shall include, but not be limited to the following:

a. A detailed accounting of expenditures of all funds allocated and paid herein by line item;

b. Copies of detailed Public Entity purchase documents, receipts and proof of payment for equipment, materials, or supplies purchased, (including model and serial numbers, if any) necessary to perform the programs;

c. Copies of the payroll for youth employees and;

d. Such other information as may be required by the Department or the Litter Control Council.

5. To not expend funds on items of equipment, projects, promotional programs, services, or any other matter not related to litter prevention, elimination, control programs and beautification.

6. To keep accounting records for the Litter Control, Graffiti, Beautification, Recycling, and related community programs. An accounting and performance report shall be made to the Department by Public Entity on or before the tenth (10) day after the end of the fourth quarter; which is the termination date of this agreement, as specified in SECTION SEVEN, paragraph 1, of this agreement, or upon specified written termination by the Department. The report shall include, but not be limited to, the following:

a. An accounting of expenditures of all funds allocated and paid herein by line item;

b. A certification that equipment was used only for the purpose of fulfilling this Agreement under the Act, and none other;

c. A detailed summary of accomplishments towards those objectives and goals of the program;

d. Any other information necessary to explain the program accomplishments; and

e. Such other information as may be required by the Department or the Litter Control Council.

7. Equipment which may be adaptable for uses other than anti-litter and beautification program activities and which is purchased, in whole or in part, with funds allocated and paid under this Agreement shall be used only for the anti-litter and beautification purposes as required by the Act. The service life for such equipment shall be specified and agreed upon by the Department and Public Entity. Expected service life will be based on the kind of equipment, amount of anticipated use, service that will be performed and its normal service life.

8. That it shall not assign or transfer any interest in this Agreement or assign any claims or money due or that may become due under this Agreement .

9. That it shall not subcontract any portion of the services to be performed, or programs to be fulfilled and accomplished, or consultants to be hired, under this Agreement without prior written approval of the Department.

10. That it shall maintain detailed time records which indicate the date, time and nature of services rendered and progress of programs undertaken. These records shall be subject to inspection by the Department, the Department of Finance and Administration and the New Mexico State Auditor. The Department shall have the right

to audit billings both before and after payment; payment under this Agreement shall not foreclose the right of the Department to recover excessive illegal payment.

11. Public Entity 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 service required under this Agreement.

SECTION THREE - BOTH PARTIES AGREE:

1. The requirements set forth in the Department's Litter Control and Beautification Grant Requirements Rule (as amended) shall be strictly adhered to for grant approval, allocation and reporting.

2. Disbursements of grant monies shall be made based upon Department receipt of proper written documentation of expenditures. Illegal or unauthorized expenditures shall constitute a debt owed by Public Entity, its successors or assigns to the State of New Mexico and which sum the Department may elect to withhold from any future allocations to Public Entity, or shall be recovered from Public Entity or its successors or assignees by appropriate legal action.

3. That no direct and separate travel or per diem shall be paid by the Department under this Agreement, unless proposed and requested by Public Entity and approved by the Department. All direct costs of travel or per diem incurred by Public Entity shall be the sole responsibility of Public Entity.

4. That Public Entity upon final payment of the amount due under this Agreement releases the Department, its officers, and employees, and the State of New Mexico as provided for by law from all liabilities, claims and obligations whatsoever arising from or under this Agreement.

5. Public Entity shall not purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, unless Public Entity has written authority to do so, and then only within the strict limits of that authority.

SECTION FOUR - AMENDMENT:

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

SECTION FIVE - DEPARTMENT'S AUTHORIZATION OF EXPENDITURES:

The Department is expressly not committed to expenditure of any funds under this Agreement until such time as they are budgeted, appropriated by the legislature, and approved for expenditure by the Department. The Department's decision as to whether its funds from appropriations or funds under the Act are sufficient for fulfillment of this Agreement shall be final.

SECTION SIX - INDEPENDENT CONTRACTOR:

Public Entity and its agents and employees are independent contractors fulfilling their obligations to the Department under this Agreement and are not employees of the State of New Mexico. Public Entity and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of State vehicles, or any other benefits afforded to the employees of the State of New Mexico as a result of this Agreement.

SECTION SEVEN - TERMINATION:

1. This Agreement shall not take effect until executed by the parties hereto. This Agreement shall terminate on June 30, 2011, unless terminated pursuant to SECTION TWO, paragraph 3 or Section Seven, paragraph 2 of this Agreement.

2. Either party may cancel this Agreement upon thirty (30) days written notice to the other party. By such termination, neither party may nullify obligations already incurred for performance or failure to perform for the programs rendered prior to the date of termination of the Agreement. However, neither party shall have any obligation to perform services or make payment for services or specified programs rendered after such date of termination.

SECTION EIGHT - INTEGRATION:

This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof. No prior agreements or understanding, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

SECTION NINE - PUBLIC ENTITY'S ACQUIRED PROPERTY:

If upon termination or expiration of this Agreement, Public Entity has any property acquired pursuant to this Agreement, Public Entity shall account for same and dispose of it as directed by the Department.

SECTION TEN - CONTROLLING LAW:

The laws of the State of New Mexico shall govern this agreement. The parties agree that the District Courts of the State of New Mexico located where the parties reside or where the actions of this Agreement are performed shall have jurisdiction over any lawsuits brought by either party to enforce its rights hereunder.

SECTION ELEVEN - UNEXPENDED AND UNENCUMBERED PROJECT BALANCES:

Any unexpended or unencumbered balance from the State or Act funds appropriated for this Agreement shall revert to the Department.

SECTION TWELVE - INTENT OF AGREEMENT:

This Agreement is not intended by any of the provisions or any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize anyone not a party to this Agreement to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ties), and/or any other claims(s) whatsoever pursuant to the provisions of this Agreement.

SECTION THIRTEEN - NEW MEXICO TORT CLAIMS ACT:

By entering into this Agreement, 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 the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq., as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The Public Entity and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defenses and/or do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies and/or waives any provisions of the New Mexico Tort Claims Act.

SECTION FOURTEEN - ACCOUNTABILITY OF RECEIPTS & DISBURSEMENTS:

There shall be strict accountability for all receipts and disbursements relating

hereto.

SECTION FIFTEEN – EQUAL OPPORTUNITY COMPLIANCE

The Public Entity agrees to abide by all federal and state laws and rules and regulations, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, the Public Entity agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the Public Entity is found to not be in compliance with these requirements during the term of this Agreement, the Public Entity agrees to take appropriate steps to correct these deficiencies.

SECTION SIXTEEN – CIVIL RIGHTS LAWS AND REGULATION COMPLIANCE

The Department and Public Entity shall comply with all federal, state and local laws and ordinances applicable to the work called for herein. The Department and Public Entity further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990 and the New Mexico Human Rights Act.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below specified.

**New Mexico Tourism Department**

By: \_\_\_\_\_  
Cabinet Secretary

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

**City of Las Cruces  
"Public Entity"**

By:  \_\_\_\_\_  
Terrence Moore

Date: 5/25/10

Title: City Manager

APPROVED AS TO FORM:  
  
Dean  
City Attorney

**\* REVISED \***

**FY2011 Grant Award Funding Breakdown**

Community:

**Grant Award Distribution**

|                                    | Program Resources              | Youth Employment          |                                   |
|------------------------------------|--------------------------------|---------------------------|-----------------------------------|
|                                    |                                | Intern + Benefits         | Sub-Contracts                     |
| <b>I. Litter Eradication -</b>     |                                | \$                        | \$                                |
| Adult Civic Groups Sub-Contracting | \$ -                           | -                         | -                                 |
| Composting Programs                | \$ -                           |                           |                                   |
| Equipment                          | \$ -                           |                           |                                   |
| Safety Equipment                   | \$ -                           | Do Not write in this area |                                   |
| Supervisors                        | \$ -                           |                           |                                   |
| Trash & Litter Bags                | \$ -                           |                           |                                   |
| Trash Receptacles                  | \$ -                           |                           |                                   |
| <b>Distribution Totals:</b>        | <b>Program Resources: \$ -</b> | <b>Youth Emp.: \$ -</b>   | <b>Litter Control Total: \$ -</b> |

|  |                                |                           |  |
|--|--------------------------------|---------------------------|--|
| <b>II. Beautification &amp; Weed Eradication -</b> |                                | \$                        | \$   |
| Adult Civic Groups Sub-Contracting                 | \$ -                           | -                         | -  |
| Equipment  | \$ -                           |                           |  |
| Landscaping  | \$ -                           | Do Not write in this area |  |
| Safety Equipment                                   | \$ -                           |                           |  |
| Professional Sub-Contracting                       | \$ -                           |                           |  |
| <b>Distribution Totals:</b>                        | <b>Program Resources: \$ -</b> | <b>Youth Emp.: \$ -</b>   | <b>Beautification &amp; Weed Total: \$ -</b> |

|                                  |                                |                           |                              |
|----------------------------------|--------------------------------|---------------------------|------------------------------|
| <b>III. Education -</b>          |                                | \$                        | \$                           |
| Awards and Volunteer Recognition | \$ -                           | -                         | -                            |
| Educational Materials            | \$ -                           |                           |                              |
| Event Advertising                | \$ -                           |                           |                              |
| Postage, Film, Printing          | \$ -                           | Do Not write in this area |                              |
| Promotion of Program             | \$ -                           |                           |                              |
| School Contests                  | \$ -                           |                           |                              |
| <b>Distribution Totals:</b>      | <b>Program Resources: \$ -</b> | <b>Youth Emp.: \$ -</b>   | <b>Education Total: \$ -</b> |

|                             |                                |                           |                              |
|-----------------------------|--------------------------------|---------------------------|------------------------------|
| <b>IV. Recycling -</b>      |                                | \$                        | \$                           |
| Equipment                   | \$ -                           | -                         | -                            |
| Recycling Bags              | \$ -                           | Do Not write in this area |                              |
| Recycling Receptacles       | \$ -                           |                           |                              |
| Safety Equipment            | \$ -                           |                           |                              |
| Supervisors                 | \$ -                           |                           |                              |
| <b>Distribution Totals:</b> | <b>Program Resources: \$ -</b> | <b>Youth Emp.: \$ -</b>   | <b>Recycling Total: \$ -</b> |

|                            |                                |                           |                             |
|----------------------------|--------------------------------|---------------------------|-----------------------------|
| <b>V. Graffiti -</b>       |                                | \$                        | \$                          |
| Graffiti Program Materials | \$ -                           | -                         | -                           |
| Equipment                  | \$ -                           | Do Not write in this area |                             |
| Safety Equipment           | \$ -                           |                           |                             |
| <b>Totals:</b>             | <b>Program Resources: \$ -</b> | <b>Youth Emp.: \$ -</b>   | <b>Graffiti Total: \$ -</b> |

|                                     |                                |                           |                        |
|-------------------------------------|--------------------------------|---------------------------|------------------------|
| <b>VI. KAB Affiliate programs -</b> |                                | \$                        | \$                     |
| Travel, Per Diem and Registrations  | \$ -                           | -                         | -                      |
| KAB materials/ Board Development    | \$ -                           | Do Not write in this area |                        |
| KAB Network Service Fees            | \$ -                           |                           |                        |
| <b>Distribution Totals:</b>         | <b>Program Resources: \$ -</b> | <b>Youth Emp.: \$ -</b>   | <b>KAB Total: \$ -</b> |

|   | Program Resources | Youth Employment | All Categories |
|---|-------------------|------------------|----------------|
| <b>Total Distribution of Awarded funds:</b> | \$ -              | \$ -             | \$ -           |

## Grant Application Package

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### Application Submission Verification and Signature

Opportunity Title: New Mexico Litter Control and Beautification Act

Offering Agency: New Mexico Department of Tourism

Opportunity Number: 11-418-6000-0029

Approximate Value Requested: \$31,000.00

Opportunity Closing Date: June 15, 2010

Requesting Agency/Department: KLCB, Code Enforcement

OMB – Grant Writer: Auguie Henry III / Craig Fenske

### SUPPORT INFORMATION

New Mexico Litter & Beautification award provides funding to incorporated municipalities, counties, and tribal governments in order to reduce litter by involving the public during local community and statewide events, programs and projects.

Keep Las Cruces Beautiful (KLCB) is dedicated to engaging citizens to take greater responsibility for improving their local community environments by: 1) litter eradication; 2) beautification and weed eradication; 3) education; 4) recycling; and 5) graffiti eradication.

### OPTIONS

1. Agree with request to accept the award. Affirmed by signature below. Package to be returned to OMB, Grant Writer.
2. Disagree, reject the award. Unsigned package to be returned to GAO, Grant Writer.

### Approved:



\_\_\_\_\_  
Terrence Moore, City Manager

Date

5/27/10

|  |
|--|
| <p>CMP #2.2 Effective 9/20/04: The City Manager may authorize the application for any grant with these exceptions:<br/> The grant award is anticipated to be in excess of \$50,000 and funding has not been appropriated as part of the current budget.<br/> The acceptance of the grant will require City Council to adjust the current budget to appropriate matching funds.<br/> The grant requirements stipulate that the City will continue to operate and fund the project/program after the grant period is complete.<br/> The grant requirements stipulate that the City enter into a new Memorandum of Understanding or a Joint Powers Agreement with another entity.</p> |
|--|