



City of Las Cruces®

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Council Action and Executive Summary

Item # 25

Ordinance/Resolution# 11-155

Council District: All City

For Meeting of January 3, 2011

(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT A GRANT AWARD FOR FISCAL YEAR 2010-2011 IN THE AMOUNT OF \$14,300 FROM THE NEW MEXICO TOURISM DEPARTMENT FOR THE LAS CRUCES CONVENTION & VISITORS BUREAU, WHICH REQUIRES A THREE HUNDRED PERCENT (300%) MATCH AND TO ADJUST THE FISCAL YEAR BUDGET.

PURPOSE(S) OF ACTION: Accept the New Mexico Tourism Department Cooperative Marketing Grant Agreement and Award.

Drafter and Staff Contact: Ken Mompellier <i>[Signature]</i>		Department: Public Services / CVB		Phone: 541-2166	
Department	Signature	Phone	Department	Signature	Phone
Department Director	<i>[Signature]</i> Lori Grumet	528-3477	Budget	<i>[Signature]</i>	541-2107
Other			Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: The New Mexico Tourism Department (NMTD) solicited proposals through the Cooperative Marketing Program from non-profit organizations for an advertising contract in furtherance of the NMTD's marketing programs. Funding is provided to non-profit organizations in the State for promoting the state of New Mexico as a tourist destination. The City of Las Cruces Convention & Visitors Bureau (CVB) has been a recipient of this grant for the past 13 years.

The CVB received the request for proposal from the NMTD for the 2010-2011 fiscal year Cooperative Marketing Program on April 28, 2010. In June 2010, the CVB submitted a grant application request to City Council and received approval to apply to the NMTD for a grant not to exceed \$20,000 with a 300% match (maximum of \$60,000). As a result, the CVB has been awarded an appropriation in the amount of \$14,300 (the largest amount awarded this fiscal year) from the NMTD. This change in awarded funds makes the match total required \$42,900, which is part of the existing expenditures.

The grant will allow the CVB to further its advertising campaign (print, outdoor, website development, etc.) to enhance overnight business to Las Cruces from the convention, sports, group tour and leisure markets, thus increasing the lodgers' tax collections.

A budget adjustment to the fiscal year 2010-2011 budget is needed to reflect the grant amount of \$14,300 in the adopted budget. During the budget process in early 2010, the CVB

anticipated receiving the same grant amount as the previous year and budgeted \$18,700 in grant award revenue. Therefore, the revenue account must be reduced by \$4,400 to reflect the \$14,300 award for 2010-2011.

SUPPORT INFORMATION:

1. Resolution/Ordinance.
2. Exhibit "A" – Agreement Number 11-418-3002-0021
3. Exhibit "B" – Budget Adjustment

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
<input type="checkbox"/>		Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>2710</u> in the amount of \$14,300 for FY11.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

The New Mexico Tourism Department Cooperative Marketing grant will allow the CVB to further its advertising campaign (print, outdoor, website development, etc.) to enhance overnight business to Las Cruces from the convention, sports, group tour and leisure markets, thus increasing the lodgers' tax collections. The Las Cruces Convention & Visitors Bureau already has the required 300% matching funds of \$42,900 budgeted for fiscal year 2010-11, so accepting the grant extends the abilities of the Convention & Visitors Bureau to reach markets in other parts of New Mexico and in other states without costing the City of Las Cruces additional funding.

A budget adjustment to the fiscal year 2010-2011 budget is needed to reflect the reduced grant amount awarded by the New Mexico Tourism Department Cooperative Marketing Program of \$14,300 in the adopted budget. During the budget process in early 2010, the CVB anticipated receiving the same grant amount as the previous year, \$18,700, and budgeted \$18,700 in grant award revenue. Therefore, the revenue account must be reduced by \$4,400 to reflect the \$14,300 award for 2010-2011.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Advertising	27205020-722104	\$14,300	\$0	\$14,300	Advertising as specified in grant agreement

OPTIONS / ALTERNATIVES:

1. **Vote "Yes"**; this will approve the resolution and authorize the City of Las Cruces to accept a grant award for fiscal year 2010-2011 in the amount of \$14,300 from the New Mexico Department of Tourism for the Las Cruces Convention & Visitors Bureau, and adjust the fiscal year 2010-2011 budget.
2. **Vote "No"**; this will refuse the grant award and reduce the current advertising campaign through print and outdoor advertising as well as website development which is used to encourage overnight business to Las Cruces.
3. **Vote to "Amend"** and direct staff to pursue other options. This would not allow CVB adequate time to meet established deadline to submit the signed agreement and would not allow the CVB to obtain \$14,300 in grant funds to enhance advertising efforts.
4. **Vote to "Table"** and direct staff to pursue other options. This delay would not allow CVB adequate time to meet established deadline to submit the signed agreement and would not allow the CVB to obtain \$14,300 in grant funds to enhance advertising efforts.

REFERENCE INFORMATION

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

1. Resolution No. 10-283.

RESOLUTION NO. 11-155

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT A GRANT AWARD FOR FISCAL YEAR 2010-2011 IN THE AMOUNT OF \$14,300 FROM THE NEW MEXICO TOURISM DEPARTMENT FOR THE LAS CRUCES CONVENTION & VISITORS BUREAU, WHICH REQUIRES A THREE HUNDRED PERCENT (300%) MATCH AND TO ADJUST THE FISCAL YEAR BUDGET.

The City Council is informed that:

WHEREAS, the New Mexico Tourism Department (NMTD), through their Cooperative Marketing Program, solicited proposals for advertising contracts in furtherance of the NMTD's marketing programs; and

WHEREAS, CVB requested and received approval from City Council in May 2010 to apply to the NMTD for a grant not to exceed \$18,700 which required a 300% match (a maximum of \$56,100); and

WHEREAS, as a result, the CVB has been awarded an appropriation of \$14,300 which will require a 300% match which is part of the existing expenditures; and

WHEREAS, the grant will allow the CVB to further its advertising campaign (print, outdoor, website development, etc.) to enhance overnight business to Las Cruces from the convention, sports, group tour and leisure markets, thus increasing the Lodger's Tax collections; and

WHEREAS, a budget adjustment to the Fiscal Year 2010-2011 budget is needed to reflect the grant award of \$14,300.

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

(I)

THAT the Mayor is authorized to sign and accept the Fiscal Year 2010-2011 Resolution agreement from the New Mexico Tourism Department designated as Exhibit "A", attached hereto and made a part of this Resolution.

(II)

THAT the City of Las Cruces Fiscal Year 2010-2011 budget is hereby adjusted, designated as Exhibit "B", attached hereto and made a part thereof.

Resolution No. 11-155 con't.

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(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 _____, 2011.

APPROVED:

(SEAL)

Mayor

ATTEST:

City Clerk

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

NEW MEXICO TOURISM DEPARTMENT
COOPERATIVE MARKETING GRANT AGREEMENT

WHEREAS the New Mexico Tourism Department has been funded by the New Mexico State Legislature for a community cooperative marketing program, and;

WHEREAS the New Mexico Tourism Department desires to promote tourism for the State of New Mexico, in cooperation with **City of Las Cruces Convention & Visitors Bureau**, and;

WHEREAS **City of Las Cruces Convention & Visitors Bureau** agrees to provide advertising and promotional service to accomplish the above stated purpose and will provide matching funds to further the above purpose, said parties hereby enter into this agreement.

NOW, THEREFORE:

THIS AGREEMENT, made and entered into by and between the State of New Mexico, Tourism Department, hereinafter referred to as the "Department", and **City of Las Cruces Convention & Visitors Bureau**, hereinafter referred to as the "Contractor."

THIS AGREEMENT IS EFFECTIVE JULY 1, 2010. THE DEPARTMENT SHALL NOT BE OBLIGATED TO PAY THE CONTRACTOR FOR ANY SERVICE THAT COMMENCED PRIOR TO THE EFFECTIVE DATE.

DEFINITIONS:

Quarter: For the purpose of this agreement a quarters are designated as:

- First Quarter – July through September
- Second Quarter – October through December
- Third Quarter – January through March
- Fourth Quarter – April through June

IT IS MUTUALLY AGREED BETWEEN THE PARTIES:

1. SCOPE OF WORK:

The Contractor agrees:

To promote New Mexico and the Las Cruces area by advertising through various forms of media as defined in the original application.

Total Marketing Budget: is \$120,000 or more and the Department will provide a 33.33% match of eligible expenses up to the grant award.

Contractor Agrees to expend this amount in Eligible Expenses: \$42,900

Department Match (Grant Award): \$14,300

The Contractor agrees:

- **To meet or exceed twice the Department award through actual cash expenditures; in-kind services do not qualify toward the match requirement.**
- To meet the requirements of the 2010-2011 Request for Proposals.
- The Tourism Department's logo or tag line "visit www.newmexico.org" must be used on all advertising, in the case of radio advertising the slogan "New Mexico Land of Enchantment" must be used as well as "funded in part by the New Mexico Tourism Department".
- To provide its own funds above and beyond the agreed compensation to perform this agreement.

Deliverables:

End of year evaluation report: Submitted with the final request for payment, on or before May 31, 2011.

Proof of commitment: Due **January 1, 2011** (This applies to the balance of unused funds not reimbursed to the contractor as of January 1, 2011)

2. COMPENSATION:

A. The Department shall reimburse to the Contractor in full payment for services rendered an amount not to exceed \$14,300.

B. Gross Receipts Tax

The Contractor is a non-profit organization therefore is exempt from the payment of New Mexico Gross Receipts Tax, and/or is registered with the New Mexico Taxation and Revenue Department to pay gross receipts tax, if applicable.

C. Payment

Payment shall be made upon receipt of a detailed package of proof of performance. The proof of performance package must include all the supporting documentation. Compliance must be made with 2010-2011 Request for Proposal Guidelines and Request for Payment Form. Requests for payment must be submitted on a quarterly basis as follows: **Requests must be postmarked on or before the fifteenth (15th) day after the end of each quarter except for the fourth quarter ending May 31st; it must be postmarked on or before the tenth (10th) day of June 2011.** Failure to adhere to these requirements can result in a penalty assessed on the invoice equal to 10% of the total invoice submitted for the first, second and third quarters. Failure to adhere to these requirements for the fourth quarter will result in the remaining agreement balance being returned to the Department. The balance will not be reimbursed at a future date.

3. **TERM:**

THIS AGREEMENT IS EFFECTIVE JULY 1, 2010. This Agreement shall terminate on **June 30, 2011**, unless terminated pursuant to paragraph 4, infra.

4. **TERMINATION:**

A. Termination

This Agreement may be terminated by either of the parties hereto upon written notice delivered to the other party at least ten (10) 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 Department 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. *THIS PROVISION IS NOT EXCLUSIVE AND DOES NOT WAIVE THE STATE'S OTHER LEGAL RIGHTS AND REMEDIES CAUSED BY THE CONTRACTOR'S DEFAULT/BREACH OF THIS AGREEMENT.*

B. Termination Management

Immediately upon receipt by either the Department or the Contractor of notice of termination of this Agreement, the Contractor shall: 1) not incur any further obligations for salaries, services or any other expenditure of funds under this Agreement without written approval of the Department; 2) comply with all directives issued by the Department in the notice of termination as to the performance of work under this Agreement; and 3) take such action as the Department shall direct for the protection, preservation, retention or transfer of all property titled to the Department and client records generated under this Agreement and any non-expendable personal property or equipment purchased by the Contractor with agreement funds shall become property of the Department upon termination. On the date the notice of termination is received, the Contractor shall furnish to the Department a complete, detailed inventory of non-expendable personal property purchased with funds provided under the existing and previous Department agreements with the Contractor; the property listed in the inventory report including client records and a final closing of the financial records and books of accounts which were required to be kept by the Contractor under the paragraph of this Agreement regarding financial records

5. **STATUS OF THE CONTRACTOR:**

The Contractor, and his agents and employees, are independent contractors performing professional services for the Department and are not employees of the State of New Mexico. The Contractor, and his agents and employees, shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement.

6. 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 Department.

7. SUBCONTRACTING:

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

8. RECORDS AND AUDIT:

The Contractor shall maintain detailed time records which indicate the date, time and nature of services rendered. These records shall be subject to inspection by the Department, The Department of Finance and Administration, and the 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 or illegal payments.

9. 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, this Agreement shall terminate upon written notice being given by the Department to the Contractor. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final.

10. RELEASE:

The Contractor, upon final payment of the amount due under this Agreement releases the Department, its officers and employees, and the State of New Mexico from all liabilities, claims and obligations whatsoever arising from or under this Agreement. The Contractor agrees not to purport to bind the State of New Mexico to any obligation not assumed herein by the State of New Mexico, 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 Department.

12. PRODUCT OF SERVICES: COPYRIGHT:

All materials developed or acquired by the Contractor under this Agreement shall become the property of the State of New Mexico and shall be delivered to the Department 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 by or on behalf of the Contractor.

13. GOVERNMENTAL CONDUCT ACT:

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 of services required under this 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 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 understandings, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this Agreement.

16. NOTICE:

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. 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, or, if the employer has fifty or more employees, spousal affiliation, or, if the employer has fifteen or more employees, 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.

18. APPLICABLE LAW:

This Agreement shall be governed by the laws of the State of New Mexico.

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 contracting Department.

19. INDEMNIFICATION:

Each party shall be solely responsible for fiscal or other sanctions, penalties, or fines occasioned as a result of its own violation or alleged violation of requirements applicable to performance of the Agreement. Each party shall be liable for its acts or failure to act in accordance with this agreement, subject to the immunities and limitations of the New Mexico Tort Claims Act.

20. OTHER PROVISIONS:

This Agreement is contingent upon compliance with the **2010-2011** Request for Proposal Guidelines and the **2010-2011** Request for Payment Form.

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 electronic mail, facsimile, U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To the Department:

New Mexico Tourism Department
Audrey Herrera
491 Old Santa Fe Trail
Santa Fe, NM 87501
505-827-7325
audrey@newmexico.org

To the Contractor:

City of Las Cruces Convention & Visitors Bureau
Connie Maifeld
211 N. Water St.
Las Cruces, New Mexico 88001
575-541-2444
cmaifeld@las-cruces.org

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of execution by the State of New Mexico.

CONTRACTOR	
By:	Title:
Date:	

STATE OF NEW MEXICO
New Mexico Tourism Department
By:
Date:

NEW MEXICO TAXATION & REVENUE DEPARTMENT
The records of the New Mexico Taxation and Revenue Department reflect that the Contractor is registered with the Taxation and Revenue Department to pay gross receipts and compensating taxes, if applicable.
ID: 01-406383-002
By:
Date:

CITY OF LAS CRUCES
ADOPTED BUDGET FY 2010/2011

FUND	DIVISION		FUND TYPE	
Convention & Visitors Bureau Fund 2710	Public Services		Special Revenue	
	FY 2009/10 Preliminary*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
RESOURCES				
Beginning Balance	\$ 1,929,848	2,078,198		2,078,198
REVENUES				
552016 New Mexico Tourism Department	18,700	18,700	(4,400)	14,300
570010 Investment Income	35,302	30,000		30,000
543210 CVB Merchandise Sales	5,277	7,000		7,000
590015 Net Incr (Decr) Fair Value Investment	6,424	0		0
592001 Reimbursed Expense Other	0	0		0
Total Revenues	\$ 65,703	55,700	(4,400)	51,300
Total Resources	\$ 1,995,551	2,133,898	(4,400)	2,129,498
EXPENDITURES				
CVB Administration 27205010				
Personnel Services	\$ 640,987	632,200		632,200
Operating	91,062	116,600		116,600
Capital Outlay	0	0		0
Total CVB Administration 27205010	\$ 732,049	748,800	0	748,800
CVB Convention/Tourism 27205020				
Operating	\$ 634,225	616,893		616,893
Total CVB Convention/Tourism 27205020	\$ 634,225	616,893	0	616,893
CVB Special 27205030				
Operating	\$ 43,671	58,719		58,719
Total CVB Special 27205030	\$ 43,671	58,719	0	58,719
Railroad Museum 27205040				
Personnel Services	\$ 15,090	0		0
Operating	796	0		0
Total Railroad Museum 27205040	\$ 15,886	0	0	0
CVB Las Cruces Center 27205200				
Operating	\$ 389,317	380,674		380,674
Total CVB Las Cruces Center 27205200	389,317	380,674	0	380,674
CVB Las Cruces Convention Center 27805020				
Capital Outlay	\$ 0	600,000	0	600,000
Total CVB Las Cruces Convention Center 27805020	0	600,000	0	600,000
Total Expenditures	\$ 1,815,148	2,405,086	0	2,405,086

*Preliminary Projection as of Sept. 21, 2010

**CITY OF LAS CRUCES
ADOPTED BUDGET FY 2010/2011**

FUND	DIVISION		FUND TYPE	
Convention & Visitors Bureau Fund 2710	Public Services		Special Revenue	
	FY 2009/10 Preliminary*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
OTHER FINANCING SOURCES (USES)				
Transfer from Fund 1000 - General Fund	\$ 450,000	0		0
Transfer from Fund 2820 - Lodger's Tax (85%)	1,422,458	1,495,484		1,495,484
Transfer from Fund 2820 - Tourism (2.5%)	41,837	43,985		43,985
Transfer to Fund 1000 - General Fund	(16,500)	(16,500)		(16,500)
Transfer to Fund 3614 - Convention Center Debt Svc	0	(67,969)		(67,969)
Transfer to Fund 5700 - Convention Ctr Operating	0	(91,628)		(91,628)
Total Other Financing Sources (Uses)	\$ 1,897,795	1,363,372	0	1,363,372
ENDING BALANCE	\$ 2,078,198	1,092,184	(4,400)	1,087,784

*Preliminary Projection as of Sept. 21, 2010