

# City of Las Cruces®

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 12 Ordinance/Resolution# 11-191 Council District: All

For Meeting of March 7, 2011  
(Adoption Date)

**TITLE:** A RESOLUTION TO ADJUST THE FY 2011 BUDGET TO INCLUDE LEGISLATIVE APPROPRIATION CONTRACT #03891 IN THE AMOUNT OF \$227,700 AND LEGISLATIVE APPROPRIATION CONTRACT #03501 WITH AMENDMENT NO. 1 IN THE AMOUNT OF \$141,049.

**PURPOSE(S) OF ACTION:** To accept funding and approve budget adjustment.

<b>Drafter and Staff Contact:</b> Auguie Henry III		<b>Department:</b> GAO		<b>Phone:</b> (575) 541-2281	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Finance Department	<i>Pat Segman (Interim)</i>	541-2080	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:** Per notice from the Department of Finance and Administration dated October 30, 2009, "based upon Governor Richardson's October 26, 2009 directive ordering a freeze on all capital 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 projects." These appropriations were part of the terminated contracts.

- Contract #03891: funding to design, construct, renovate and expand a housing complex for homeless veterans in Las Cruces in Doña Ana County was reinstated on July 30, 2010, after the start of the new fiscal year for the City of Las Cruces. As funding was not available prior to year-end, the funds were not "rolled" into the FY 2011 budget. These funds are pledged by the Community of Hope as match for another federal grant they are partnering with, Las Cruces Housing Authority, to leverage the funding in excess of \$400,000 for homeless veteran housing.
- Contract #03501: funding to plan, design and construct the Downtown Plaza in Las Cruces in Doña Ana County, originally \$295,000, was also terminated by the October 2009 notice. When reinstated by Senate Bill 182 in March 2010, the amount was \$151,001 and the appropriate budget adjustment to the FY 2011 budget was made. On August 11, 2010 the Department of Finance and Administration amended the contract and added an additional \$141,049 to the then existing contract bringing the total to \$292,050. This action will bring the FY 2011 budget up to the correct balance. All of

(Continue on additional sheets as required)

the funding, \$292,050 is designated to fund the Downtown Revitalization Program and can be utilized for any portion of the project.

**SUPPORT INFORMATION:**

1. Resolution
2. Exhibit "A" Department of Finance Letter, dated October 30, 2009
3. Exhibit "B" DFA Local Government Contract #03891
4. Exhibit "C" DFA Local Government Contract #03501 with Amendment No. 1
5. Exhibit "D" Budget Adjustment FY 2011

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	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 (# and Fund Name) Fund.
<b>Does this action create any revenue?</b>	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: 4012 & 4112 in the amount of <u>\$227,700</u> & <u>\$141,049</u> for FY2011.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A

**FUND EXPENDITURE SUMMARY**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
1. Facilities State Grants 4012	40803170-852100-64101	\$227,700	0	\$227,700	Match funding for Federal Grant
2. State Grant Park/Land Improvements 4112	41804050-854222-60814	\$141,049	\$151,516	\$292,565	Downtown Plaza

(Continue on additional sheets as required)

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will allow the FY 2011 budget to be adjusted for the amounts listed to reflect the correct balances.
2. Vote "No"; this will cause the City to be in violation of the contracts already accepted by the City Manager.
3. Vote to "Amend"; this is not an option as the state contracts have already been accepted.
4. Vote to "Table"; this is not an option as the contracts have already been accepted by the City Manager and the project has begun to expend funds.

**REFERENCE INFORMATION**

1. 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.
2. Resolution No. 11-058 A resolution to adjust the adopted fiscal year 2011 budget allowing for carryover budget of operating and capital costs from fiscal year 2010 for the City of Las Cruces, New Mexico – with Attachment 1 (page 33 of 63)

**RESOLUTION NO. 11-191**

**A RESOLUTION TO ADJUST THE FY 2011 BUDGET TO INCLUDE LEGISLATIVE APPROPRIATION CONTRACT #03891 IN THE AMOUNT OF \$227,700 AND LEGISLATIVE APPROPRIATION CONTRACT #03501 WITH AMENDMENT NO. 1 IN THE AMOUNT OF \$141,049.**

The City Council is informed that:

**WHEREAS**, the Legislative Council for the State of New Mexico has reviewed and reinstated funding for capital projects designated to the City of Las Cruces; and

**WHEREAS**, the City of Las Cruces is the recipient of such funds for homeless veteran housing in the amount of \$227,700; and

**WHEREAS**, the City of Las Cruces is the recipient of additional funds for the Mainstreet Downtown Revitalization project in the amount of \$141,049; and

**WHEREAS**, receipt of the funds will require the adjustment of the FY 2011 budget with no required match from the City.

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

**(I)**

**THAT** the City of Las Cruces receives the allotted funds for the purposes as stated in the individual Department of Finance and Administration contracts.

**(II)**

**THAT** the Council does approve the adjustment to the City's FY 2011 budget.

**(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.

(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



**BILL RICHARDSON**  
GOVERNOR

**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

**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 projects<sup>1</sup>.**

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.<sup>1</sup> 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

<sup>1</sup> 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:<sup>2</sup>

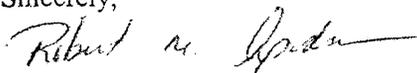
- (i) the work to be performed is in accordance with the appropriation language;
- (ii) Public Entity can demonstrate the Third Party Contract was procured in accordance with the New Mexico Procurement Code or other applicable governing procurement regulation;
- (iii) the Third Party Contract complies 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.

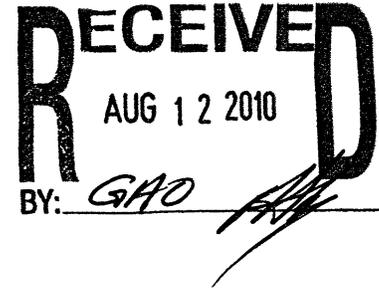
Sincerely,



Robert M. Apodaca, Director  
Local Government Division

<sup>2</sup> 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  
STB FUND APPROPRIATION PROJECT



Laws of 2009 Special Session

GRANT AGREEMENT NO. 03891

THIS AGREEMENT is made and entered into as of this 30<sup>th</sup> day of July 2010, 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 92, 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-3222                      \$227,700.00                      PROJECT EXPIRATION DATE: 30-JUN-12  
Laws of 2008, Chapter 92, Section 21, Paragraph 37, Two Hundred Twenty-Seven Thousand Seven Hundred Dollars (\$227,700.00) to design, construct, renovate and expand a housing complex for homeless veterans 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 first sentence of this Article 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. The amount set forth in the Project Description is the maximum amount granted to the Grantee under this Agreement and available to it from the corresponding appropriation in law.

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; provided, however, that the dollar amount stated in the Project Description is the maximum amount granted to the Grantee under this Agreement and available to it from the corresponding appropriation in law, regardless of the stated amount in the corresponding appropriation in law.

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-12, (hereinafter referred to as the "Termination Date") which is 60 days after the Division's calculation of the Project's Reversion Date, unless terminated sooner pursuant to Article II(C), Article II(D), or Article XIV herein.

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 prescribed 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 Two Hundred Twenty-Seven Thousand Seven Hundred dollars ( \$227,700.00); This is the maximum amount granted to the Grantee under this Agreement and available to it from the corresponding appropriation in law, regardless of the stated amount in the corresponding appropriation in law.

**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 rules:

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: Auguie Henry

Address: P.O. Box 20000 Attn:

Las Cruces, NM 88004

Title: Grant Administrator

Email:

Telephone: 541-2281

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)

June 15, 2010  
(Date)

DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION



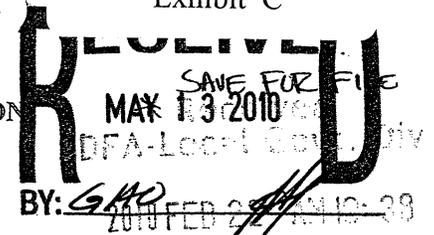
By: Sam Ojinaga  
Its: Director

7/30/10  
Date

APPROVED AS TO FORM:

  
City Attorney

423  
STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION  
STB FUND APPROPRIATION PROJECT



Laws of 2009 Special Session

GRANT AGREEMENT NO. 03501

THIS AGREEMENT is made and entered into as of this 2<sup>nd</sup> day of March, 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 92, 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-3221                      \$151,001.33                      PROJECT EXPIRATION DATE: 30-JUN-12**  
**Laws of 2008, Chapter 92, Section 21, Paragraph 36, One Hundred Fifty-One Thousand One Dollars (\$151,001.33) to plan, design and construct the downtown plaza 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.

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

Laws of 2009 Special Session

GRANT AGREEMENT NO. 03501

THIS AGREEMENT is made and entered into as of this 2<sup>nd</sup> day of March, 2010, 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 92, 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-3221            \$151,001.33            PROJECT EXPIRATION DATE: 30-JUN-12**  
**Laws of 2008, Chapter 92, Section 21, Paragraph 36, One Hundred Fifty-One Thousand One and 33/100 Dollars (\$151,001.33) to plan, design and construct the downtown plaza 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-12**, (hereinafter referred to as the "Termination Date") which is 60 days after the Division's calculation of the Project's Reversion Date, unless terminated sooner pursuant to Article II(C), Article II(D), or Article XIV herein.

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 prescribed 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 One Hundred Fifty-One Thousand One and 33/100 dollars ( \$151,001.33);

**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 rules:

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**

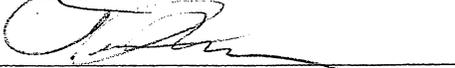
A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from DFA. Prior to the execution of this Agreement, the Division provided Grantee 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)

2/17/2010  
(Date)

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

  
By: Robert Apodaca  
It's: Director  
3/2/10  
Date

APPROVED AS TO FORM:  
  
City Attorney 02/19/10.

Received  
DFA-Local Govt. Div.

2010 AUG 10 PM 2:38

BATAAN MEMORIAL BUILDING  
SANTA FE, NM 87501

**RECEIVED**  
AUG 20 2010  
BY: GAO AKG

STATE OF NEW MEXICO  
DEPARTMENT OF FINANCE & ADMINISTRATION  
LOCAL GOVERNMENT DIVISION  
SPECIAL APPROPRIATION PROJECT

Laws of 2008

**GRANT AGREEMENT AMENDMENT NO. 1**

	<p>Name of Grantee: <u>City of Las Cruces</u></p> <p>Project Nos. Affected by Amendment: <u>08-L-G-3221</u></p>
--	---

**THIS AMENDMENT** is entered into by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 201, Santa Fe, NM 87501, hereinafter called the Division, and the City of Las Cruces, hereinafter called the Grantee.

**RECITALS**

**WHEREAS**, the Division and Grantee are parties to that certain Grant Agreement, executed by the Division on March 2, 2010, concerning certain appropriations to the Division, including Project Nos. 08-L-G-3221

**WHEREAS**, Laws of 2010, Chapter 105 (SB 182) did not revert numerous capital appropriations, including Project Nos. 08-L-G-3221; and

**WHEREAS**, the parties desire to amend the Grant Agreement to include the capital appropriations that were not reverted by Laws of 2010, Chapter 105 (SB 182).

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the mutual covenants and obligations contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. The following new **Article XVI** is added to the end of the Grant Agreement:

**PROJECTS NOT REVERTED IN LAWS OF 2010, CHAPTER 105 (SB 182)**

The parties agree that that the status of the following capital appropriations not reverted by the Laws of 2010, Chapter 105 (SB182) is follows:

<u>A.</u> <u>Project No.</u>	<u>B.</u> <u>Expenditures</u> <u>prior to Grant</u> <u>Agreement</u>	<u>C.</u> <u>Amount sent</u> <u>in Grant</u> <u>Agreement</u>	<u>D.</u> <u>Increase amount</u> <u>by this</u> <u>Amendment</u>	<u>E.</u> <u>Maximum</u> <u>Grant</u> <u>Amount</u> <u>granted by</u> <u>this</u> <u>Amendment</u> <u>(Column C</u> <u>plus Column</u> <u>D)</u>
08-L-G-3221	\$2,950.00	\$151,001.33	\$141,048.67	\$292,050.00

Grantee hereby acknowledges and agrees that the amount set forth under Column E is the maximum amount available to Grantee for any project amended by this Amendment and acknowledges. Accordingly, Grantee agrees to not seek reimbursement for any project amended by this Amendment in excess of the amount set forth in Column E for that project. For each project included in this Amendment, the Division shall reimburse Grantee for qualifying expenditures in a total not to exceed the amount set forth for the project in Column E.

2. The Grant Agreement total amount is hereby amended to read: "The total funds available under this Agreement for all projects shall not exceed \$292,050.00"
3. All other provisions of the Grant Agreement not amended herein remain in full force and effect.

IN WITNESS WHEREOF, the parties have duly executed this Amendment as of the date it is executed by both parties.

GRANTEE

[Handwritten Signature]

(Signature)

By: Robert Garza  
(Print Name)

Its: Asst. City Manager  
(Print Title)

8/6/10

(Date)

DEPARTMENT OF FINANCE AND ADMINISTRATION  
LOCAL GOVERNMENT DIVISION

[Handwritten Signature]

Dolores Gonzales, Bureau Chief

8/11/10

(Date)

APPROVED AS TO FORM:  
[Handwritten Signature]  
City Attorney

CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011

Page 1 of 2

FUND	DIVISION		FUND TYPE	
Facility State Grant Improvements Fund 4012	Various		Capital Project	
	FY 2009/10 Prelim Actual*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ (23,448)	0	0	0
<b>REVENUES</b>				
60302 Burn Lake/Esslinger Park	\$ 4,227	0		0
60404 Bus Shelters	37,500	0		0
60912 La Casa Renovation 2009	0	635,384		635,384
60A01 East Mesa Multigenerational Center	10,504	0		0
60E0A Community of Hope - Ph4	1,551	0		0
60F03 Mesquite Neighborhood	2,376	0		0
60F04 Mesquite Neighborhood	2,062	0		0
60F05 Mesquite Neighborhood	150,000	0		0
60H08 Mesilla Park community Center	7,860	0		0
60J01 North Las Cruces Park	9,533	0		0
60P03 Multipurpose Aquatic & Recreation Center	513,647	0		0
60P04 Multipurpose Aquatic & Recreation Center	8,269,812	0		0
60Q05 Thomas Branigan Memorial Library	228,138	0		0
60U01 Munson Center Improvements	120,434	0		0
60U06 Munson Center Improvements	97,000	0		0
60U05 Munson Center Improvements	198,000	0		0
60V02 Civil Air Patrol Hanger	149,857	0		0
61002 East Mesa Senior Center Improvements	600,000	0		0
60Q09 Branigan Library Expansion	66,909	477,591		477,591
60E10 Community of Hope Garden	751	0		0
63402 Paleozoic Trackway Exhibit	233	55,367		55,367
63701 Police & Fire Training Academy	0	30,610		30,610
60H10 Mesilla Park Community Center - Bldg & Grnds	9,673	30,074		30,074
60E11 Community of Hope	2,174	0		0
60911 Las Casa Shelter & Transitional Housing	0	91,478		91,478
63901 La Pinon Sexual Assault Center	30,962	10,938		10,938
64101 Homeless Veterans Housing Complex (2008)	0	0	227,700	227,700
60P03 Indoor Swimming Pool	0	343,854		343,854
60P05 Multipurpose Rec & Aquatic Phase II (2008)	36,831	121,477		121,477
63502 Amador Museum (2008)	79,691	16,470		16,470
63403 Museum of Nature & Science (2008)	166,675	11,525		11,525
60Q10 Branigan Library Childrens Wing (2008)	11,250	90,553		90,553
60H11 Mesilla Park Community Center (2008)	12,120	39,899		39,899
60103 Animal Services Center (2008)	18,499	0		0
60U10 Munson Center Renovations	19,000	0		0
20012 Senior Kitchen	0	20,000		20,000
60U08 Senior Kitchen	0	51,900		51,900
64200 East Side Center Improvements (2009)	0	18,000		18,000
60204 Benavidez Center Code Improvements (2009)	0	76,600		76,600
<b>Total Revenues</b>	\$ 10,857,269	2,121,720	227,700	2,349,420
<b>Total Resources</b>	\$ 10,833,821	2,121,720	227,700	2,349,420

\*Preliminary actual as of 11/17/10.

CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011

FUND	DIVISION		FUND TYPE	
Facility State Grant Improvements Fund 4012	Various		Capital Project	
	FY 2009/10 Prelim Actual*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
<b>EXPENDITURES</b>				
60302 Burn Lake/Esslinger Park	\$ 4,227	0		0
60404 Bus Shelters	37,500	0		0
60911 Las Casa Shelter & Transitional Housing	0	91,478		91,478
60912 La Casa Renovation 2009	0	635,384		635,384
60A01 East Mesa Multigenerational Center	10,504	0		0
60E0A Community of Hope - Ph4	1,551	0		0
60F03 Mesquite Neighborhood	2,376	0		0
60F04 Mesquite Neighborhood	2,062	0		0
60F05 Mesquite Neighborhood	150,000	0		0
60H08 Mesilla Park community Center	7,860	0		0
60J01 North Las Cruces Park	9,533	0		0
60P03 Multipurpose Aquatic & Recreation Center	513,647	0		0
60P04 Multipurpose Aquatic & Recreation Center	8,269,812	0		0
60Q05 Thomas Branigan Memorial Library	228,138	0		0
60U01 Munson Center Improvements	120,434	0		0
60U05 Munson Center Improvements	198,000	0		0
60U06 Munson Center Improvements	97,000	0		0
60V02 Civil Air Patrol Hanger	149,857	0		0
61002 East Mesa Senior Center Improvements	600,000	0		0
60Q09 Branigan Library Expansion	66,909	477,591		477,591
60E10 Community of Hope Garden	751	0		0
63402 Paleozoic Trackway Exhibit	233	55,367		55,367
63701 Police & Fire Training Academy	0	30,610		30,610
60H10 Mesilla Park Community Center - Bldg & Grnds	9,673	30,074		30,074
63901 La Pinon Sexual Assault Center	30,962	10,938		10,938
60E11 Community of Hope	2,174	0		0
64101 Homeless Veterans Housing Complex (2008)	0	0	227,700	227,700
60P03 Indoor Swimming Pool	0	343,854		343,854
60P05 Multipurpose Rec & Aquatic Phase II (2008)	36,831	121,477		121,477
63502 Amador Museum (2008)	79,691	16,470		16,470
63403 Museum of Nature & Science (2008)	166,675	11,525		11,525
60Q10 Branigan Library Childrens Wing (2008)	11,250	90,553		90,553
60H11 Mesilla Park Community Center (2008)	12,120	39,899		39,899
60103 Animal Services Center (2008)	18,499	0		0
60U10 Munson Center Renovations	19,000	0		0
20012 Senior Kitchen	0	20,000		20,000
60U08 Senior Kitchen	0	51,900		51,900
64200 East Side Center Improvements (2009)	0	18,000		18,000
60204 Benavidez Center Code Improvements (2009)	0	76,600		76,600
<b>Total Expenditures</b>	\$ 10,857,269	2,121,720	227,700	2,349,420
<b>OTHER FINANCING SOURCES (USES)</b>				
Transfer from Fund 101000 - General Fund	23,448	0		0
<b>Total Other Financing Sources (Uses)</b>	\$ 23,448	0	0	0
<b>ENDING BALANCE</b>	\$ 0	0	0	0

\*Preliminary actual as of 11/17/10.

## EXHIBIT "D" CONTINUED

CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011

FUND	DIVISION		FUND TYPE	
Park/Land Capital Improvements Fund 4112	Facilities		Capital Project	
	FY 2009/10 Prelim Actual*	FY 2010/11 Adopted	Adjustment	FY 2010/11 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ 0	0		0
<b>REVENUES</b>				
60802 Downtown Revitalization	0	0		0
60809 Downtown Plaza	18,996	0		0
60810 Downtown Plaza	165,510	0		0
60813 Downtown Plaza	30,109	799,891		799,891
60815 La Placita - Phase I	99,912	272,549		272,549
60814 Downtown Plaza	0	151,516	141,049	292,565
60E05 Community of Hope	0	0		0
60F06 Mesquite Historical District	17,080	0		0
60T07 Veteran's Memorial Wall	0	5,837		5,837
60T08 Veteran's Memorial Wall	0	858		858
63802 Dog Park	333	0		0
60304 Burn Lake/Esslinger Park (2008)	29,999	0		0
23007 Skeet & Trap Range (2008)	24,651	40,349		40,349
<b>Total Revenues</b>	\$ 386,590	1,271,000	141,049	1,412,049
<b>Total Resources</b>	\$ 386,590	1,271,000	141,049	1,412,049
<b>EXPENDITURES</b>				
60802 Downtown Revitalization	0	0		0
60809 Downtown Plaza	18,996	0		0
60810 Downtown Plaza	165,510	0		0
60813 Downtown Plaza	30,109	799,891		799,891
60815 La Placita - Phase I	99,912	272,549		272,549
60816 La Placita - Phase II	0	0		0
60814 Downtown Plaza	0	151,516	141,049	292,565
60304 Burn Lake/Esslinger Park (2008)	29,999	0		0
23007 Skeet & Trap Range (2008)	24,651	40,349		40,349
60E05 Community of Hope	0	0		0
60F06 Mesquite Historical District	17,080	0		0
60T07 Veteran's Memorial Wall	0	5,837		5,837
60T08 Veteran's Memorial Wall	0	858		858
61R03 Burn Lake	0	0		0
62304 High Noon Soccer Fields	0	0		0
62305 High Noon Soccer Fields	0	0		0
63801 Alternative Recreation Facility/Park (Dog Park)	0	0		0
63802 Dog Park	333	0		0
<b>Total Expenditures</b>	\$ 386,590	1,271,000	141,049	1,412,049
<b>ENDING BALANCE</b>	\$ 0	0	0	0

\*Preliminary actual as of 11/17/10.