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

**Council Action and Executive Summary**

Item # 2 Ordinance/Resolution# 12-193

For Meeting of \_\_\_\_\_  
 (Ordinance First Reading Date)

For Meeting of May 21, 2012  
 (Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION AUTHORIZING LAS CRUCES SENIOR PROGRAMS TO ACCEPT A CAPITAL APPROPRIATION FROM THE STATE OF NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT FURNISHED THROUGH AN EMERGENCY FUND ALLOCATION IN THE AMOUNT OF \$5,000.00 WITH NO MATCH REQUIREMENT FOR ASBESTOS ABATEMENT AT EAST SIDE SENIOR CENTER, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE APPROPRIATION AGREEMENT, AND TO ADJUST THE FY 2012 BUDGET.

**PURPOSE(S) OF ACTION:**

To accept grant, ratify City Manager signature, and adjust budget.

<b>COUNCIL DISTRICT: ALL</b>		
<b><u>Drafter/Staff Contact:</u></b> Elizabeth Vega	<b><u>Department/Section:</u></b> Finance/Grants	<b><u>Phone:</u></b> 575-541-2717
<b><u>City Manager Signature:</u></b>		

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

The New Mexico Aging and Long-Term Services Department—through funds apportioned them by the New Mexico Legislature—appropriated \$5,000.00 to the Las Cruces Senior Programs section from their emergency fund. The \$5,000.00 appropriation, with no match requirement, will be used “to make code improvements of asbestos abatement” to the East Side Senior Center. This appropriation reverts June 30, 2012.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit “A”, Capital Appropriation Agreement.
3. Exhibit “B”, Budget Adjustment.

(Continue on additional sheets as required)

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" 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.
<b>Does this action create any revenue?</b>	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: <u>4012 Facility State Grant Improvements Fund</u> in the amount of <u>\$5,000.00</u> for FY 2012.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

Grant funds will be deposited into Fund #4012 (Facility State Grant Improvements) under project #64201 to be used by Senior Programs to pay for asbestos abatement at East Side Senior Center.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Facility State Grant Fund	40806090-852100-64201	\$5,000.00	\$5,000.00*	\$0.00	N/A

\* pending adjustment

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will accept grant funds from the New Mexico Aging and Long-Term Services Department in the amount of \$5,000.00 for asbestos abatement.
2. Vote "No"; this is not an option since the funds are necessary for the asbestos abatement.
3. Vote to "Amend"; this is not an option as the grant agreement has been agreed upon.
4. Vote to "Table"; this not an option, as grant funds need to be accepted to meet reversion deadlines.

**REFERENCE INFORMATION:**

N/A

**RESOLUTION NO. 12-193**

**A RESOLUTION AUTHORIZING LAS CRUCES SENIOR PROGRAMS TO ACCEPT A CAPITAL APPROPRIATION FROM THE STATE OF NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT FURNISHED THROUGH AN EMERGENCY FUND ALLOCATION IN THE AMOUNT OF \$5,000.00 WITH NO MATCH REQUIREMENT FOR ASBESTOS ABATEMENT AT EAST SIDE SENIOR CENTER, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE APPROPRIATION AGREEMENT, AND TO ADJUST THE FY 2012 BUDGET.**

The City Council is informed that:

**WHEREAS**, the New Mexico Aging and Long-Term Services Department has offered a fund emergency capital appropriation to the City of Las Cruces Senior Programs in the amount of \$5,000.00 as demonstrated in Exhibit "A"; and

**WHEREAS**, the appropriation will be used for asbestos abatement at the East Side Senior Center; and

**WHEREAS**, there is no local match required to accept these funds; and

**WHEREAS**, the appropriation must be spent before the reversion date of June 30, 2012.

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

**(I)**

**THAT** the City of Las Cruces Senior Programs section is authorized to accept a capital appropriation in the amount of \$5,000.00, with no local match requirement.

**(II)**

**THAT** the FY 2012 Adopted Budget is hereby adjusted as reflected in Exhibit "B" attached hereto and made a part of this resolution.

**(III)**

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

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

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

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

VOTE:

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

APPROVED AS TO FORM:

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

2012-006

East Side Senior Center

**STATE OF NEW MEXICO  
AGING AND LONG-TERM SERVICES DEPARTMENT  
FUND EMERGENCY CAPITAL APPROPRIATION PROJECT**

**THIS AGREEMENT** is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2012, by and between the Aging and Long-Term Services Department, New Mexico, hereinafter called the "Department" or abbreviation such as "ALTSD", and City of Las Cruces, hereinafter called the "Grantee". **The Effective Date of this Agreement is the date of last signature by both the Department and the Grantee.**

**RECITALS**

**WHEREAS**, in the Laws of 2011, Chapter 179, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

**WHEREAS**, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement.

**WHEREAS**, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency), Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) and the Older Americans Act, as amended 1965, may enter into grants and contracts as appropriated by law.

**AGREEMENT**

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

**ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE**

A. The project that is the subject of this Agreement is described as follows:

(Emergency) \$5,000

East Side Senior Center

APPROPRIATION REVERSION DATE:

6/30/2012

Laws of 2011, Chapter 179, five thousand dollars (\$5,000), to the East Side Senior Center to make code improvements of asbestos abatement to the East Side Senior Center in Las Cruces in Dona Ana County.

The Grantee's total reimbursements shall not exceed the appropriation amount five thousand dollars (\$5,000) minus the allocation for Art in Public Places<sup>1</sup>, if applicable, (\$) which equals [five thousand dollars (\$5,000)], hereinafter referred to as "Adjusted Appropriation Amount."

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited herein Article I. A., the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I. A. is referred to collectively throughout the remainder of this Agreement as the "Project Description - East Side Senior Center to make code improvements of asbestos abatement to the East Side Senior Center in Las Cruces in Dona Ana County. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, requests for payment and reports.

## **ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE**

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse<sup>2</sup> Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a.) The Adjusted Appropriation Amount identified in Article I. A., herein or (b.) The total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s); and
- (iii) The Grantee's expenditures were made pursuant to the Grantee's legal procurement and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including

<sup>1</sup> The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." See, Section 13-4A-4 NMSA 1978.

<sup>2</sup> "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth Article IX. herein; and
- (v) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations), to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations), as soon as possible after execution by the Third Party but prior to execution by the Grantee.
  - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
  - c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date.
  - d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

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

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

**ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES**

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Las Cruces

Name: \_\_\_\_\_

Title: \_\_\_\_\_

P.O. Box 20000

Las Cruces New Mexico 88004

Email: \_\_\_\_\_

Telephone: \_\_\_\_\_

FAX: \_\_\_\_\_

Department: **AGING AND LONG-TERM SERVICES DEPARTMENT**Address: **2550 CERRILLOS ROAD  
TONEY ANAYA BUILDING  
SANTA FE, NM 87505**Telephone: **(505) 476-4799**FAX: **(505) 476-4836**

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party'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 and 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 and received on the date reflected on the delivery receipt of email. In the event the designated representative is required to be changed or updated, the Department shall be informed of the new Grantee representative in writing.

#### **ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION**

A. As referenced in Article I. A., the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2012 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V. herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* "expended" and an "expenditure" has *not* occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

**ARTICLE V. EARLY TERMINATION****A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V. A.

**B. Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I. and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V.B.

**C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

**ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS**

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI. D. herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II, herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V. herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

**D. Corrective Action Plan in the Event of Suspension**

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI.A., the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V. A. (iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

**ARTICLE VII. AMENDMENT**

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

**ARTICLE VIII. REPORTS**

**A. Paper Periodic Reports**

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1. The Department shall provide the Grantee with a minimum of thirty (30) days advance written notice of any change to the Periodic Report format or content.

The Paper 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 Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) 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. Paper Final Report**

The Grantee shall submit to the Department and the Department of Finance and Administration a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**C. Paperless Reporting**

In lieu of the paper reports described in subparagraphs A and B of this Article, the Department may, in its discretion, require Grantee to report periodic and final Project activity by entering such Project information as the Department and the Department of Finance and Administration may require directly into a database maintained by the Department of Finance and Administration. The Department shall give Grantee a minimum of thirty (30) days advance, written notice of the switch to or from paperless reporting. The Department shall also give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless 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 Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

**D. Requests for Additional Information/Project Inspection**

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII., the Department 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 Department. 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 IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES**

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

- (i) The Grantee must submit one original and one copy of each Request; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III. herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within 15 calendar days from the date of cashing or depositing of the State warrant.

**B. Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II. herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II. herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

**ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS;  
REPRESENTATIONS AND WARRANTIES**

A. The Grantee hereby represents and warrants that all of the following general conditions and restrictions are applicable to the Project:

- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).
- (ii) The Grantee insures compliance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
- (iii) 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."
- (iv) 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 Department's express, advance, and written approval.
- (v) The Grantee has the legal authority to receive and expend the Project's funds.
- (vi) 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.
- (vii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the

Grantee's charter (if applicable), or any judgment or decree to which it is subject.

- (viii) 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.
- (ix) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (x) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and federal whistleblower laws. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (xi) The Grantee certifies, to the best of its knowledge and belief, no funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.
- (xii) The Grantee shall comply with 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.
- (xiii) If this Agreement is for equipment for a senior center or senior services, the Grantee shall be responsible for adhering to the policy on Management and Disposition of Tangible Property provided by the Department if such equipment is no longer usable for its intended purpose.
- (xiv) If this Agreement is for a vehicle or vehicle purchase, the Grantee agrees that the vehicle(s) shall be used for transportation services for senior

citizens and persons with disabilities and in accordance with the appropriation law set forth in this Agreement. When the vehicle(s) are no longer used or needed for its intended purpose and prior to the vehicle(s) disposition, the contractor shall notify the Department and obtain the Department's instructions as to the disposition of the vehicle, including the title of the vehicle. After the Department approves the proposed disposition, the Grantee shall give notification to the State Auditor and the Department at least thirty (30) days prior to its action in making the deletion from its public inventory. In addition, if the Grantee receives any proceeds from the sale of the vehicle(s) all proceeds shall be retained by the senior programs. The Grantee agrees to retain a record of the sale for a minimum of three years.

- (xv) If this Agreement is for improvement or renovation projects, 10%, the Grantee shall not enter into any agreement with architects or engineers, wherein the fee would be in excess of 10% of the amount awarded herein.
- (xvi) If this Agreement is for renovation or improvements of an existing senior center building, the Grantee shall ensure for a period of five (5) years from the date hereof, East Side Senior Center shall be used solely for the purpose of senior citizens and not for any other purpose whatsoever. The East Side Senior Center shall not be closed, subleased, or disposed of without the written prior consent of the Department.
- (xvii) If this Agreement is for construction of a new building as a senior center, the Grantee shall ensure for a period of twenty (20) years from the date hereof, East Side Senior Center shall be used solely for the purpose of senior citizens and not for any other purpose whatsoever. The East Side Senior Center shall not be closed, subleased, or disposed of without the written prior consent of the Department.

#### **ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS**

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the 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 Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

#### **ARTICLE XII. IMPROPERLY REIMBURSED FUNDS**

If the Department determines that part of all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

#### **ARTICLE XIII. 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 XIV. 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 XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties 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 that states:

"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 City of Las Cruces may immediately terminate this Agreement by giving Grantee written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces or the ALTSD or the State of New Mexico in the

event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department”

**ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT**

Grantee acknowledges and agrees that Grantee shall include the following or a 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 ALTSD Grant Agreement. Should the ALTSD early terminate the grant agreement, the ALTSD may early terminate this contract by providing contractor written notice of such termination. In the event of termination pursuant to this paragraph, the ALTSD only liability shall be to pay contractor or vendor for acceptable goods delivered and services rendered before the termination date.”

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

[THIS SPACE LEFT BLANK INTENTIONALLY]

NEW  
MEXICO  
AGING &  
LONG-TERM  
SERVICES  
DEPARTMENT

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

CITY OF LAS CRUCES

\_\_\_\_\_  
Signature of Official with Authority to Bind Grantee

By: Robert L. Garza, P.E.  
(Type or Print Name)

Its: City Manager  
(Type or Print Title)

\_\_\_\_\_  
Date

AGING AND LONG-TERM SERVICES DEPARTMENT

\_\_\_\_\_  
By:

\_\_\_\_\_  
Date



**CITY OF LAS CRUCES**  
**ADOPTED BUDGET FY 2011/2012**

FUND	DIVISION		FUND TYPE	
Facility State Grant Improvements Fund 4012	Various		Capital Project	
	FY 2010/11 Preliminary*	FY 2011/12 Adopted	FY 2011/12 Adjustment	FY 2011/12 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ 0	0		0
<b>REVENUES</b>				
20012 Senior Kitchen		20,000		20,000
60204 Benavidez Center Code Improvements (2009)	73,599	3,001		3,001
60911 Las Casa Shelter & Transitional Housing	86,605	128,396		128,396
60912 La Casa Renovation 2009	564,598	70,785		70,785
60H10 Mesilla Park Community Center - Bldg & Grnds	30,073	0		0
60H11 Mesilla Park Community Center (2008)	39,899	0		0
60H12 Mesilla Park Community Center Restrooms		75,000		75,000
60P03 Indoor Swimming Pool	245,231	98,622		98,622
60P05 Multipurpose Rec & Aquatic Phase II (2008)	48,856	502,374		502,374
60Q09 Branigan Library Expansion	477,591	0		0
60Q10 Branigan Library Childrens Wing (2008)	18,309	72,244		72,244
60U08 Senior Kitchen	50,269	1,631		1,631
60U09 Munson Center Bldg Improv		10,000		10,000
60U11 Munson Center ADA Billiards		178,500		178,500
60U12 STB Capital Appropriation	0	250,000		250,000
63402 Paleozoic Trackway Exhibit	55,367	0		0
63403 Museum of Nature & Science (2008)	11,496	0		0
63501 Amador Hotel	25,000			
63502 Amador Museum (2008)	16,052	418		418
63701 Police & Fire Training Academy	30,610	0		0
63901 La Pinon Sexual Assault Center	10,824	0		0
64101 FAC ST GR-Amador Museum		227,700		227,700
64200 East Side Center Improvements (2009)		18,000		18,000
64201 East Side Center Improvements (2012)			5,000	
<b>Total Revenues</b>	\$ 1,784,379	1,656,671	5,000	1,656,671
<b>Total Resources</b>	\$ 1,784,379	1,656,671	5,000	1,656,671

\*Preliminary actual as of December 8, 2011

## EXHIBIT "B" CONTINUED

CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2011/2012

Page 2 of 2

FUND	DIVISION		FUND TYPE	
Facility State Grant Improvements Fund 4012	Various		Capital Project	
	FY 2010/11 Preliminary*	FY 2011/12 Adopted	FY 2011/12 Adjustment	FY 2011/12 Adjusted
<b>EXPENDITURES</b>				
20012 Senior Kitchen	0	20,000		20,000
60204 Benavidez Center Code Improvements (2009)	73,599	3,001		3,001
60911 Las Casa Shelter & Transitional Housing	86,605	128,396		128,396
60912 La Casa Renovation 2009	564,598	149,285		149,285
60H10 Mesilla Park Community Center - Bldg & Grnds	30,073	0		0
60H11 Mesilla Park Community Center (2008)	39,899	0		0
60H12 Mesilla Park Community Center Restrooms		75,000		75,000
60P03 Indoor Swimming Pool	245,231	98,622		98,622
60P05 Multipurpose Rec & Aquatic Phase II (2008)	48,856	502,374		502,374
60Q09 Branigan Library Expansion	477,591	0		0
60Q10 Branigan Library Childrens Wing (2008)	18,309	72,244		72,244
60U08 Senior Kitchen	50,269	1,631		1,631
60U09 Munson Center Bldg Improv		10,000		10,000
60U11 Munson Center ADA Billiards		100,000		100,000
60U12 STB Capital Appropriation	0	250,000		250,000
63402 Paleozoic Trackway Exhibit	55,367	0		0
63403 Museum of Nature & Science (2008)	11,496	0		0
63501 Amador Hotel	25,000	418		418
63502 Amador Museum (2008)	16,052	0		0
63701 Police & Fire Training Academy	30,610	0		0
63901 La Pinon Sexual Assault Center	10,824	0		0
64101 FAC ST GR-Amador Museum		227,700		227,700
64200 East Side Center Improvements (2009)		18,000		18,000
64201 East Side Center Improvements (2012)			5,000	
<b>Total Expenditures</b>	<b>\$ 1,784,379</b>	<b>1,656,671</b>	<b>5,000</b>	<b>1,656,671</b>
<b>OTHER FINANCING SOURCES (USES)</b>				
Transfer from Fund 101000 - General Fund	0	0	0	0
<b>Total Other Financing Sources (Uses)</b>	<b>\$ 0</b>	<b>0</b>	<b>0</b>	<b>0</b>
<b>ENDING BALANCE</b>	<b>\$ 0</b>	<b>0</b>	<b>0</b>	<b>0</b>

\*Preliminary actual as of December 8, 2011