

City of Las Cruces®

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Council Action and Executive Summary

Item # 8 Ordinance/Resolution# 10-008 Council District:

For Meeting of July 6, 2009

(Adoption Date)

TITLE: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT (MOA) WITH THE CITY OF LAS CRUCES, DOÑA ANA COUNTY AND THE TOWN OF MESILLA, AND AGREEING TO PROVIDE A TOTAL OF \$37,500 (\$12,500 PER YEAR FOR THREE YEARS) FOR GROUNDWORK DOÑA ANA, A NEWLY-FORMED ENVIRONMENTAL ORGANIZATION.

PURPOSE(S) OF ACTION: Approve the MOA and provide funding in the amount of \$37,500 (over a three year period) to help launch a newly-formed community environmental organization that would provide environmental, conservation and volunteer-based services throughout the county.

Name of Drafter: Carol McCall <i>cm</i>		Department: Community Development		Phone: 528-3209	
Department	Signature	Phone	Department	Signature	Phone
Community Development	<i>Vincent M. Ramirez</i>	528-3066	Budget Assistant City Manager	<i>Richard [Signature]</i>	541-2107
					541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Groundwork USA Program is a joint venture of the National Park Service (NPS) Rivers and Trails Program and the Environmental Protection Agency (EPA) Brownfields Program. The mission of Groundwork USA is to bring about the sustained regeneration, improvement and management of the physical environment by developing community-based partnerships which empower people, businesses and organizations to promote environmental, economic and social well-being. Groundwork USA accomplishes this through the establishment of a network of independent, not-for-profit, environmental businesses called Groundwork Trusts. Locally-organized and controlled, these Trusts provide cost-effective project development services in the areas of natural resource conservation, brownfield redevelopment and neighborhood revitalization.

On November 3, 2008, the City Council heard a presentation regarding Groundwork Doña Ana (GWDA), a newly-formed organization in the community. The organization will receive \$80,000 in federal funding, but in order to release the funding, the National Parks Service requires a match from the City, Town of Mesilla and Doña Ana County each year for three years. GWDA has requested that the City and Doña Ana County each provide \$12,500 per

year and the Town of Mesilla provide \$2,000 per year. At the November 3, 2008 meeting, Council endorsed the GWDA Feasibility Study and Strategic Plan, and approved the funding request contingent on the approval of the Memorandum of Agreement (MOA). On June 8, 2009, the Town of Mesilla Board of Trustees approved the MOA with a vote of 3-0 (2 members absent), and on June 9, 2009, the Doña Ana Board of County Commissioners approved the MOA with a vote of 5-0.

The MOA explains:

- The responsibilities of the City, County, the Town;
- The invoicing and reimbursement procedures;
- The duration of the Agreement is three years;
- That the Town of Mesilla will serve as the Fiscal Agent for GWDA for the duration that the 3-year Agreement is in place; and
- That funding will be used for administrative purposes only.

At the November 3, 2008 Council meeting, it was anticipated that the MOA would be with the City, County, Town and GWDA. However, Doña Ana County requested that the MOA be written to include only the three local governments, since GWDA has not yet been incorporated as a non-profit organization. The MOA specifies that one of the responsibilities of the Town of Mesilla will be to establish the GWDA Board of Directors, which will then begin creating the non-profit corporation. It is expected that this process will be completed well within the three-year time frame of the MOA.

When the Board of County Commissioners passed Resolution No. 08-124 endorsing GWDA and pledging funds on November 28, 2008, the Resolution contained a provision that would require the MOA to provide for "operation control of GWDA to be retained by the coalition of government partners" for the three year duration the MOA is in place. In other words, representatives chosen by the local governments would sit on the Board of Directors during this period. This is addressed in the MOA in Section Three, Number 2. The intent of this stipulation is to help ensure that the projects carried out by the Groundwork organization are consistent with the natural resource conservation, brownfield redevelopment and neighborhood revitalization goals of the governmental agencies during the time that the governmental agencies are providing funding to the organization.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
Regional Plan Fund 2030-20184180-722190-20401	\$12,500	\$12,500

1. Resolution
2. Exhibit "A" – Memorandum of Agreement
3. Attachment "A" – Resolution 09-120 (November 3, 2008)
4. Attachment "B" – Dona Ana County Resolution 08-124 (November 28, 2008)

OPTIONS / ALTERNATIVES:

1. Vote YES to approve the Resolution. In doing so, the City authorizes the Mayor to sign the Memorandum of Agreement and authorizes the use of budgeted funds to help create Groundwork Doña Ana.
2. Vote NO and deny the Resolution. In doing so, the City of Las Cruces would not authorize the Mayor to sign the Memorandum of Agreement and would not authorize the use of budgeted funds to help create Groundwork Doña Ana.
3. Modify the Resolution and vote YES. Modifications may include changing the Memorandum of Agreement or changing the amount of funding provided to Groundwork Doña Ana.
4. Table or postpone the vote and direct staff accordingly.

RESOLUTION NO. 10-008

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT (MOA) WITH THE CITY OF LAS CRUCES, DOÑA ANA COUNTY AND THE TOWN OF MESILLA, AND AGREEING TO PROVIDE A TOTAL OF \$37,500 (\$12,500 PER YEAR FOR THREE YEARS) FOR GROUNDWORK DOÑA ANA, A NEWLY-FORMED ENVIRONMENTAL ORGANIZATION.

The City Council is informed that:

WHEREAS, the City of Las Cruces has shown support for the protection of natural areas and open space; and

WHEREAS, many citizens and neighborhood organizations have expressed a desire for the City to prioritize protection and preservation of natural areas within the City for recreational and aesthetic purposes; and

WHEREAS, the City received notice that the National Parks Service (NPS) has accepted a proposal to create Groundwork Doña Ana (GWDA), a non-profit organization with a mission to enhance the natural and cultural environment and social and economic welfare of Doña Ana County through it's various projects related to environmental restoration, recreation, brownfields and neglected areas, farming and native plants, transportation and social services, and historic preservation; and

WHEREAS, in order to release \$80,000 in funding to the local Groundwork organization, the National Parks Service requires a \$27,000 match per year for the next 3 years from local government contributions; and

WHEREAS, on November 3, 2008, the City Council passed Resolution 09-120, which endorsed the Groundwork Doña Ana Feasibility Study and Strategic Plan, and approved funding, contingent on the approval of a Memorandum of Agreement among the participating parties; and

WHEREAS, on June 8, 2009, the Town of Mesilla Board of Trustees approved the MOA with a vote of 3-0 (2 members absent), and on June 9, 2009, the Doña Ana Board of County Commissioners approved the MOA with a vote of 5-0.

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

(I)

THAT the City of Las Cruces hereby approves the Memorandum of Agreement with the City of Las Cruces, Doña Ana County, the Town of Mesilla and Groundwork Doña Ana.

(II)

THAT the Mayor is hereby authorized to sign the Memorandum of Agreement attached hereto as Exhibit "A" and made a part of this Resolution, for the accomplishment of the herein above.

(III)

THAT the City is hereby authorized to expend \$12,500 per year for three years to help create Groundwork Doña Ana as part of the National Parks Service matching funds requirement.

(IV)

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

DONE AND APPROVED this _____ day of _____ 2009.

APPROVED:

Mayor

(SEAL)

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Archuleta: _____
Councillor Small: _____
Councillor Jones: _____
Councillor Thomas: _____

**MEMORANDUM OF AGREEMENT BETWEEN
THE COUNTY OF DOÑA ANA,
THE CITY OF LAS CRUCES, AND THE TOWN OF MESILLA**

This Memorandum of Agreement, hereinafter referred to as "MOA," is made and entered into this _____ day of _____, 2009, by and among the County of Doña Ana, hereinafter referred to as "County," the City of Las Cruces, hereinafter referred to as "City," and the Town of Mesilla, hereinafter referred to as "Town" (hereinafter referred to collectively as the "Parties").

WHEREAS, the Parties have endorsed the "Feasibility Study and Strategic Plan to Establish Groundwork Doña Ana, New Mexico," the findings of which address several areas of county-wide, community concern, including environmental restoration and recreation, brown field and neglected areas, farming and native plants, transportation and social services, historic preservation, and appropriate energies and technologies; and

WHEREAS, the National Park Service (NPS) has approved the "Feasibility Study and Strategic Plan" and, upon receipt of the endorsements from each of the Parties has designated Groundwork Doña Ana (GWDA) as an Established Groundwork Trust within the Groundwork USA Network as of March 15, 2009; and

WHEREAS, the funding to be provided by the NPS for the launching and initial operations of GWDA requires a local match for three consecutive years, which each of the Parties have committed to provide, subject to the availability of funds.

NOW THEREFORE, the Parties agree that the method by which the actions to launch GWDA shall be accomplished is this Memorandum of Agreement (MOA).

SECTION ONE: PURPOSES OF MOA

The purposes of this MOA are to collectively authorize and encumber a total of \$27,000 in funds per year for three consecutive years, subject to availability of funds, to aid in launching the GWDA organization, to facilitate coordination and communication among the Parties, and to specify obligations of the Parties hereto.

SECTION ONE: FINANCIAL, DESIGNATION, AND REPORTING OBLIGATIONS

1. The County shall:
 - a. Subject to the availability of funds, pay the Town of Mesilla \$12,500 per year for three consecutive years, said funds to be combined with the contributions of the City and the Town and used by the Town for eligible expenses incurred in launching GWDA pursuant to this MOA;
 - b. Designate a point of contact to the Town; and
 - c. Designate two (2) representatives of the County to serve on the Board of Directors of GWDA.

2. The City shall:
 - a. Subject to the availability of funds, pay the Town of Mesilla \$12,500 per year for three consecutive years, said funds to be combined with the contributions of the County and the Town and used by the Town for eligible expenses incurred in launching GWDA pursuant to this MOA;
 - b. Designate a point of contact to the Town; and
 - c. Designate two (2) representatives of the City to serve on the Board of Directors of GWDA.

3. The Town shall:
 - a. Subject to the availability of funds, contribute \$2,000 per year for three consecutive years, said funds to be combined with the contributions of the County and the City and used by the Town for eligible expenses incurred in launching GWDA pursuant to this MOA;
 - b. Designate a point of contact to the County and the City;
 - c. Designate two (2) representatives of the Town to serve on the Board of Directors of GWDA;
 - d. On a quarterly basis, provide to the County and the City a written progress report and financial statement which shall be prepared in accordance with standard accounting procedures; and
 - d. Complete the task obligations in Section Three, below.

SECTION THREE: TASK OBLIGATIONS OF THE TOWN

In return for the funding provided by the Parties, the Town shall:

1. Act as fiscal agent for the funds provided pursuant to this MOA;
2. Incorporate GWDA as a non-profit organization with a Board of Directors responsible for operational control consisting of eleven members, none of whom shall be elected officials. Two members shall be representatives of the County chosen by the Board of County Commissioners, two members shall be representatives of the City chosen by the City Council, and two members shall be representatives of the Town, chosen by the Town Trustees. The remaining five members shall be representatives from supporting agencies and the community at large chosen by the governmental board members;
3. Consistent with the terms and purposes of this agreement, enter into a contract with GWDA which shall specify the reimbursement of eligible expenses and the procedures for reimbursement from the funds provided by the parties;
4. Assist the Board in the hiring of a project manager/executive director, who shall work under the direction of the Board, through a competitive hiring process;
5. Assist the Board to establish GWDA in accordance with the Groundwork Dona Ana Feasibility Study/Strategic Plan;
6. Assist the Board in developing promotional tools such as a website, banner and brochure to launch the program;
7. Assist the Board in developing a three year business plan in partnership with the Parties to his MOA and the NPS;
8. Assist the Board in the review of community led projects and programs that improve the quality of life and opportunities for economic regeneration through

the development and stewardship of parkland, recreation areas, nature reserves, trail systems and other environmental improvements throughout Dona Ana County;

9. Using the findings from # 8, assist the Board in the planning and organization of a demonstration project and then in the implementation of the project with funding from other sources to announce the launch of GWDA; and
10. Assist the Board with the preparation of documents required by the NPS, including but not limited to, funding, in-kind services, volunteer hours, and the annual Groundwork USA Performance Measures.

SECTION FOUR: FUNDING AND COSTS PURSUANT TO THIS MOA

1. The funding to be provided by the Parties over a three year period shall not exceed a combined total of \$27,000 per year.
2. Only those expenses that are properly documented and deemed eligible shall be reimbursed by the Town from the funds provided for in this MOA.
3. Eligible expenses include costs for planning, organizing, administering and promoting the development, launching and operation of GWDA.
4. Ineligible expenses include costs for construction documents and/or construction and maintenance of specific projects.
5. Each eligible expense shall be paid from the funds provided by the Parties under this MOA in accordance with each Party's contribution percentage as follows: County 46.3%, City 46.3%, Town 7.4%.
6. The Parties to this MOA shall not be responsible for any expenses in excess of the contribution amounts or percentages specified in this MOA.

SECTION FIVE: NON-APPROPRIATION; TERMINATION

The County's, City's, and Town's obligation to each make a contribution under the terms of this MOA are contingent upon each Party's appropriation of sufficient funds to make that contribution. If the County, the City, or the Town does not appropriate funds for its contribution under this MOA, that Party's continued participation under this MOA shall terminate upon written notice of that effect to the other Parties. The County's, City's, or Town's determination that sufficient funds have not been appropriated is firm, binding and not subject to review.

SECTION SIX: RETURN OF FINANCIAL CONTRIBUTION

Upon termination of this MOA, either automatically under Section Eight, or by action of a Party under Section Five or Ten, and after satisfaction of any outstanding eligible reimbursable expenses, any remaining funds contributed under this MOA shall be returned to the Parties in proportion to each Parties' percentage of contribution.

SECTION SEVEN: NEW MEXICO TORT CLAIMS ACT

No provision of this MOA establishes any waiver of immunity for alleged tortuous conduct of any employee of the parties arising from the performance of this MOA apart from that set forth in the NM Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

SECTION EIGHT: EFFECTIVE DATE AND TERM OF AGREEMENT

This MOA becomes effective upon the date of the last signature below and shall automatically terminate three years from the effective date. No Party shall have any further obligation under this MOA after the termination date, except that the Parties shall honor obligations for reimbursement of eligible expenses already incurred prior to the date of termination.

SECTION NINE: AMENDMENT

This MOA shall not be altered, changed or amended except by instrument in writing executed by the parties hereto.

SECTION TEN: TERMINATION BY PARTY

This MOA may be terminated by a Party hereto upon written notice delivered to the other Parties at least thirty (30) days prior to the intended date of termination. Notwithstanding such termination the Parties shall honor obligations for reimbursement of eligible expenses already incurred prior to the date of termination of this MOA.

SECTION ELEVEN: PRINCIPAL CONTACTS

The principal contacts and their addresses for this MOA are:

City of Las Cruces:

Carol McCall, Planner
City of Las Cruces Community Development Department
P.O. Box 20000
Las Cruces, NM 88004.....

County of Doña Ana:

Chuck McMahan, Director
Doña Ana County Community Development Department
845 N. Motel Blvd.
Las Cruces, NM 88007

Town of Mesilla:

Susan Kruger, Deputy Town Clerk
Town of Mesilla
PO Box 10
Mesilla, NM 88046.....

SECTION TWELVE: COMPLIANCE WITH RIGHTS AND OBLIGATIONS

All activities taken pursuant to this MOA shall comply with all applicable law.

SECTION THIRTEEN: ASSIGNMENT OF DUTIES

No Party to this agreement may assign the duties of this MOA without the written consent of the other Parties.

SIGNATURES

COUNTY OF DOÑA ANA

BY: M. Benavente, ACM
County Manager

6/10/09
DATE

CITY OF LAS CRUCES

BY: _____
Mayor

DATE

TOWN OF MESILLA

BY: [Signature]
Mayor

6/10/09
DATE

APPROVED AS TO FORM:

[Signature]
DEPUTY County Attorney

[Signature]
Deputy City Attorney

[Signature]
Town Attorney

RESOLUTION NO. 09-120

A RESOLUTION ENDORSING THE FEASIBILITY STUDY AND STRATEGIC PLAN FOR THE NEWLY-CREATED GROUNDWORK DOÑA ANA ORGANIZATION, AND AGREEING TO PROVIDE A TOTAL OF \$37,500 (\$12,500 PER YEAR FOR THREE YEARS, BEGINNING THIS FISCAL YEAR) AS PART OF A REQUIRED MATCH TO RECEIVE FEDERAL FUNDING. THE RESOLUTION APPROVES A BUDGET ADJUSTMENT FOR THIS FUNDING IN THE CITY'S ADOPTED FY 2009 BUDGET.

The City Council is informed that:

WHEREAS, the City of Las Cruces has shown support for the protection of natural areas, recreational trails, and arroyos and open space; and

WHEREAS, many citizens and neighborhood organizations have expressed a desire for the City to prioritize protection and preservation of natural areas within the City for recreational and aesthetic purposes; and

WHEREAS, the City received notice that the National Parks Service (NPS) has accepted a proposal to create Groundwork Doña Ana (GWDA), a non-profit organization with a mission to enhance the natural and cultural environment and social and economic welfare of Dona Ana County through it's various projects related to environmental restoration and recreation, brownfields and neglected areas, farming and native plants, transportation and social services, historic preservation, and appropriate energies and technologies; and

WHEREAS, these goals and objects are explained in the Groundwork Dona Ana Feasibility Study and Strategic Plan; and

WHEREAS, the organization has requested the City to endorse its Feasibility Study and Strategic Plan and to provide a total of \$37,500 (\$12,500 per year for three years, beginning this fiscal year) as part of a required match to receive federal funding from the National Parks Service; and

WHEREAS, the award of the funding is contingent on approval of a four-way Memorandum of Agreement (MOA) with the City, Doña Ana County, Groundwork Doña Ana and the Town of Mesilla.

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

(I)

THAT the City of Las Cruces hereby endorses the Feasibility Study and Strategic Plan of Groundwork Doña Ana, attached hereto as "Exhibit "A" and made a part of this Resolution.

(II)

THAT the City's adopted FY 2009 budget as reflected in Exhibit "B," attached hereto and made a part of this Resolution, is hereby approved.

(III)

THAT award of the funding is contingent on approval of a four-way Memorandum of Agreement (MOA) with the City, Doña Ana County, Groundwork Doña Ana and the Town of Mesilla.

(II)

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

DONE AND APPROVED this 3rd day of November 2008.

APPROVED:

(SEAL)

APPROVED:



Mayor

ATTEST:



City Clerk

City Clerk

(SEAL)

VOTE:

Mayor Miyagishima: Aye

Councillor Silva: Aye

Councillor Connor: Nay

Councillor Archuleta: Aye

Councillor Small: Aye

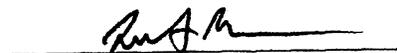
Councillor Jones: Nay

Councillor Thomas: Aye

Moved by: Jones

Seconded by: Thomas

APPROVED AS TO FORM:



City Attorney

City Attorney

RESOLUTION NO. 08-124**A RESOLUTION TO ESTABLISH GROUNDWORK DOÑA ANA AND TO
TRANSFER THE FISCAL AGENT RESPONSIBILITY TO
THE TOWN OF MESILLA**

WHEREAS, on November 8, 2005 the Board of County Commissioners voted to endorse Groundwork Trust in Doña Ana County (GWDA) as submitted by the Open Space and Trails Network of Doña Ana County to the Groundwork USA Rivers and Trails Program of the National Park Service (NPS), Resolution No. 05-107; and,

WHEREAS, GWDA will take a principle and active role in environmental restoration and preservation, brown fields and neglected areas while improving social and economic welfare in Doña Ana County; and,

WHEREAS, the Town of Mesilla, City of Las Cruces, and City of Sunland Park are local government partners with Doña Ana County and support the establishment of GWDA; and,

WHEREAS, a Feasibility Study (FS) and Strategic Plan (SP) were submitted to the National Park Service (NPS) to establish GWDA; and,

WHEREAS, in August 2008 the NPS approved the study and selected Doña Ana County for the development of a new Groundwork Trust organization; and,

WHEREAS, the NPS will release funds in the amount of \$80,000, and is requiring a minimum of \$25,000 per year for three years from the local government partners to operate GWDA; and,

WHEREAS, Doña Ana County will make available to GWDA \$12,500 per year for three years subject to funding availability; and,

WHEREAS, award of funding is contingent on approval of a four-way Memorandum of Agreement (MOA) with the City of Las Cruces, Doña Ana County, Town of Mesilla and GWDA which provides for operation control of GWDA to be retained by the coalition of government partners; and,

WHEREAS, on October 14, 2008 the Board of Trustees of the Town of Mesilla approved a Resolution to enter into contract and task agreements with the NPS to act as fiscal agent for GWDA; and,

WHEREAS, the Board supports the Town of Mesilla's Resolution to act as the fiscal agent for GWDA: and,

NOW, THEREFORE, BE IT RESOLVED that the Board of County Commissioners of Doña Ana County hereby relinquishes its position under the previous Resolution No. 05-107 to act as fiscal agent for GWDA and supports the Town of Mesilla to act as fiscal agent to the GWDA; and

BE IT FURTHER RESOLVED to fund the GWDA \$12,500 per year for three years and to authorize County Management to disperse funding as available.

Approved this 25th day of November, 2008.

Recorded 12/23/2008 DAC

BOARD OF COUNTY COMMISSIONERS OF DOÑA ANA COUNTY, NEW MEXICO

[Signature of D. Kent Evans]

D. Kent Evans, Chairman (aye/nay)

[Signature of William J. McCamley]

William J. McCamley, Vice-Chairman (aye/nay)

[Signature of Oscar Vásquez Butler]

Oscar Vásquez Butler, Member (aye/nay)

[Signature of Dolores Saldaña-Caviness]

Dolores Saldaña-Caviness, Member (aye/nay)

[Signature of Karen Perez]

Karen Perez, Member (aye/nay)



ATTEST:

[Signature of Rita Torres]

Rita Torres
County Clerk

[Signature of County Clerk]

COUNTY OF DONA ANA) RESOLUTION
STATE OF NEW MEXICO) ss PAGES: 2

I Hereby Certify That This Instrument Was Filed for Record On The 23RD Day Of December, 2008 at 01:57:25 PM And Was Duly Recorded as Instrument #0834186 Of The Records Of Dona Ana County

Witness My Hand And Seal Of Office
Rita Torres

Deputy *[Signature]* County Clerk, Dona Ana, NM

