City of Las Cruces®
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Council Action and Executive Summary

Item # 4 **Ordinance/Resolution#** 13-128

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of April 15, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION FOR THE CITY OF LAS CRUCES TO ACCEPT LEGISLATIVE RE-APPROPRIATION FUNDING IN THE AMOUNT OF $31,184.31 FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION (DFA/LGD), GENERAL FUND CAPITAL RE-APPROPRIATION FOR THE LAS CRUCES REGIONAL AQUATIC CENTER AND ADJUST THE FY 2013 BUDGET.

PURPOSE(S) OF ACTION:

Accept funding.

COUNCIL DISTRICT: 6		
Drafter/Staff Contact: Auguie Henry III	**Department/Section:** Finance/Grants & Contracts Administration	**Phone:** 541-2281
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The design of the Las Cruces Regional Aquatic Center began in October, 2006. Part of the original design called for the construction of outdoor recreational activity areas such as a small patio on the west side and a walled-in area on the south/southeast part of the property. Unfortunately, during the course of the project, changes occurred in the availability of funding from the State of New Mexico, causing these areas to be scaled back. Now, that re-appropriated funds are being made available for the project, City staff is ready to proceed with the next phase. Given the size of the area and types of activities supported, this will include construction of a concrete patio on the south/southeast side of the property, to include site furnishings, shade structures, and a perimeter wall/fence. Staff has prepared the design, and will utilize the funds to procure materials, with construction by City crews.

Funding is being provided by the New Mexico Legislature through the Department of Finance and Administration, Local Government Division (DFA/LGD) in the amount of thirty-one thousand one hundred eighty-four and 31/100 dollars ($31,184.31). These unexpended funds have been re-appropriated from the Talavera Mutual Domestic Water Consumers Association Water

(Continue on additional sheets as required)

System. Any non-expended funds must be returned to DFA/LGD upon the reversion date of June 30, 2014.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Grant Agreement No. 04330.
3. Exhibit "B", Budget Adjustment.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☒	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☒	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the Fund.
Does this action create any revenue?			
	Yes	☒	Funds will be deposited into this fund: 4012 Facility State Grant Improvements in the amount of $31,184.31 for FY13.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

Funds, $31,184.31, will be established in the 4012 Facility State Grant Improvements Fund for construction of a concrete patio on the south/southeast side of the property, to include site furnishings, shade structures, and a perimeter wall/fence at the Las Cruces Regional Aquatic Center.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
4012 Facility State Grant Improvements	40806090-852100-60P07	$31,184.31	$31,184.31*	$0.00	N/A

*Upon approved budget adjustment

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will allow the City to accept the funding as re-appropriated by the Legislature.
2. Vote "No"; this will reject the Legislative re-appropriation and cause the funds to be returned to DFA/LGD for re-appropriation as prescribed.
3. Vote to "Amend"; is not allowable under Grant Agreement No. 04330. The agreement must be accepted as written.
4. Vote to "Table"; is not allowable under Grant Agreement No. 04330. The agreement must be accepted as written to observe the Reversion Date of June 30, 2014.

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 13-128

A RESOLUTION FOR THE CITY OF LAS CRUCES TO ACCEPT LEGISLATIVE RE-APPROPRIATION FUNDING IN THE AMOUNT OF $31,184.31 FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION (DFA/LGD), GENERAL FUND CAPITAL RE-APPROPRIATION FOR THE LAS CRUCES REGIONAL AQUATIC CENTER AND ADJUST THE FY 2013 BUDGET.

The City Council is informed that:

WHEREAS, Department of Finance and Administration, Local Government Division (DFA/LGD) has re-appropriated to the City of Las Cruces an amount of $31,184.31 as indicated within Exhibit "A" attached hereto and made part of this resolution; and

WHEREAS, these unexpended funds were originally designated to the Talavera Mutual Domestic Water Consumers Association Water System and re-appropriated to the Las Cruces Regional Aquatic Center under the Laws of 2012, Chapter 63, Section 41; and

WHEREAS, these funds are to be used for construction of a concrete patio on the south/southeast side of the property, to include site furnishings, shade structures, and a perimeter wall/fence at the Las Cruces Regional Aquatic Center; and

WHEREAS, all unexpended re-appropriation funding will revert back to DFA/LGD on the reversion date of June 30, 2014.

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

(I)

THAT the City of Las Cruces is authorized to accept the re-appropriation from the Department of Finance and Administration, Local Government Division, General Fund Capital Re-appropriation Project in the amount of $31,184.31.

(II)

THAT any funds unexpended by June 30, 2014 will revert back to DFA/LGD.

(III)

THAT the City's FY 2013 budget is adjusted as prescribed in Exhibit "B", attached hereto and made part of this resolution.

(IV)

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 _____, 2013.

APPROVED:

_____
Mayor

ATTEST:

_____
City Clerk

(SEAL)

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

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

_____
City Attorney

Exhibit A

Received
DFA-Local Govt. Div
2012 DEC 14 AM 11:53
BATAAN BLDG., ROOM 20
SANTA FE, NM 87501

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
GENERAL FUND CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this 19 day of December 2012, 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 "Department" or "DFA", and the **City of Las Cruces**, hereinafter called the "Grantee." The Effective Date of this agreement is the date of the last signature by both the Department and the Grantee.

RECITALS

WHEREAS, in the Laws of 2012, Chapter 63, Section 41 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, pursuant to Sections 9-6-5 and 9-6-5.1. NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iii) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (iv) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

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:

12-L-G-1594 $31,184.31 Appropriation Reversion Date: June 30, 2014
Laws of 2012, Chapter 63, Section 41, Thirty-One Thousand One Hundred Eighty-Four and 31/100 Dollars($31,184.31)TALAVERA MUTUAL DOMESTIC WATER CONSUMERS ASSOCIATION WATER SYSTEM--CHANGE TO LAS CRUCES REGIONAL RECREATION AND AQUATICS CENTER--CHANGE AGENCY--EXTEND TIME--GENERAL FUND.--The unexpended balance of the appropriation to the department of environment in Subsection 34 of Section 48 of Chapter 92 of Laws 2008 for the Talavera mutual domestic water consumers association water system in Dona Ana county shall not be expended for the original purpose but is appropriated to the local government division to plan, design, construct, equip and furnish the regional recreation and aquatics center and pool in Las

Cruces in Dona Ana county. The time of expenditure is extended through fiscal year 2014.

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". 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* Grantee (hereinafter referred to as "Notice of Obligation") for invoices. Notice of Obligation's will be issued in increments of $50,000.00. 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 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:

* "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

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: Auguie Henry
Title: Grants & Contracts Administrator
Address: P.O. Box 20000 , Las Cruces, NM, 88001
Email: auhenry@las-cruces.org
Telephone: 575-541-2281
FAX: 575-541-2077

Department: DFA/Local Government Division
Name: Mr. Simon P Saiz
Title: Project Manager
Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501
Email: simonp.saiz@state.nm.us
Telephone: 505-827-4939
FAX: 505-827-4948

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.

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 **June 30, 2014**, 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: de-authorization, 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

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 I. 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 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 I. 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 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 II. Payment requests are subject to the following procedures:

(i) The Grantee must submit one original Request for Payment; 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 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 sub-awards, including subcontracts, loans and cooperative agreements. All sub-recipients 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.

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

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 DFA Grant Agreement. Should the DFA early terminate the grant agreement, the Grantee may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Grantee's 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]

IN WITNESS WHEREOF, the Grantee and the Division do hearby execute this Grant Agreement as of the date of the first above written.

THIS GRANT AGREEMENT has been approved by:

GRANTEE

Mayor, County Commission Chairman

12-12-12
Date

Ken Miyagishima, Mayor
Type or Print Name

STATE OF NEW MEXICO)
)ss
COUNTY OF Doña Ana)

The foregoing instrument was acknowledged before me this 12th day of December, 2012, by Janice L. Jones

seal

Notary Public

My Commission Expires: 11-03-15

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

By: Ryan Gleason
Ryan Gleason, Director

12/19/12
Date

STATE OF NEW MEXICO)
)ss
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 19 day of December, 2012, by Ryan Gleason

seal

Notary Public

My Commission Expires: 8-31-15

OFFICIAL SEAL
Shawntae Barela
NOTARY PUBLIC
STATE OF NEW MEXICO
My Commission Expires: 8-31-15

EXHIBIT "B"

CITY OF LAS CRUCES
ADOPTED BUDGET FY 2012/2013

FUND	DIVISION	FUND TYPE
Facility State Grant Improvements Fund 4012	Various	Capital Project

	FY 2011/12 Actual	FY 2012/13 Adopted	FY 2012/13 Adjustment	FY 2012/13 Adjusted
RESOURCES				
Beginning Balance	$ 0	0	0	0
REVENUES				
20012 Senior Kitchen	20,000	0		0
60204 Benavidez Center Code Improvements (2009)	3,001	0		0
60911 Las Casa Shelter & Transitional Housing	120,902	7,494		7,494
60912 La Casa Renovation 2009	70,785	0		0
60E14 Community of Hope-Jardin de los Ninos Rehabilitatic	0	50,000		50,000
60H10 Mesilla Park Community Center - Bldg & Grnds	0	0		0
60H11 Mesilla Park Community Center (2008)	0	0		0
60H12 Mesilla Park Community Center Restrooms	0	75,000		75,000
60P03 Indoor Swimming Pool	38,497	60,125		60,125
60P05 Multipurpose Rec & Aquatic Phase II (2008)	502,373	0		0
60P06 LC Regional Recreation and Aquatic Center	0	20,000		20,000
60P07 LC Regional Aquatic Center Outdoor Areas	0	0	31,185	31,185
60Q10 Branigan Library Childrens Wing (2008)	72,244	0		0
60U08 Senior Kitchen	0	0		0
60U09 Munson Center Bldg Improv	0	0		0
60U11 Munson Center ADA Billiards	0	178,500		178,500
60U12 STB Capital Appropriation	0	250,000		250,000
61004 Sage Café 2013	0	148,500		148,500
63402 Paleozoic Trackway Exhibit	0	0		0
63403 Museum of Nature & Science (2008)	0	0		0
63501 Amador Hotel	0	0		0
63502 Amador Museum (2008)	416	0		0
63701 Police & Fire Training Academy	0	0		0
63901 La Pinon Sexual Assault Center	0	0		0
64101 FAC ST GR-Amador Museum	102,711	124,989		124,989
64200 East Side Center Improvements (2009)	18,000	0		0
64201 East Side Abatement	5,000	0		0
61B70 East Mesa Public Safety Complex	0	1,201,860		1,201,860
Total Revenues	$ 953,929	2,116,468	31,185	2,147,653
Total Resources	$ 953,929	2,116,468	31,185	2,147,653

CITY OF LAS CRUCES
ADOPTED BUDGET FY 2012/2013

FUND	DIVISION	FUND TYPE
Facility State Grant Improvements Fund 4012	Various	Capital Project

	FY 2011/12 Actual	FY 2012/13 Adopted	FY 2012/13 Adjustment	FY 2012/13 Adjusted
EXPENDITURES				
20012 Senior Kitchen	20,000	0		0
60204 Benavidez Center Code Improvements (2009)	3,001	0		0
60911 Las Casa Shelter & Transitional Housing	120,902	7,494		7,494
60912 La Casa Renovation 2009	70,785	0		0
60E14 Community of Hope-Jardin de los Ninos Rehabilitatic	0	50,000		50,000
60H10 Mesilla Park Community Center - Bldg & Grnds	0	0		0
60H11 Mesilla Park Community Center (2008)	0	0		0
60H12 Mesilla Park Community Center Restrooms	0	75,000		75,000
60P03 Indoor Swimming Pool	38,497	60,125		60,125
60P05 Multipurpose Rec & Aquatic Phase II (2008)	502,373	0		0
60P06 LC Regional Recreation and Aquatic Center	0	20,000		20,000
60P07 LC Regional Aquatic Center Outdoor Areas	0	0	31,185	31,185
60Q10 Branigan Library Childrens Wing (2008)	72,244	0		0
60U08 Senior Kitchen	0	0		0
60U09 Munson Center Bldg Improv	0	0		0
60U11 ALTS Munson Senior Center Improve-Code	0	178,500		178,500
60U12 Munson Senior Center Improve-Code	0	250,000		250,000
61004 Sage Café 2013	0	148,500		148,500
63402 Paleozoic Trackway Exhibit	0	0		0
63403 Museum of Nature & Science (2008)	0	0		0
63501 Amador Hotel	0	0		0
63502 Amador Museum (2008)	416	0		0
63701 Police & Fire Training Academy	0	0		0
63901 La Pinon Sexual Assault Center	0	0		0
64101 FAC ST GR-Amador Museum	102,711	124,989		124,989
64200 East Side Center Improvements (2009)	18,000	0		0
64201 East Side Abatement	5,000	0		0
61B70 East Mesa Public Safety Complex (2012)	0	1,201,860		1,201,860
Total Expenditures	$ 953,929	2,116,468	31,185	2,147,653
OTHER FINANCING SOURCES (USES)				
Transfer from Fund 101000 - General Fund	0	0	0	0
Total Other Financing Sources (Uses)	$ 0	0	0	0
ENDING BALANCE	$ 0	0	0	0

City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of April 1, 2013 (Adoption Date)

TITLE: **A RESOLUTION FOR THE CITY OF LAS CRUCES TO ACCEPT LEGISLATIVE RE-APPROPRIATION FUNDING IN THE AMOUNT OF $31,184.31 FROM THE DEPARTMENT OF FINANCE AND ADMINISTRATION, LOCAL GOVERNMENT DIVISION (DFA/LGD), GENERAL FUND CAPITAL RE-APPROPRIATION FOR THE LAS CRUCES REGIONAL AQUATIC CENTER AND ADJUST THE FY 2013 BUDGET.**

Purchasing Manager's Request to Contract (PMRC) {Required?} **Yes** ☐ **No** ☒

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Auguie Henry III, Grants & Contracts Administrator		541-2281	3-12-2013
Victoria Fredrick Director of Financial Services	Victoria Fredrick	541-2080	3/12/13
Auguie Henry III Grants & Contracts Administrator		541-2281	3-12-2013
Mark Winson Assistant City Manager /CAO		541-2078	3/14/13
Dick Gebhart Management & Budget Manager		541-2107	3/13/13
Brian Denmark Assistant City Manager/COO		541-2271	3/21/13
Harry (Pete) Connelly City Attorney	Harry (Pete) Connelly	541-2128	3/22/13
Esther Martinez-Carrillo City Clerk	Esther Martinez-Carrillo	541-2115	3/22/13

Rev. 8/2011