

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10 Ordinance/Resolution# 15-104

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of December 1, 2014
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT CAPITAL APPROPRIATION FUNDING IN THE AMOUNT OF \$80,000.00 FROM THE STATE OF NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PLAN, DESIGN AND INSTALL TRANSIT SYSTEM BUS SHELTERS AND ACQUIRE RIGHTS OF WAY IN CENTRAL LAS CRUCES, RATIFY THE CITY MANAGER'S SIGNATURE ON THE AGREEMENT AND TO ADJUST THE FY2015 BUDGET.

PURPOSE(S) OF ACTION:

Accept funding and adjust the budget.

COUNCIL DISTRICT: 1		
<u>Drafter/Staff Contact:</u> S. Nicole Williams	<u>Department/Section:</u> Financial Services / Grants Administration	<u>Phone:</u> 541-2716
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The New Mexico Legislature, through the Department of Transportation (NMDOT), has awarded the City of Las Cruces \$80,000.00 to plan, design and install transit system bus shelters and to acquire rights of way in central Las Cruces.

This project will be a mix of artistic and standard bus shelters to be placed at strategic locations along bus routes. The Transportation Department is focusing on locations in Representative Steinborn's district, who was the sponsor of this legislation. Multiple locations are being considered since site issues, including acquisition of rights-of-way (ROW) or easements, may result in some locations not being considered for these improvements. The City Art Board will help coordinate the selection of designs for sites designated for artistic shelters.

The following is a brief list of objectives for this funding:

1. Move the standard bus shelter at Klein Park to Dairy Queen on North Main Street: approximate cost for the pad and installation is \$3,500.00. This is NMDOT ROW and placement of this shelter has already been approved by NMDOT.

(Continue on additional sheets as required)

2. Commission a design for an artistic bus shelter to be installed at Klein Park site using an existing pad. Approximate cost should not exceed \$15,000.00.
3. Install a standard bus shelter on an existing pad at Main Street and Fleming Avenue. Approximate cost for the bus shelter and installation is \$6,500.00. There was a bus shelter at this location which the property owner asked to have removed, however the pad remains. Staff has attempted to contact the current property owner to see if a bus shelter could be approved for this location, to date there has been no response.
4. Install a standard bus shelter near the Sonic Drive-in Restaurant on North Main Street. Approximate cost for the bus shelter, pad and installation is \$8,500.00. This is NMDOT ROW and placement of this shelter has been approved by NMDOT.
5. Install an artistic bus shelter at a potential new site by Lowe's on North Main Street. Approximate cost for the artistic bus shelter should not exceed \$15,000.00. This part of the project will have to wait until the construction on North Main Street is complete. Attempts have been made to contact the property owner, but there has been no response.
6. Install an artistic bus shelter at a possible new site on southbound Main Street near the bus pullout area. Approximate cost for the artistic bus shelter should not exceed \$15,000.00. This part of the project will have to wait until the construction on North Main Street is complete.
7. Install standard bus shelters at two (2) stops on North Solano Drive. Approximate cost for each standard bus shelter, pad and installation is \$8,500.00. All potential sites would require property owner permission. Potential sites are: Solano Drive and Juniper Street, both north and south bound (2 sites); Solano Drive and Oasis Street, both southbound and northbound (2 sites). The property owners of both sites at the latter locations are willing to work with the City on establishing a bus shelter at these locations.
8. Install an artistic bus shelter at El Paseo Road at the Village Inn Restaurant. This part of the project would require reconstruction of the sidewalk and grading work for ADA accessibility. Approximate cost for an artistic bus shelter to be installed at this site is \$25,000.00 to \$35,000.00. The property owner is willing to work with the City to develop a shelter at this site.

The period of performance is from September 29, 2014 through June 30, 2017. Any non-expended funds must be returned to the State upon the reversion date.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Funding Agreement.
3. Exhibit "B", Budget Adjustment.

(Continue on additional sheets as required)

SOURCE OF FUNDING:

Is this action already budgeted?	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 checked="" type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the Fund.
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: 5921 in the amount of \$80,000.00 for FY15.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Funds will be established in the 5921 Transit Grants Fund under project number 60406 for planning, design, installation of bus shelters and acquisition of rights of way.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Transit Grants	59323150-730200-60406	\$80,000.00*	\$80,000.00*	\$0	None

* Upon approval of budget adjustment.

OPTIONS / ALTERNATIVES:

- Vote "Yes"; this will allow the City of Las Cruces to accept NMDOT funding and approve the FY2015 budget adjustment.
- Vote "No"; this will reject the Legislative appropriation and cause funds to be returned to the State for re-appropriation.
- Vote to "Amend"; this is not an option as funding is specific to approved expenditures as stipulated under the agreement.
- Vote to "Table"; this is not an option as funding is constrained by a specific period of performance.

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 15-104

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT CAPITAL APPROPRIATION FUNDING IN THE AMOUNT OF \$80,000.00 FROM THE STATE OF NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PLAN, DESIGN AND INSTALL TRANSIT SYSTEM BUS SHELTERS AND ACQUIRE RIGHTS OF WAY IN CENTRAL LAS CRUCES, RATIFY THE CITY MANAGER'S SIGNATURE ON THE AGREEMENT AND TO ADJUST THE FY 2015 BUDGET.

The City Council is informed that:

WHEREAS, the State of New Mexico Department of Transportation has appropriated to the City of Las Cruces an amount of \$80,000.00; and

WHEREAS, funds will be used to plan, design and install bus shelters and acquire rights-of-way in central Las Cruces; and

WHEREAS, all unexpended appropriation funding will revert back to the State on the reversion date of June 30, 2017.

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

(I)

THAT the City of Las Cruces is authorized to accept the appropriation in the amount of \$80,000.00 from the State of New Mexico Department of Transportation and that the City Manager's signature on the agreement is hereby ratified, Exhibit "A" attached hereto and made part of this resolution.

(II)

THAT any funds unexpended by June 30, 2017 will revert back to the State.

(III)

THAT the FY 2015 budget is adjusted as outlined in Exhibit "B", attached hereto and made part of this resolution.

(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 _____, 20_____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

- Mayor Miyagishima: _____
- Councillor Silva: _____
- Councillor Smith: _____
- Councillor Pedroza: _____
- Councillor Small: _____
- Councillor Sorg: _____
- Councillor Levatino: _____

APPROVED AS TO FORM:

WBF

Deputy City Attorney

Contract Number: D/4622
 Vendor Number: 000054342
 Control Number: C1131844

**STATE OF NEW MEXICO
 DEPARTMENT OF TRANSPORTATION
 FUND 89200 CAPITAL APPROPRIATION PROJECT**

Sept. **THIS AGREEMENT** is made and entered into as of this 9th day of Sept., 2014, by and between the Department of Transportation, P.O. Box 1149, Room 126, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department" and City of Las Cruces, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2013, SB60, Chapter 226, 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; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

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:

DFA Appropriation ID 13-1844 NMDOT Control Number C1131844 \$80,000
 APPROPRIATION REVERSION DATE: 6/30/2017
 Laws of 2013 SB60, Chapter 226, Section 36, Sub Section 32, Eighty Thousand Dollars (\$80,000) to plan, design and install transit system bus shelters and acquire rights of way in central Las Cruces in Dona Ana county .

The Grantee's total reimbursements shall not exceed the appropriation amount Eighty Thousand Dollars \$80,000 (the "Appropriation Amount") minus the allocation for Art in

Public Places (“AIPP amount”¹, if applicable, Zero Dollars, \$0.00, which equals Eighty Thousand Dollars \$80,000 (the “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 above in this 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.” “Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. 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 Reimburse² 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), as defined in subparagraph iii of this Article II(A); and

¹ 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).” Section 13-4A-4 NMSA 1978.

² “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.

- (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 in Article IX of this Agreement ;
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

- a. must be approved by the applicable oversight entity (if any) in accordance with law; or
- b. if no oversight entity is required to approve of the transaction, the Department must approve of the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to subparagraph (a) or (b) above, the Department may, in its discretion and unless inconsistent with New Mexico State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

- (vi) 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. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
 - 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: Nicole Williams
 Title: Grants and Contracts Manager
 Address: P.O. Box 20000, Las Cruces, New Mexico 88004
 Email: swilliams@las-cruces.org
 Telephone: 575-541-2716

Department: Department of Transportation District 1 Office
 Name: Debra Hudson
 Title: Local Government Road Fund Coordinator
 Address: 2912 East Pine Street, Deming, NM 88030
 Email: DebraA.Hudson@state.nm.us
 Telephone: 575-544-6536
 FAX: 575-544-7380

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 6/30/2017 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

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, whichever first occurs.

C. Paperless Reporting

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall 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 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 VIII.

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 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; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (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 five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

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) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
 - (iii) Twenty (20) days from date of Early Termination; or
 - (iv) 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 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 Project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. 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 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.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) 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.
- (iii) 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.
- (iv) 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.
- (v) 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.
- (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. 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.

- (vii) 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.

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 or 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 Contractor 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 Department of Transportation 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 Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Las Cruces may early terminate this contract

by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor 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.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, which is administered by the New Mexico State Board of Finance (BOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole responsibility to determine through BOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a BOF imposed condition does not affect the validity or enforceability of the condition; (iii) the BOF may

in the future impose further or different conditions upon the Project; (iv) all BOF conditions are effective without amendment of this Agreement; (v) all applicable BOF conditions must be satisfied before the BOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current BOF conditions being satisfied.

B. Grantee acknowledges and agrees that this Agreement is subject to the BOF's Bond Project Disbursements rule, 2.61.6 NMAC, as such may be amended or re-codified.

[THIS SPACE LEFT BLANK INTENTIONALLY]

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

GRANTEE



Signature of Official with Authority to Bind Grantee

By: Robert Garza
(Type or Print Name)

Its: City Manager
(Type or Print Title)

9-18-14
Date

APPROVED AS TO FORM:


City Attorney

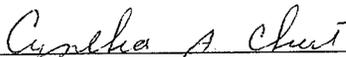
DEPARTMENT OF TRANSPORTATION



Cabinet Secretary or Designee

9/29/14
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL


By: Cynthia Christ

Its: Assistant General Counsel
9-2-14
Date

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
PAPER PERIODIC/FINAL REPORT
EXHIBIT 1**

PERIODIC REPORT FINAL REPORT

Grantee: _____

Project Number: _____

Reporting Period: _____

1. Please provide a detailed status of project referenced above.

A. Third Party Obligations

Purchase Order or Contract # _____

Name of Contractor or Vendor: _____

Amount of Third Party Obligation: _____

Date Executed: _____

Termination Date: _____

B. Project Phase

Bonds Sold Plan/Design Bid Documents Construction
(provide anticipated date of commencement and completion for each phase)

2. Grant Amount adjusted for AIPP if applicable: _____

Total Amount of all Notices of Obligation to Reimburse: _____

Total Grant Amount Expended by Grantee to Date: _____

Grant Balance as of this Date: _____

Amount of Other Unexpended Funding Sources: _____

PERIODIC REPORT

I hereby certify that the aforementioned Capital Grant Project funds are being expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable requirements.

FINAL REPORT

I hereby certify that the aforementioned Capital Grant Project funds have been completed and funds were expended in accordance with all requirements of the Grant Agreement, and in compliance with all other applicable state/regulatory requirements.

Grantee Representative/Title

Date

**STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 2**

<p>I. Grantee Information (Make sure information is complete & accurate)</p> <p>A. Grantee: _____</p> <p>B. Address: _____ <small>Complete Mailing, including Suite, if applicable</small></p> <table style="width: 100%; border: none;"> <tr> <td style="width: 33%; border: none;">City</td> <td style="width: 33%; border: none;">State</td> <td style="width: 33%; border: none;">Zip</td> </tr> </table> <p>C. Phone No: _____</p> <p>D. Grant No: _____</p> <p>E. Project Title: _____</p> <p>F. Grant Expiration Date: _____</p>	City	State	Zip	<p>II. Payment Computation</p> <p>A. Grant Amount: _____</p> <p>B. AIPP Amount (If Applicable) _____</p> <p>C. Funds Requested to Date: _____</p> <p>D. Amount Requested this Payment: _____</p> <p>E. Grant Balance: \$0.00</p> <p>F. <input type="checkbox"/> GF <input type="checkbox"/> GOB <input type="checkbox"/> STB (attach wire if 1st draw)</p> <p>G. Payment Request No. _____</p>
City	State	Zip		

III. Fiscal Year Expenditure Period Ending: (check one)	(Jan-Jun) <input type="checkbox"/>	Fiscal Year
	(Jul-Dec) <input type="checkbox"/>	

IV. Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

<p>Grantee Fiscal Officer</p> <p>Printed Name _____ Date: _____</p> <p>SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 20____</p> <p>Notary Public _____ My Commission expires _____</p>	<p>Grantee Representative</p> <p>Printed Name _____ Date: _____</p> <p>SWORN TO AND SUBSCRIBED before me on this _____ day of _____, 20____</p> <p>Notary Public _____ My Commission expires _____</p>
---	---

(Department Use Only)

Vendor Code: _____	Fund No.: _____
Loc No.: _____	

Division Fiscal Officer Date	Division Project Manager Date
-----------------------------------	------------------------------------

I certify that the Grantee financial and vendor file information agree with the above submitted information	I certify that the Grantee records and related appropriation laws agree with the above submitted information.
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**STATE OF NEW MEXICO
 CAPITAL GRANT PROJECT
 NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
 EXHIBIT 3**

DATE: _____

TO: Grantee Representative: _____

FROM: Department Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Project Number: _____

As the designated representative of the Department for Grant Agreement number C1131844 entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract) #: _____
 Vendor or Contractor: _____

Third Party Obligation Amount: _____
 Termination Date: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount adjusted for AIPP if applicable: _____

The Amount of this Notice of Obligation to Reimburse: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Reimburse as of this Date:

Department Representative: _____

Title: _____

Signature: _____

Date: _____

CAPITAL OUTLAY PROJECT SCOPE AND TERMINI FORM

Appropriation ID: _____ Control Number: _____

Specific Roadway Project Information

Route #(s)/Road #(s)/Road Name(s)	Begin Termini (Mile Post if applicable)	End Termini (Mile Post if applicable)

Estimated Cost in each area that this appropriation will be utilized for

Planning	Design	Construction	Other (specify)

Provide a Detailed Project Scope In Space Below

Include items such as pavement rehab or construction/reconstruction, shoulder widening, intersections, bridge replacement or rehab, bike paths/lanes, sidewalks or other type of pedestrian facilities, structural improvements, drainage improvements, lighting or signal improvements, signing, striping, right of way acquisition, & all other pertinent information.

Tribal/Local Government Agency Name: _____

 (Signature)* (Printed Name) (Date)

 (Title) (Telephone Number)

*Must be signed by authorized officer who has knowledge of the representations contained in this Form.

When complete fax or e-mail form to:	Sean Sandoval New Mexico Department of Transportation (NMDOT) Phone: 505-476-3784 Fax: 505-827-5640 Sean.sandoval@state.nm.us
---	---

Tribal/Local Government Agencies must complete each section. Failure to do so may cause delays in the review of your project for the funding agreement process.

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.

ATTACHMENT A

6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.
- 11.

CITY OF LAS CRUCES
2014-15 Fiscal Year Budget

FUND	DIVISION		FUND TYPE	
	Transportation		Proprietary Fund Enterprise Funds	
Transit Grants Fund 5921	2013-14 Un-Audited	2014-15 Adopted	2014-15 Adjustment	2014-15 Adjusted
RESOURCES				
Beginning Balance	\$ (181,129)	0	3,257	3,257
Revenues				
Federal Grants	497,019	2,528,646	0	2,528,646
State Grants	0	192,672	80,000	272,672
Operating Transfers In	0	0	0	0
Total Revenues	497,019	2,721,318	80,000	2,801,318
TOTAL RESOURCES	\$ 315,890	2,721,318	83,257	2,804,575
Expenditures				
Transit Administrative Services				
24114 - FTA OPERATING GRANT FY14	0	52,985	0	52,985
24115 - FTA OPERATING GRANT FY15	0	194,090	0	194,090
FTA Operating Assistance				
24114 - FTA OPERATING GRANT FY14	0	195,626	0	195,626
24115 - FTA OPERATING GRANT FY15	0	993,367	0	993,367
Transit Dial-A-Ride				
24114 - FTA OPERATING GRANT FY14	0	100,237	0	100,237
24115 - FTA OPERATING GRANT FY15	0	350,267	0	350,267
Transit Bus Maintenance				
24114 - FTA OPERATING GRANT FY14	0	38,397	0	38,397
24115 - FTA OPERATING GRANT FY15	0	171,494	0	171,494
Projects:				
24215 - U.S. DOT DIAL-A-RIDE FY14	0	278,050	0	278,050
24216 - NM DOT BUS/FACILITIES SEC 5339 FY14	0	192,672	0	192,672
60406 - BUS SHELTERS FY15	0	0	80,000	80,000
60407 - STB 14-2065 BUS SHELTERS	0	0	0	0
61L50 - TRANSIT INTERMODAL CENTER	75,541	52,796	0	52,796
61L51 - FED TRANSIT AUTHORITY AWARD-INTERMO	237,093	104,593	0	104,593
61L52 - INTERMODAL FUNDING 2	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Expenditures	\$ 312,634	2,724,574	80,000	2,804,574
Accrual Adjustments	(3,256)	0	0	0
ENDING BALANCE	\$ 0	(3,256)	3,257	1