

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 18Ordinance/Resolution# 15-186For Meeting of _____
(Ordinance First Reading Date)For Meeting of April 06, 2015
(Adoption Date)

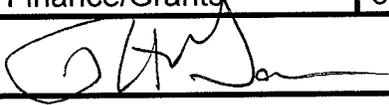
Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT AWARDED FUNDING ON BEHALF OF THE PARKS AND RECREATION DEPARTMENT FROM THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, FORESTRY DIVISION IN THE AMOUNT OF \$11,200.00 WITH A \$11,200.00 IN-KIND MATCH REQUIREMENT FOR THE LAS CRUCES TREE STEWARDS PROGRAM, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE GRANT AGREEMENT, AND TO ADJUST THE FY 2015 BUDGET.

PURPOSE(S) OF ACTION:

To accept grant and adjust the City budget.

COUNCIL DISTRICT: ALL		
<u>Drafter/Staff Contact:</u> Robin L. Rice	<u>Department/Section:</u> Finance/Grants	<u>Phone:</u> 575-541-2281
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The New Mexico Energy, Minerals, and Natural Resources Department, Forestry Division called for proposals under their Community Forestry Assistance Cost-Share Program. The City of Las Cruces Parks and Recreation Department submitted an application on behalf of the Las Cruces Tree Stewards Program for \$11,200.00, and were successful in receiving the funding. The grant funds will be used to recruit and train additional volunteers and to purchase materials and supplies with which to conduct a comprehensive phased tree inventory for park and street trees planted in previous years.

The \$11,200.00 in-kind match will be met through tracking volunteer time for the program.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Grant Award.

(Continue on additional sheets as required)

3. Exhibit "B", Budget Adjustment.

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: <u>2760</u> in the amount of <u>\$11,200.00</u> for FY <u>2015</u> .
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Grant funds in the amount of \$11,200.00 will be deposited into Fund 2760 State Operating Grant Fund, under project number 36041 to be used by the Parks and Recreation Department to supplement the operational expenses of the Las Cruces Tree Stewards Program. The \$11,200.00 in-kind match requirement will be tracked separately through volunteer time logs.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
State Operating Grant Fund	27383020-730110-30641	\$11,200.00*	\$11,200.00*	\$0.00	N/A

* Pending approved budget adjustment.

OPTIONS / ALTERNATIVES:

- Vote "Yes"; this will accept the funding from the New Mexico Energy, Minerals and Natural Resources Department, ratify the City Manager's signature and adjust the FY 2015 budget.
- Vote "No"; this will prevent the Las Cruces Tree Stewards Program from operating.
- Vote to "Amend"; this will delay the process of spending the grant funds within the period of performance.
- Vote to "Table"; this will impact Senior Programs ability to utilize the funds and the grant funds will be returned to Meals on Wheels, to be used for other communities.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 15-186

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ACCEPT AWARDED FUNDING ON BEHALF OF THE PARKS AND RECREATION DEPARTMENT FROM THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT, FORESTRY DIVISION IN THE AMOUNT OF \$11,200.00 WITH A \$11,200.00 IN-KIND MATCH REQUIREMENT FOR THE LAS CRUCES TREE STEWARDS PROGRAM, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE GRANT AGREEMENT, AND TO ADJUST THE FY 2015 BUDGET..

The City Council is informed that:

WHEREAS, the New Mexico Energy, Minerals and Natural Resources Department, Forestry Division (NMEMRD) solicited grant applications for their Community Forestry Assistance Cost-Share Program for local government entities interested in developing sustainable urban and community forestry programs; and

WHEREAS, the City of Las Cruces was successful in their grant request for \$11,200.00 to support the operation of the Las Cruces Tree Steward Program as reflected in Exhibit "A"; and

WHEREAS, the NMEMRD grant will be used for operational expenses related to the Las Cruces Tree Stewards Program; and

WHEREAS, the \$11,200.00 in-kind match requirement will be met through volunteer time spent training and participating at events in support of the program.

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

(I)

THAT the City of Las Cruces Parks and Recreation Department is authorized to accept a grant award in the amount of \$11,200.00 with a \$11,200.00, in-kind match requirement, as shown in Exhibit "A" attached hereto and made part of this resolution.

(II)

THAT the City Manager is authorized to sign the agreement on the City's behalf.

(III)

THAT the FY 2015 Adopted Budget is hereby adjusted as reflected in Exhibit "B" attached hereto and made a 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 _____, 20__.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

VOTE:

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

Moved by _____

Seconded by _____

APPROVED AS TO FORM:



City Attorney

**STATE OF NEW MEXICO
GOVERNMENTAL SERVICES AGREEMENT
BETWEEN THE
ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT
AND
CITY OF LAS CRUCES**

THIS AGREEMENT is made and entered into by and between the State of New Mexico Energy, Minerals, and Natural Resources Department (EMNRD) and City of Las Cruces (Contractor).

THE PARTIES MUTUALLY AGREE:

1. Scope of Work: Contractor shall:

A. Purchase tree inventory supplies and materials necessary to support the Contractor's tree inventory for city parks, including training handbooks, field measurement, and data collection supplies, and a handheld Global Positioning System (GPS) device. Provide EMNRD with documentation of supplies and materials purchased.

B. Develop a 12-hour tree inventory training course for Las Cruces City Park crew workers and volunteers. Course content shall include classroom and hands-on training on tree species identification; how to measure diameter at breast height (DBH); health and condition indicators, and use of hand-held GPS devices. Provide EMNRD with a copy of training materials, and include names of participants, number of participants, and hours of instruction.

C. Complete an inventory of Contractor's city park trees, to include number of trees, species, DBH, health condition, and height. Provide EMNRD with a copy of data and summary reports of the inventory, as well as names of participants and hours spent conducting the inventory.

D. Prepare a written project summary of the tree inventory, and a Community Forestry Management Plan (CFMP) that includes a detailed analysis of the number of trees in Contractor's public parks, species composition, and management needs that Contractor must address to improve tree health and tree conditions. Provide a copy of the summary and CFMP to EMNRD.

E. Provide EMNRD with a final written report detailing project success, containing materials indicated above, and including match documentation by Agreement termination date.

2. Compensation:

A. Upon satisfactory completion of services, EMNRD shall pay contractor for services satisfactorily performed pursuant to the Scope of Work in an amount not to exceed eleven thousand two hundred dollars (\$11,200.00), including New Mexico gross receipts taxes, if any. Contractor shall provide non-federal, in-kind match, dollar for dollar. EMNRD MUST receive all invoices no later than 15 days after the termination of the Fiscal Year in which the services were delivered. Invoices received after such date SHALL NOT BE PAID.

B. Contractor shall be responsible for paying New Mexico Governmental Gross Receipts taxes, if any, levied on amounts payable under this Agreement.

C. Contractor must submit a detailed statement accounting for all services performed, goods obtained, and expenses incurred. The invoice shall document the source and type of match. Vouchers must be supported by approved purchase order or equivalent document and invoice by the supplier, evidencing the propriety of each claim for payment. Wage amounts charged shall be based upon payrolls maintained by Contractor and must be supported by time and attendance sheets. If EMNRD finds that the statement, services, goods, or expenses are not acceptable, within 30 days after the date of receipt of (i) written notice from the Contractor that payment is requested, and (ii) all supporting documentation, EMNRD shall provide the Contractor a letter of exception explaining the defect or objection to the statement, services, goods, or expenses, and outlining steps the Contractor may take to provide remedial action. Upon EMNRD's certification that the statement, supporting documentation, services, goods, or expenses have been received and accepted, EMNRD shall tender payment to the Contractor within 30 days after the date of acceptance. If payment is made by mail, the payment shall be deemed tendered on the date it is postmarked. However, EMNRD shall not incur late charges, interest, or penalties, for failure to make payment within the time specified herein.

3. Term: This Agreement becomes effective when executed by an authorized representative of Contractor and of EMNRD and when DFA encumbers funds for this Agreement. It shall terminate on June 30, 2016, unless earlier terminated pursuant to Section 4, Termination, or Section 5, Appropriations, below.

4. Termination: Either party may terminate this Agreement upon written notice delivered to the other at least 10 days prior to the intended termination date. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination.

5. Appropriations: This Agreement's terms are contingent upon the New Mexico State Legislature and U.S. Department of Agriculture, Forest Service (USFS) granting sufficient appropriation and authorization. If sufficient appropriation or

authorization is not granted, EMNRD may terminate this Agreement, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from EMNRD to Contractor. EMNRD's decision as to whether sufficient appropriations are available shall be at its sole and absolute discretion and shall be final, binding, and accepted by Contractor.

6. Status of Contractor: The Contractor and its agents and employees are independent contractors performing professional services for EMNRD and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement. The Contractor acknowledges that all sums received hereunder are reportable by the Contractor for tax purposes, including without limitation, self-employment and business income tax. The Contractor agrees not to purport to bind the State of New Mexico unless the Contractor has express written authority to do so, and then only within the strict limits of that written authority.

7. Assignment: Contractor shall not assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without EMNRD's prior written approval.

8. Subcontracting: Contractor shall not subcontract any portion of the services to be performed under this Agreement or obligate itself in any manner to any third party, with respect to any rights or responsibilities under this Agreement, without EMNRD's prior written approval. EMNRD may disallow costs incurred by the Contractor in relation to a subcontract if Contractor does not obtain prior written approval.

9. Release: Final payment of the amounts due under this Agreement shall operate as a release of EMNRD, its officers, and employees, and the State of New Mexico from all liabilities, claims, and obligations whatsoever arising from or under this Agreement.

10. Acknowledgment: Contractor shall acknowledge EMNRD and USFS as a co-sponsor and funding source in all news releases, programs, proceedings and related publicity/publications for the Project.

11. Product of Services; Copyright: All materials developed or acquired by Contractor under this Agreement shall become the State of New Mexico's property and be delivered to EMNRD no later than this Agreement's expiration date. Nothing Contractor produces, in whole or in part, under this Agreement shall be the subject of a copyright application or other claim of ownership by or on behalf of Contractor.

12. Conflict of Interest; Governmental Conduct Act: Contractor warrants that it presently has no interest and that it shall not acquire any interest, direct or indirect, which would conflict in any manner with performance or other services required under this Agreement. Contractor certifies that all applicable provisions of the requirements of

the Governmental Conduct Act, NMSA 1978, §§ 10-16-1 through –18, including provisions related to contracting with, or employing, public officers, legislators, state employees or former state employees, have been followed.

13. Amendment: This Agreement shall not be altered, changed, or amended except by written instrument executed and approved by the parties hereto.

14. Merger: This Agreement incorporates all the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements and understandings have been merged into this written Agreement. No prior agreement or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless as embodied in this Agreement.

15. Penalties for Violation of Law: The Procurement Code, NMSA 1978, §§ 13-1-28 through 13-1-199, imposes civil and criminal penalties for its violation. In addition, the New Mexico criminal statutes impose felony penalties for bribes, gratuities, and kickbacks.

16. Equal Opportunity Compliance: Contractor agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws of the State of New Mexico, the Contractor assures that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, age, physical or mental handicap, or serious medical condition, spousal affiliation, sexual orientation, or gender identity, be excluded from employment with or participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity performed under this Agreement. If Contractor is found not to be in compliance with these requirements during the life of this Agreement, Contractor agrees to take appropriate steps to correct these deficiencies.

17. Applicable Law: The laws of the State of New Mexico shall govern this Agreement, without giving effect to New Mexico's choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, § 38-3-1(G). By execution of this Agreement, Contractor acknowledges and agrees to the exclusive jurisdiction of the courts of the State of New Mexico over any and all lawsuits arising under or out of any term of this Agreement.

18. Compliance with Law and Funding Source Conditions: Contractor shall comply with all applicable state and federal statutes, regulations or rules, including without limitation those imposed as a consequence of funding pursuant to this Agreement.

19. Insurance Coverage: By signing this Agreement, Contractor certifies that the activities described in the Scope of Work are covered by insurance as set forth below, secured in accordance with any method allowed by applicable law, including self-insurance, pooling of self-insured reserves, or insurance provided by a third party.

Contractor shall maintain continuous coverage of the activities described in the Scope of Work, so long as this Agreement is in effect. Failure to maintain such coverage is reason for immediate termination of this Agreement. Contractor shall notify EMNRD prior to cancellation or expiration of any insurance required under this Agreement.

A. Worker's Compensation protection that complies with the requirements of the New Mexico Worker's Compensation Act, NMSA 1978, §§ 52-1-1, *et seq.*, if applicable. If the Contractor fails to comply with the Workers Compensation Act and applicable rules when required to do so, EMNRD may terminate this Agreement.

B. Comprehensive public liability protection covering property damage and personal injury liability that may arise under this Agreement and any amendments hereto, in amounts equal or greater than liability limits set forth in NMSA 1978, § 41-4-19, as it may be amended from time to time.

20. Records and Audit:

A. The Contractor shall maintain detailed time and expenditure records that indicate the date, time, nature, and cost of services rendered during the Agreement's term and effect and retain them until December 31, 2020. These records shall be maintained and available within the State of New Mexico if the Contractor has an office within the state; otherwise, Contractor shall make such records available to EMNRD within 10 days upon EMNRD's request. During this time, such records shall be subject to inspection by EMNRD, DFA, the State Auditor, and USFS. Contractor further agrees to include in all subcontracts hereunder the same right of inspection and audit against all subcontractors. EMNRD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose EMNRD's right to recover excessive or illegal payments. The periods of inspection and audit may be extended for records, which relate to litigation or settlement of claims arising out of performance of this Agreement and costs and expenses related to this Agreement for which exception is under consideration by USFS or any authorized representative and shall continue until all potential litigation, appeals, claims, or exceptions have expired or been resolved.

B. If Contractor receives \$500,000 or more in federal funding from all sources in the aggregate in a fiscal year, Contractor's financial records involving services and procurement under this Agreement shall be audited annually pursuant to all federal, state and local government audit requirements, 2 C.F.R. Part 225 and OMB Circular and A-133, as prescribed by the Single Audit Act of 1984, or any subsequent OMB Circular. Contractor shall provide EMNRD with a copy of the independent financial audit, either in hard copy format or on disk, no more than 45 days after the audit's completion for each fiscal year this Agreement is in effect.

21. 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 with this Agreement is subject to the immunities and limitations of the New

Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, *et seq.*, as amended.

22. Procurement, Utilization, and Disposition of Property: Contractor shall report acquisition of any capital property (property with an expected life of at least one year) to EMNRD within one month following the acquisition. If upon termination of this Agreement Contractor has any property in its possession belonging to EMNRD, Contractor shall account for the property and dispose of it as EMNRD directs. All property acquired by the Contractor or procured under this Agreement shall be used and disposed of in accordance with USFS regulations governing disposal of property.

23. Minimum Wage Rate: If applicable, Contractor shall comply with minimum wage rates as established by the New Mexico Department of Workforce Solutions, Labor Relations Division, and with all other applicable requirements of that Department, including posting of the wage rates in a prominent location on the site for hiring and performing of this Agreement.

24. Attorney's Fees and Costs: Contractor agrees that if a court of competent jurisdiction finds Contractor has breached this Agreement, or amendments hereto, or to have committed any tortious act relating to this Agreement's scope, EMNRD may recover from Contractor reasonable attorneys' fees and costs in connection with litigation brought to obtain the judicial determination and to collect any judgment.

25. Invalid Term or Condition: If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

26. Enforcement of Agreement: A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict performance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no waiver of a specified right by a party shall be effective to waive any other rights.

27. Authority: If Contractor is other than a natural person, the individual(s) signing this Agreement on behalf of Contractor represent and warrant that he or she has the power and authority to bind Contractor, and that no further action, resolution, or approval from Contractor or any other entity is necessary to enter into a binding contract.

28. Notice:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To EMNRD:

Urban and Community Forest Program Manager
EMNRD – Forestry Division
1220 S. St. Francis Drive
Santa Fe, NM 87505

Assistant General Counsel
EMNRD – Office of the Secretary
1220 S. St. Francis Drive
Santa Fe, NM 87505

To the Contractor:

Finance Director
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004

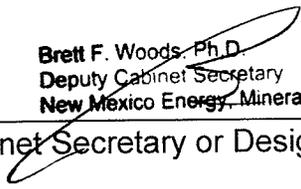
To Risk Management Division:

Risk Management Division
General Services Department
P.O. Drawer 26100
Santa Fe, NM 87502-0110

29. Compliance with Underlying Federal Funding Source: Contractor shall comply with all applicable provisions of U.S. Department of Agriculture, Forest Service, Grant No. 13-DG-11031600-070, Federal Fiscal Year 20134 Cooperative Forestry Assistance Grant, and Grant No. 12-DG-11031600-046, Federal Fiscal Year 2012 Cooperative Forestry Assistance Grant. The Division shall provide Contractor with copies of the grants with the Notice to Proceed.

IN WITNESS WHEREOF, the parties hereto have herein below executed this Agreement.

STATE OF NEW MEXICO, ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT

By:  Date: 3-11-15
Brett F. Woods, Ph.D.
Deputy Cabinet Secretary
New Mexico Energy, Minerals and Natural Resources Department
Cabinet Secretary or Designee

CITY OF LAS CRUCES

By:  Date: 3-5-15
Authorized Representative Signature

Robert L. Garza, P.E., City Manager
Printed Name and Title

CITY OF LAS CRUCES
2014-15 Fiscal Year Budget

FUND	DIVISION		FUND TYPE	
State Operating Grants Fund 2760	Various		Special Revenue Funds	
	2013-14 Un-Audited	2014-15 Adopted	2014-15 Adjustment	2014-15 Adjusted
RESOURCES				
Beginning Balance	\$ (0)	0	0	0
Revenues				
State Grants	27,994	78,684	11,200	89,884
Operating Transfers In	0	0	0	0
Total Revenues	<u>27,994</u>	<u>78,684</u>	<u>11,200</u>	<u>89,884</u>
TOTAL RESOURCES	<u>\$ 27,994</u>	<u>78,684</u>	<u>11,200</u>	<u>89,884</u>
Expenditures				
Parks & Recreation				
30634 - MUNSON COMMUNITY GARDEN	0	0	0	0
30635 - LC TREE STEWARDS PROGRAM	3,644	0	0	0
30639 - FY15 Healthy Kids Healthy Communities	0	25,000	0	25,000
30641 - LC Tree Stewards Program FY 15	0	0	11,200	11,200
Community Development				
20407 - NMFA ECON DEV FEASIBILITY STUDY	0	0	0	0
Community & Cultural Services				
21014 - STATE LIBRARY AID FY14	13,706	0	0	0
21015 - STATE LIBRARY AID FY15	0	15,560	0	15,560
22016 - GROUND UP XXVI GRANTS FY14	6,456	0	0	0
22017 - MUSEUM OF ART 2015	0	6,067	0	6,067
25003 - NM HIST ADVISORY BOARD GRANT FY14	4,188	0	0	0
Las Cruces Fire Department				
33018 - FEMA/DHS - FIRE PREVENTION & SAFETY	0	8,668	0	8,668
Operating Transfers Out	0	0	0	0
Total Expenditures	<u>\$ 27,994</u>	<u>55,295</u>	<u>11,200</u>	<u>66,495</u>
Accrual Adjustments	0	0	0	0
ENDING BALANCE	<u>\$ 0</u>	<u>23,389</u>	<u>0</u>	<u>23,389</u>