City of Las Cruces®
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Council Action and Executive Summary

Item # 2 **Ordinance/Resolution#** 15-222

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of June 1, 2015 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT (NMEMNRD) TO INITIATE THE CITY'S PARTICIPATION IN THE LOCAL ENERGY EFFICIENCY PROGRAM (LEEP) FOR THE PURPOSE OF IDENTIFYING AND ASSESSING ENERGY EFFICIENCY IMPROVEMENT OPPORTUNITIES FOR CITY FACILITIES.

PURPOSE(S) OF ACTION:

Approve a Memorandum of Agreement.

COUNCIL DISTRICT: N/A		
Drafter/Staff Contact: Lisa LaRocque LLR	**Department/Section:** Public Works/ Facilities Management	**Phone:** 541-2177
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City has been invited to participate in the NMEMNRD LEEP, which is funded through a U.S. Department of Energy grant. This program strongly supports the City's Strategic Plan to "support cost-effective energy initiatives" (Goal 15).

The goal of the LEEP is to increase energy efficiency and renewable energy investments using Energy Service Performance Contracts (ESPC). An ESPC is a partnership between a government entity and an Energy Service Company (ESCO). The ESCO:

- Conducts a comprehensive energy audit of selected facilities and identifies improvements to save energy.
- Develops a project (including design and construction support) that meets the governmental entity's needs and helps arrange the necessary funding.
- Guarantees the proposed improvements will generate energy cost savings to pay for the project over the term of the contract (up to 25 years).

NMEMNRD prepared a Memorandum of Agreement (MOA) for the City to execute. The proposed MOA has been reviewed by staff (Exhibit "A"). Details included in the MOA are as follows:

- NMEMNRD will provide participating municipalities with a third-party reviewer to validate:
  - Energy audit protocols and findings
  - Suggested energy conservation and renewable measures proposed in a guaranteed energy performance contract
  - Project implementation
  - Measurement and verification reports
- During the grant program, participating municipalities are expected to:
  - Identify potential project areas in City-owned buildings, facilities, and systems
  - Choose a qualified ESCO and enter into a contract to conduct an investment grade audit of the identified projects, subject to sufficient appropriations and authorization
  - Enter into an initial ESPC with an ESCO, subject to sufficient appropriations and authorization

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Memorandum of Agreement.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☐	If No, then check one below:
N/A	*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: _____ in the amount of $_____for FY_
N/A	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; authorizing the City Manager to sign the MOA, allowing the City of Las Cruces to participate in the LEEP.
2. Vote "No"; this will deny the Resolution and prohibit signing of the MOA for participation in the LEEP.
3. Vote to "Amend"; this will direct staff to proceed as amended by City Council.
4. Vote to "Table"; this may delay implementation of the LEEP.

REFERENCE INFORMATION:

1. N/A

RESOLUTION NO. 15-222

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO ENERGY, MINERALS, AND NATURAL RESOURCES DEPARTMENT (NMEMNRD) TO INITIATE THE CITY'S PARTICIPATION IN THE LOCAL ENERGY EFFICIENCY PROGRAM (LEEP) FOR THE PURPOSE OF IDENTIFYING AND ASSESSING ENERGY EFFICIENCY IMPROVEMENT OPPORTUNITIES FOR CITY FACILITIES.

The City Council is informed that:

WHEREAS, the City of Las Cruces 2014 Strategic Plan supports cost-effective energy initiatives; and

WHEREAS, participation in the LEEP may help increase energy efficiency and renewable energy investments using Energy Service Performance Contracts; and

WHEREAS, the LEEP provides a third-party technical reviewer and resources throughout the audit, implementation, and monitoring and verification process; and

WHEREAS, these energy improvements are anticipated to generate energy cost savings to pay for the project over the term of the contract.

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

(I)

THAT the Memorandum of Agreement between the City and NMEMNRD initiating the City's participation in the LEEP, as shown in Exhibit "A", attached hereto and made a part of this Resolution, is hereby approved.

(II)

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)

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

MEMORANDUM OF AGREEMENT BETWEEN THE NEW MEXICO ENERGY, MINERALS AND NATURAL RESOURCES DEPARTMENT AND CITY OF LAS CRUCES

THIS MEMORANDUM OF AGREEMENT (MOA) is entered into by and between the State of New Mexico, Energy, Minerals and Natural Resources Department (EMNRD), Energy Conservation and Management Division (Division) and the City of Las Cruces (City).

WHEREAS, the Division is responsible pursuant to NMSA 1978, § 9-5A-4 for planning, administering, reviewing, providing technical assistance, maintaining records and monitoring state and federal energy conservation and renewable energy technology programs; and

WHEREAS, the Division is responsible for certification that qualified providers of energy conservation measures pursuant to NMSA 1978, § 6-23-5B(2), to meet experience requirements and the guaranteed energy savings from the energy conservation and renewable energy measures proposed in guaranteed utility savings contracts with governmental units appear to be accurately estimated and reasonable; and

WHEREAS, few local governments have the tools, technical knowledge, and financing to pursue energy efficiency and renewable energy projects;

WHEREAS, the US Department of Energy (DOE) has entered into a cooperative agreement with EMNRD to implement a Local Energy Efficiency Performance (LEEP) Program to fill these technical and financial gaps by creating a sustainable state-led program to support successful implementation of energy service performance contracts (ESPCs) throughout all local government facilities in New Mexico; and

WHEREAS, this MOA's purpose is to provide the City access to the services and support provided under the LEEP Program for development and implementation of guaranteed ESPCs and to help the City follow and adhere to the guidelines of the Program;

WHEREAS, EMNRD and the City desire to enter into this MOA for administrative efficiency so that the project can be carried out through a single program; and

WHEREAS, the Division seeks to use its experience to support implementation of ESPCs throughout local government facilities in New Mexico; apply lessons learned to continually improve the LEEP Program; reduce facility energy use and carbon emissions; and ensure proper level of financing accompanies each Project identified by the Program,

NOW, THEREFORE, THE PARTIES AGREE as follows:

1. City Activities: The City shall:

A. identify energy efficiency and renewable energy projects (Projects) in City-owned buildings, facilities, and systems;

B. choose from the General Services Department list of qualified energy service providers an Energy Services Performance Contractor (ESPC) and enter into a contract with the ESPC to conduct an investment grade audit of the Projects;

C. based on the audit, decide if the City wants to complete energy efficiency and renewable energy measures presented by the ESPC;

D. if not, then the City pays the cost of the audit which cost shall not exceed $_____;

E. if yes, the City enters into a performance contract with the ESCP to be separately negotiated subject to sufficient appropriations and authorization;

F. issue a notice to proceed to the ESPC to complete energy efficiency and renewable energy measures, and require the ESPC to identify all applicable utility rebate programs;

G. develop a process along with the Division to assign utility rebates, if any, to continue the third party verification program;

H. enter utility data into Energy Star Portfolio Manager for the twelve months prior to the time the energy audit was conducted; and

I. enter monthly utility data into DOE's eProject Builder and Energy Star Portfolio Manager, for the duration of this MOA.

2. Division Activities: The Division shall:

A. determine if the City's Projects are sufficient to fully participate in the LEEP Program;

B. provide training to City staff on LEEP requirements related to eProject Builder and Energy Star Portfolio Manager data collection and reporting;

C. contract with a third-party reviewer to provide the City technical assistance throughout all of the performance contracting stages;

D. review and certify energy audits and third-party reviewer findings pursuant to NMSA 1978, § 6-23-5B(2), to ensure that the guaranteed energy savings

from the energy conservation and renewable energy measures proposed in guaranteed utility savings contracts with governmental units appear to be accurately estimated and reasonable;

E. review implementation and verification reports from third-party reviewer that can be shared with the City and DOE;

F. review measurement and verification (M&V) reports provided by the selected ESPC; that can be shared with the City and DOE;

G. review for completeness data City enters into eProject Builder and Energy Star Portfolio Manager;

H. issue an energy savings certificate to the City for the sum of all energy savings achieved through the City's project; and

I. meet with the City on a quarterly basis during this MOA's term to review the M&V reports provided by the ESPC to ensure continued savings.

3. Compensation: No funds shall be exchanged under this MOA.

4. Term: This MOA becomes effective on EMNRD's signature. This MOA shall terminate two years from date of EMNRD signature, unless terminated earlier pursuant to Section 5, Termination, or Section 6, Appropriations, below.

5. Termination: Either party may terminate this MOA upon written notice to the other delivered at least 30 days prior to the termination date. By such termination, neither party may nullify or avoid any obligation required to have been performed prior to termination.

6. Appropriations: This MOA's terms are contingent upon the, New Mexico State Legislature, DOE, and City granting sufficient appropriation and authorization. If sufficient appropriation or authorization is not granted, either party may terminate this MOA, or in the alternative suspend performance pending approval of sufficient appropriation or authorization, upon written notice from one party to the other. Both parties' decision as to whether sufficient appropriations are available shall be final, binding and accepted by the other.

7. Liability: Neither party shall be responsible for liability incurred as a result of the other party's' acts or omissions in connection with this MOA. Any liability incurred with this MOA is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq., as amended.

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

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

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

By: _____ Date: _____
Cabinet Secretary or Designee

CITY OF LAS CRUCES

By: _____ Date: _____
Authorized Representative Signature

_____
Printed Name and Title