City of Las Cruces®
PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 11 **Ordinance/Resolution#** 16-021

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of August 3, 2015 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: **A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, ON BEHALF OF ITS SENIOR PROGRAMS, TO ACCEPT LEGISLATIVE APPROPRIATION FUNDING A14-1136 IN THE AMOUNT OF $160,000.00, FROM THE NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT (NMALTSD) TO PURCHASE AND EQUIP FOUR "MEALS ON WHEELS" (MOW) VEHICLES, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE CONTRACT AGREEMENT; AND TO AMEND THE CITY'S ADOPTED FY2016 BUDGET.**

PURPOSE(S) OF ACTION:

To accept legislative appropriation, ratify the City Manager's signature, and adjust the City budget.

COUNCIL DISTRICT: ALL		
Drafter/Staff Contact: Amy Johnson Bassford	**Department/Section:** Finance/Grants	**Phone:** 575-541-2281
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) on behalf of its Senior Programs section was awarded a New Mexico Severance Tax Bond (STB) through a NMALTSD grant in the amount of $160,000.00 to purchase and equip MOW vehicles, with no local match required.

Due to the increase in eligible senior clients, new and reliable MOW vehicles are needed to help meet the needs of homebound seniors. City staff submitted and NMALTSD secured STB funds through the New Mexico Legislature in the 2014 session. These funds will used for the City's Senior Programs MOWs program to acquire and equip four hot-spot vehicles. The Fleet Administrator has completed the rolling stock request form for FY2016. This resolution, if approved, accepts the funding agreement and adjusts the City's budget.

SUPPORT INFORMATION:

1. Resolution.

(Continue on additional sheets as required)

2. Exhibit "A", Grant Agreement A14-1136.
3. Exhibit "B", Budget Adjustment.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☐	See fund summary below
	No	☒	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☒	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☒	Funds will be deposited into this fund: 4612 in the amount of $160,000.00 for FY 2016.
	No	☐	There is no new revenue generated by this action.

BUDGET NARRATIVE

Grant funds in the amount of $160,000.00, will be deposited into Fund 4612, State Capital Equipment Fund, under project number 36003 to be used by Senior Programs in support of the MOW Program operated out of the Eastside Community Center.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
State Capital Equipment	46200010-851100-36003	$160.000.00	$160,000.00*	$0.00	None

* Pending approved budget adjustment.

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will accept appropriation funds from the NMALTSD and adjust the FY 2016 budget.
2. Vote "No"; this will impact Senior Programs' ability to purchase and equip the needed four (4) vehicles for the MOW Program operated out of the Eastside Community Center.
3. Vote to "Amend"; this will delay the process of spending the grant funds within the predetermined grant schedule.
4. Vote to "Table"; this will impact Senior Programs' ability to utilize the funds and the grant funds will be returned to NMALTSD, to be used for other communities.

(Continue on additional sheets as required)

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 16-021

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, ON BEHALF OF ITS SENIOR PROGRAMS, TO ACCEPT LEGISLATIVE APPROPRIATION FUNDING A14-1136 IN THE AMOUNT OF $160,000.00, FROM THE NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT (NMALTSD) TO PURCHASE AND EQUIP FOUR "MEALS ON WHEELS" (MOW) VEHICLES, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE CONTRACT AGREEMENT; AND TO AMEND THE CITY'S ADOPTED FY2016 BUDGET.

The City Council is informed that:

WHEREAS, the City of Las Cruces Senior Programs Section received legislative appropriation A14-1136 from the NMALTSD; and

WHEREAS, the legislative appropriation funds will be used to purchase additional MOW vehicles to support the Senior Programs homebound senior population; and

WHEREAS, the appropriation reverts on June 30, 2018 and all funds must be expended by that time.

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

(I)

THAT the City of Las Cruces Senior Programs Section is authorized to accept legislative appropriation funding in the amount of $160,000.00 from NMALTSD to purchase and equip four MOW vehicles as shown in Exhibit "A", attached hereto and made part of this resolution.

(II

THAT the City Manager's signature is ratified on legislative appropriation A14-1136 grant agreement.

(III)

THAT the City's FY2016 budget is adjusted, as shown in Exhibit "B", attached hereto and made part of this resolution.

(IV)

THAT the 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

STATE OF NEW MEXICO
AGING AND LONG-TERM SERVICES DEPARTMENT
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into as of this 7 day of July, 15, by and between the Aging and Long-Term Services Department, P.O. Box 27118, New Mexico, 87502-7118, hereinafter called the "Department" or abbreviation such as "ALTSD", and the 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 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 37, 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, State Agency on Aging (28-4-1 to 28-4-9 NMSA 1978: successor agency, Aging and Long-Term Services Department (9-23-1 to 9-23-12 NMSA 1978) may enter into grants and contracts as appropriated by law.

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 and is further described in **Exhibit 4**, Project Description. Grantee agrees to expend the funds in accordance with the Project Description:

A14-1136 $160,000 APPROPRIATION REVERSION DATE: June 30, 2018
Laws of 2014, Chapter 65, Section 10, Subsection 10A, Paragraph 37, one hundred sixty thousand dollars ($160,000) to purchase and equip vehicles for the Eastside community center and meals on wheels in Las Cruces in Dona Ana county.

The Grantee's total reimbursements shall not exceed the appropriation one hundred sixty thousand dollars ($160,000), (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, ($0), which equals ($), (the "Adjusted Appropriation Amount").

[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.

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." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] 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

(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 Grantee or Fiscal Agent for Grantee, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity or Fiscal Agent for Grantee (if any) in accordance with law; or

b. if no oversight entity or Fiscal Agent for Grantee 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

[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.

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 2**.
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:	R.L. Rice	Sonia Saldana
Title:	Grants and Contracts Compliance Specialist	Senior Programs Admininstrator
Address:	P.O. Box 20000, Las Cruces, NM 88004	SAME
Email:	rrrice@las-cruces.org	ssaldana@las-cruces.org
Telephone:	575-541-2281	575-528-3004

Department:	Aging and Long-Term Services Department
Name:	Rebecca Martinez
Title:	Capital Projects Bureau Chief
Address:	P.O. Box 27118, Santa Fe, NM 87502-7118
Email:	rebeccas.martinez@state.nm.us
Telephone:	505-476-4768
FAX:	505-476-4836

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by facsimile, email, or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of facsimile transmissions, the notice shall be deemed to have been given and received on the date reflected on the facsimile confirmation indicating a successful transmission of all pages included in the writing. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2018** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be "expended" on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to "encumber" the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are "expended" and an "expenditure" has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** "expended" and an "expenditure" has ***not*** occurred as of the date they are "encumbered" by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: de-authorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

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 Monthly Reports

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Monthly Reports for the Project. Paper Monthly Reports shall be submitted on a form prescribed by the Department. The Paper Monthly 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 Monthly Report format or content.

The Paper Monthly 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 Monthly 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, which ever first occurs.

C. Paperless Reporting

In addition to the paper reports described in subparagraphs A and B of this Article, the Grantee shall report monthly 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 1**. 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, see **Exhibit 3**, 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, and 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 sub awards, including subcontracts, loans and cooperative agreements. All sub recipients 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 ALTSD 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' 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 Aging and Long-Term Services Department 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 an Aging and Long-Term Services Department Grant Agreement. Should the Aging and Long-Term Services Department 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, see **Exhibit 3**, 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)

6-18-15
Date

APPROVED AS TO FORM:

City Attorney

AGING AND LONG-TERM SERVICES DEPARTMENT

By: _____ Date: 7/7/15
ALTSD Cabinet Secretary

By: _____ Date: 6/29/15
ALTSD Legal Counsel—Certifying Legal Sufficiency

C. BRIAN JAMES

By: _____ Date: 7/6/15
ALTSD Chief Financial Officer

NEW MEXICO AGING & LONG-TERM SERVICES DEPARTMENT

12 EXHIBIT 1

ALTSD CAPITAL OUTLAY GRANT

MONTHLY / FINAL REPORT FORM & REQUEST FOR PAYMENT

MONTHLY REPORT ☐ (Due on the last day of the month) PROJECT TITLE:_____ PAY REQUEST NO._____

DATE: _____

Grantee:_____ Grant Number:_____ Reporting Period:_____ Grant Expiration Date: _____

Address:_____ Preparer's Name & Phone Number: _____
City State Zip

Please provide a detailed status of project referenced above. Please check the box that would best explain the project phase.

Bonds Sold ☐ Plan / Design ☐ Bid Documents ☐ Construction/Improvements/Renovation in Process ☐

Purchase in Process ☐ Substantial Completion ☐ Project Complete ☐ Other *(Please specify in narrative section)* ☐

Provide a project update and the anticipated timeline for commencement and completion for each phase. *(Attach extra sheet if needed)*

REQUEST FOR PAYMENT

Grant Amount: _____
AIPP Amount *(if applicable)* _____
Funds Requested to Date: _____
Amount Requested This Payment: _____
Grant Balance: _____

FINAL REPORT ☐
Fiscal Year Expenditure Period Ending
(check one)
(Jan-Jun) ☐ (Jul-Dec) ☐
Fiscal Year _____

VENDOR INVOICE DETAIL *(Attach extra sheet if needed)*

Date of Invoice	Vendor Name	Amount of Invoice	Amount Applicable to This Grant
		Amount Requested This Payment:	

☐ **MONTHLY REPORT:** I hereby certify that the aforementioned Capital Outlay 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 Outlay 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. The remaining balance is requested to be reverted to the appropriate funding source.

☐ **PROCUREMENT METHOD:** Grantee received approval from ALTSD and Notice of Obligation was issued and signed prior to reimbursement request.

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, are valid expenditures or actual receipts; and comply with NM State Procurement Code NMSA 13-1-21 through 13-1-199; 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.

_____ Grantee Fiscal Officer Signature & Printed Name

_____ Grantee Representative Signature & Printed Name *(Preparer)*

SWORN TO AND SUBSCRIBED BEFORE ME THIS_____DAY OF_____, 201_.
Notary Public:_____
My Commission Expires: _____

STATE AGENCY USE ONLY

I certify that the ALTSD Financial and vendor file information agree with the above submitted information.

_____ ALTSD Accounting Manager Date

_____ ALTSD Capital Outlay Bureau Chief Date

Vendor Code:_____ Fund No:_____ BudRef:_____ Class Code:_____

SBOF DRAW INFORMATION: Warrant #_____ Amount of Request: _____ Date:_____ Initials:_____

EXHIBIT 2
STATE OF NEW MEXICO - CAPITAL GRANT PROJECT
NOTICE OF OBLIGATION TO REIMBURSE GRANTEE

DATE: _____

TO: **Department Representative:** _____

FROM: **Grantee Representative:** _____
Signature

Chief Procurement Officer: _____
Signature

SUBJECT: **Notice of Obligation to Reimburse[1] Grantee, Project Number:** _____

As the designated representative of the Grantee, I certify that the following third party obligation executed, in writing, by the third party's authorized representative is in accordance with the NM State Procurement Code NMSA 13-1-30 or Local Procurement Code (if applicable); in addition, all indirect costs[2], as defined by NM State Board of Finance are **NOT** included.

As the designated representative of 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[1] Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement Article X – Project Conditions and Restrictions: Representations and Warranties.

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: _____

1/ "Reimburse" as used throughout this Notice of Obligation to Reimburse 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 the Grant Agreement and are a valid liability of the Grantee.

2/ Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

EXHIBIT 3
ALTSD CAPITAL OUTLAY
SPECIAL GRANT CONDITIONS

No special conditions exist for this grant agreement.

EXHIBIT 4
ALTSD CAPITAL OUTLAY
PROJECT DESCRIPTION
SCOPE OF WORK (SOW)

1. **Name of Grantee/ Fiscal Agent: City of Las Cruces**
2. **Project Title:** Las Cruces Eastside Ctr/Meals on Wheels Vehicles
3. **Grant Agreement Number: A14-1136**
4. **Background Narrative:** City of Las Cruces Senior Program operates the Meals on Wheels program within city limits. Due to an increase in eligible clients additional routes are being created. Currently, the city operates ten permanent and one relief route but there are no reserve vehicles to ensure the routes can operate uninterrupted when vehicles are in for repairs/maintenance. To serve the new routes and provide reserve vehicles, four were requested in the FY 14 cycle.
5. **Work Plan:** Appropriations received and executed through City Council action; budget adjusted; City's procurement process begins for vehicle acquisition; vehicles acquired and branded/outfitted for Meals on Wheels operation; two existing vehicles will be retired and two additional routes will be created by 2018. The vehicles are to be purchased and equipped as hot shot delivery vehicles for Las Cruces Meals on Wheels program.
6. **Budget Detail:**

Project Cost Activities	Other Funds	State Funds
Architect/Engineer		
Construction		
Renovation		
Improvements for Code Compliance		
Equipment		
Vehicle Purchase	$5,000	$160,000
Other Costs (specify)		
Totals	$5,000	$160,000

7. **Performance Measures:** Two new Meals on Wheels routes to be created by 2018 serving unserved clients which will increase service delivery by 10 percent.
8. **Results Expected:** Four hot shot delivery vehicles in use by the Las Cruces Senior Program Meals on Wheels (MOW); two current MOW vehicles will be retired and two new routes will be created to serve approximately 50 new clients.
9.

Time Frame/ Milestones:	
RFP/SOW Release	July, 2015
Bid Closing	Month 2 - Existing Pricing Agreement
Bid Award to Contractor/Vendor	Month 3 - Existing Pricing Agreement
Purchase/Install Vehicle	Month 5
Project Completion & Review	Month 6
Submit Request for Payment Form and Supporting Documents to ALTSD/Capital Projects Bureau	Month 7

10. **Responsible Staff:**

Name: Roger Bishop
Title: Nutrition Manager – Eastside Senior Center
Address: 310 N. Tornillo St., Las Cruces NM 88001
Email: rbishop@las-cruces.org
Phone: 575-528-3013

Name: Elizabeth Vega
Title: Assistant Management Analyst, City of Las Cruces Senior Programs
Address: P.O. Box 20000, Las Cruces, NM 88004
Email: Elizabeth.vega@las-cruces.org
Phone: 575-528-3001

NOTICE: The Grant Application, if approved for funding by the ALTSD, and any attachments to the Grant Application are incorporated by reference into the scope of work. In the event of a conflict between any of the documents that are part of the Agreement, the ALTSD Cabinet Secretary, at the sole discretion of ALTSD, shall resolve that conflict.

EXHIBIT "B"

CITY OF LAS CRUCES

Fund Summary

FUND	DIVISION	FUND TYPE
State Capital Equipment Fund 4612	Various	Capital Project

	2011-12 Actual	2012-13 Budget	2012-13 Projected	2013-14 Proposed
RESOURCES				
Beginning Balance	$ 0	0		0
Revenues				
State Grants	0	0	160,000	160,000
Operating Transfers In	0	0		0
Total Revenues	0	0	160,000	160,000
TOTAL RESOURCES	$ 0	0	160,000	160,000
Expenditures				
Community & Cultural Services	0	0		0
36003 - MEALS ON WHEELS VEHICLES	0	0	160,000	160,000
Operating Transfers Out	0	0		0
Total Expenditures	$ 0	0	160,000	160,000
Accrual Adjustments		0	0	0
ENDING BALANCE	$ 0	0	0	0

BUDGET ADJUSTMENT REQUEST (BAR)

Department and Section	129 Permanent or Temporary	EXHIBIT "B"
Community & Cultural Services/Senior Programs	Temporary	Council/Board Resolution No.

Justification for Request

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, ON BEHALF OF ITS SENIOR PROGRAMS, TO ACCEPT LEGISLATIVE APPROPRIATION FUNDING A14-1136 IN THE AMOUNT OF $160,000, FROM THE NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT (NMALTSD) TO PURCHASE AND EQUIP FOUR "MEALS ON WHEELS" (MOW) VEHICLES, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE CONTRACT AGREEMENT; AND TO AMEND THE CITY'S ADOPTED FY 2016 BUDGET.

MUNIS Comment: ACCEPT FUNDS FOR MOW VEH

Veronica MacGregor	541-2022	FY 2016	7/17/2015
Prepared by	**Phone No.**	**FY to be Adjusted**	**Date**

Fund	Org	Object	Project	Object Name	Increase $	Decrease $
4612	46120010	552012	36003	NM AGING & L-T SERVICES DEPT	160,000	
4612	46200010	851100	36003	ROLLING EQUIP INCL TRAILERS	160,000	
				Totals	$320,000	$0

By signing, I verify balances and accounts are available in MUNIS.		*For use by Administration and Office of Mgmt & Budget*	
Administrator / Manager	Date	**Mark A. Winson, ACM / CAO**	Date
Director	Date	**Daniel Avila, ACM / COO**	Date
For use by Office of Mgmt & Budget ***Revised 5/05/2015***		**Robert L. Garza, City Manager**	Date

Budget Adjustment Number	Posted By	Date		
Period: **JE#**			**Budget and Grant Manager**	Date

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City of Las Cruces®
PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of August 3, 2015 (Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, ON BEHALF OF ITS SENIOR PROGRAMS, TO ACCEPT LEGISLATIVE APPROPRIATION FUNDING A14-1136 IN THE AMOUNT OF $160,000.00, FROM THE NEW MEXICO AGING AND LONG-TERM SERVICES DEPARTMENT (NMALTSD) TO PURCHASE AND EQUIP FOUR "MEALS ON WHEELS" (MOW) VEHICLES, TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE CONTRACT AGREEMENT; AND TO AMEND THE CITY'S ADOPTED FY2016 BUDGET.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact Amy Johnson Bassford	Amy J Bassford	541-2281	7/17/15
Finance Victoria Fredrick	Victoria Fredrick	541-2080	7/17/15
Community & Cultural Services David Dollahon	David Dollahon	541-3060	7/17/2015
Management & Budget Manager Robert Lundien	Robert J Lundien	541-2106	7/20/15
Assistant City Manager /CAO Mark Winson	[illegible]	541-2100	7/20/15
Assistant City Manager/COO Daniel Avila	Daniel Avila	541-2100	7/23/15
City Attorney Wm. "Rusty" Babington	[illegible]	541-2128	27 July 2015
Interim City Clerk Linda Lewis	Linda Lewis	541-2116	7-27-15

Rev. 8/2011