



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 7Ordinance/Resolution# 16-146For Meeting of _____
(Ordinance First Reading Date)For Meeting of January 19, 2016
(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 THE LAS CRUCES FIRE DEPARTMENT, TO ACCEPT LEGISLATIVE APPROPRIATION NO. 15-0766 IN THE AMOUNT OF \$80,000.00, THROUGH THE NEW MEXICO DEPARTMENT OF FINANCE & ADMINISTRATION (NMDFA) TO PURCHASE VARIOUS FIREFIGHTING EQUIPMENT; 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 funding and adjust the City budget.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Michelle K. Belone	<u>Department/Section:</u> Financial Services / Grants Administration	<u>Phone:</u> 541-2716
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City), on behalf of the Fire Department, was awarded Legislative Appropriation 15-0766 funding through State of New Mexico Severance Tax Bonds through the NMDFA in the amount of \$80,000.00, with no local match required. When the City receives funding for projects through legislative appropriation, it is necessary for City Council to accept the funds as well as the conditions that are associated with the grant funding. The City did not anticipate receiving this funding when the current fiscal year budget was adopted in May, 2015. The City Council is being requested to authorize an amendment to the budget showing receipt of these new funds for FY2016 and further designating where they are placed within the City's budget.

Once accepted, these funds as authorized by the appropriation, will be used for the Fire Department to purchase various firefighting equipment. The funds will be used to purchase equipment not limited to fire hoses, nozzles, tools, breathing apparatus, thermal imaging camera, vehicle extrication, and rescue equipment.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Contract Agreement 15-0766.
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>2500</u> in the amount of <u>\$80,000.00</u> for <u>FY16</u> .
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Grant funds in the amount of \$80,000.00, will be deposited into Fund 2500, (Equipment Grant), under project number 33075 to be used by Fire Department to purchase various types of fire equipment.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Fire Department	25167010-730200-33075	\$80,000.00	\$80,000.00*	\$0.00	None

*Pending approved budget adjustment

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will accept appropriation funds from the NMDFA and adjust the FY2016 budget.
2. Vote "No"; this will impact Fire Departments' ability to purchase fire equipment and return the funds to the State of New Mexico.

(Continue on additional sheets as required)

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 Fire Departments' ability to utilize the funds and the grant funds will be returned to NMDFA, to be used for other communities.

REFERENCE INFORMATION:

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 16-146

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, ON BEHALF OF THE LAS CRUCES FIRE DEPARTMENT, TO ACCEPT LEGISLATIVE APPROPRIATION NO. 15-0766 IN THE AMOUNT OF \$80,000.00, THROUGH THE NEW MEXICO DEPARTMENT OF FINANCE & ADMINISTRATION (NMDFA) TO PURCHASE VARIOUS FIREFIGHTING EQUIPMENT; 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 Fire Department has received notice of award of New Mexico Legislative Appropriation 15-0766 through the NMDFA; and

WHEREAS, this legislative appropriation will be used to purchase various firefighting equipment; 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 hereby accepts New Mexico Legislative Appropriation 15-0766 in the amount of \$80,000.00 through the NMDFA to purchase various firefighting equipment, as shown in Exhibit "A", attached hereto and made part of this Resolution.

(II)

THAT the City Manager's signature is hereby ratified on New Mexico Legislative Appropriation 15-0766.

(III)

THAT the City of Las Cruces FY 2016 budget is hereby adjusted as designated in

Exhibit "B", Budget Adjustment, attached hereto and made part of this Resolution.

(IV)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20_____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

VOTE:

- Mayor Miyagishima: _____
- Councillor Gandara: _____
- Councillor Smith: _____
- Councillor Pedroza: _____
- Councillor Eakman: _____
- Councillor Sorg: _____
- Councillor Levatino: _____

APPROVED AS TO FORM:



City Attorney

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 89200 CAPITAL APPROPRIATION PROJECT

RECEIVED
DFA-LOCAL GOVT. DIV.
2015 NOV 23 PM 1:54
BATAAN BLDG. RM 202
SANTA FE, NM 87501

THIS AGREEMENT is made and entered into as of this 30 day of November 2015, by and between the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501, hereinafter called the "Department" or abbreviation such as "LGD", 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 2015, Chapter 3, Section 28, Para. 118 the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

15-0766 \$80,000.00 Appropriation Reversion Date: 30-JUN-18
Laws of 2015, Chapter 3, Section 28, Paragraph 118, eighty thousand dollars (\$80,000) to purchase and install equipment for the fire department in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed the appropriation amount Eighty Thousand Dollars (\$80,000.00) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")^[1], if applicable, Zero Dollars (\$0.00), which equals Eighty Thousand Dollars (\$80,000.00) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description". 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 entity, the sale, lease, license, or operating agreement:

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

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

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

(vi) The Grantee's submittal of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement as follows:

- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
- b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such expenditures.
- c. The Department may, in its absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 3.
- d. The date the Department sends, by mail or email, the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party begin work.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee and the Department hereby designate the persons listed below as their official representative concerning all matters related to this Agreement:

Grantee: City of Las Cruces
 Name: Victoria Fredrick
 Title: Director of Financial Services
 Address: P.O. Box 20000, Las Cruces, NM, 88011
 Email: vfredrick@las-cruces.org
 Telephone: 575-541-2080
 FAX: 575-541-2105

Department: DFA/Local Government Division
 Name: Ms. Ariana Vigil
 Title: Project Manager
 Address: Bataan Memorial Bldg Rm 202, Santa Fe, New Mexico, 87501
 Email: arianam.vigil@state.nm.us
 Telephone: 505-827-8074
 FAX: 505-827-4948

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

ARTICLE IV. REVERSION DATE, TERM, EARLY TERMINATION

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 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: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

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

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

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its absolute discretion, to direct the Grantee to suspend entering into new and further obligations.

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties upon the date the Grantee receives written notice given by the Department; and
- (ii) The Department is, upon the date the Grantee receives written notice given by the Department, suspending issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Paper Periodic Reports

In order that the Department may adequately monitor Project activity, the Grantee shall submit to the Department Paper Periodic Reports for the Project. Paper Periodic Reports shall be submitted on a form prescribed by the Department. The Paper Periodic and Paper Final Report form are attached hereto as Exhibit 1.

The Department shall provide the Grantee with a minimum of thirty (30) days' advance written notice of any change to the Periodic Report format or content.

The Paper Periodic Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Paper Final Report for the Project. The Department may, in its discretion, change the reporting period from time to time by giving Grantee a minimum of thirty (30) days' advance, written notice of any change to the reporting period; provided, however, that in no event shall the reporting period be less than one month.

B. Paper Final Report

The Grantee shall submit to the Department a Final Report for the Project. The Final Report shall be submitted on a form provided by the Department and contain such information as the Department may require. The Periodic and Final Report form is attached hereto as Exhibit 1. The Department shall provide Grantee with a minimum of thirty (30) days' advance, written notice of any change to the Final Report format or content. The Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, 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 periodic and final Project activity by entering such Project information as the Department may require directly

into a database maintained by the Department. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report on a paperless basis. The Paperless Report shall be due monthly on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of a Final Report for the Project. The Paperless Final Report along with a Paper Final Report must be submitted within twenty (20) days after the Project's Reversion Date or within twenty (20) days of the date of Early Termination, which ever first occurs.

D. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may (i) request such additional information regarding the Project as it deems necessary and (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department. Requests made pursuant to this subparagraph D are in addition to and not in lieu of the periodic and final reporting described in subparagraphs A through C of this article VIII.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 2. Payment requests are subject to the following procedures:

(i) The Grantee must submit one original and one copy of each Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee in the form of a notarized certification by Grantee's designated representative in Article III herein, that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee of services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing.

B. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Twenty (20) days from the end of the calendar quarter in which the expenditure was incurred or liability of the Grantee was incurred as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor, if total unreimbursed expenditures or liabilities at calendar quarter end exceed \$25,000; or
- (ii) July 15 of each year for all unreimbursed expenditures incurred during the previous fiscal year; or
- (iii) Twenty (20) days from date of Early Termination; or
- (iv) Twenty (20) days from the Reversion Date.

C. The Grantee's failure to abide by the requirements set forth in Article II herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the Procurement Code (or local procurement ordinance, where applicable).

(ii) The project must be implemented in accordance with the New Mexico Public Works Minimum Works Act, Section 13-4-10 through 13-4-17 NMSA 1978, if applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 B. NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the so-called "Anti-Donation Clause."

(iv) The Grantee shall not at any time convert any property acquired or developed with the Project's funds to uses other than those specified in the Project Description without the Department's express, advance written approval.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable

time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

- (i) The Grantee has the legal authority to receive and expend the Project's funds.
- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which it is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding Conflict of Interest and Governmental Conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records

sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department of Finance and Administration and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and DFA concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces, the Department of Finance and Administration, Local Government Division (DFA/LGD), or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or DFA/LGD."

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 Department of Finance and Administration, Local Government Division (DFA/LGD) Grant Agreement. Should DFA/LGD 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's 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.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA

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

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

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

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

ARTICLE XVIII. SEVERANCE TAX BOND PROJECT 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 Grantee and the Division do hereby execute this Grant Agreement as of the date of the first above written.

THIS GRANT AGREEMENT has been approved by:

City of Las Cruces

[Signature]

Signature of Official with Authority to Bind Grantee

11-17-15

Date

Robert + Garza

(Type or Print Name)

APPROVED AS TO FORM:

[Signature]

City Attorney

STATE OF NEW MEXICO)
COUNTY OF Dona Ana)ss

The foregoing instrument was acknowledged before me this 17th day of November, 2015,
by Robert + Garza

[Signature]

Notary Public

seal

My Commission Expires: 11-03-19

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

By: Bill Garcia
~~Rick Lopez, Director~~ Bill Garcia, Deputy Director

11/30/15
Date

STATE OF NEW MEXICO)
COUNTY OF SANTA FE)

The foregoing instrument was acknowledged before me this 30 day of November, 2015,
by Bill Garcia

[Signature]

Notary Public

seal

My Commission Expires: 3-17-18



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

PERIODIC REPORT FINAL REPORT

Grantee: _____

Project Number: _____ Reporting Period: _____

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

A. Third Party Obligations

Purchase Order or Contract # _____

Name of Contractor or Vendor: _____

Amount of Third Party Obligation: _____

Date Executed: _____

Termination Date: _____

B. Project Phase

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

2. Grant Amount adjusted for AIPP if applicable: _____

Total Amount of all Notices of Obligation to Reimburse: _____

Total Grant Amount Expended by Grantee to Date: _____

Grant Balance as of this Date: _____

Amount of Other Unexpended Funding Sources: _____

PERIODIC REPORT

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

FINAL REPORT

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

Grantee Representative/Title

Date

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

I. Grantee Information

(Make sure information is complete & accurate)

- A. Grantee: _____
- B. Address: _____
Complete Mailing, including Suite, if applicable
- City _____ State _____ Zip _____
- C. Phone No: _____
- D. Grant No: _____
- E. Project Title: _____
- F. Grant Expiration Date: _____

II. Payment Computation

- A. Grant Amount: _____
- B. AIPP Amount (If Applicable) _____
- C. Funds Requested to Date: _____
- D. Amount Requested this Payment: _____
- E. Grant Balance: _____ \$0.00
- F. GF GOB STB (attach wire if 1st draw)
- G. Payment Request No. _____

III. Fiscal Year Expenditure Period Ending:

(check one)

- (Jan-Jun) Fiscal
- (Jul-Dec) Year

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

Grantee Fiscal Officer
 or Fiscal Agent (if applicable)

Printed Name _____
 Date: _____

SWORN TO AND SUBSCRIBED
 before me on this _____ day
 of _____, 20____

Notary Public _____
 My Commission expires _____

Grantee Representative

Printed Name _____
 Date: _____

SWORN TO AND SUBSCRIBED
 before me on this _____ day
 of _____, 20____

Notary Public _____
 My Commission expires _____

(Department Use Only)

Vendor Code: _____
 Loc No.: _____

Fund No.: _____

Division Fiscal Officer	Date
I certify that the Grantee financial and vendor file information agree with the above submitted information	

Division Project Manager	Date
I certify that the Grantee records and related appropriation laws agree with the above submitted information.	

**STATE OF NEW MEXICO
 CAPITAL GRANT PROJECT
 NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
 EXHIBIT 3**

DATE: _____

TO: Grantee Representative: _____

FROM: Department Representative: _____

**SUBJECT: Notice of Obligation to Reimburse Grantee
 Project Number: 15-0766**

As the designated representative of the Department for the Grant Agreement number 15-0766 entered into between Grantee and the Department, I certify that the Grantee has submitted to the department the following third party obligation executed in writing, by the third party's authorized representative:

Third Party Obligation (includes purchase orders and contract)#: _____
 Vendor of Contractor: _____
 Third party Obligation amount: _____
 Termination Date: _____

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

Grant Amount adjusted for AIPP if applicable: _____
 The Amount of this notice of Obligation to Reimburse: _____
 The Total Amount of all Previously Issued Notices of Obligation: _____
 The Total Amount of all Notices of Obligation to Reimburse as of this Date: _____

Department Representative: _____

Title: _____

Signature: _____

Date: _____

CITY OF LAS CRUCES

Fund Summary

EXHIBIT "B"

Fund: 2500 **Fund Name:** EQUIPMENT GRANTS
DFA: 218 **DFA Name:** Intergovernmental Grants

	2015-16 Budget			%
	Adopted	Adjustment	Amended	Inc. / Dec.
<i>Beginning Balance</i>	\$ 0	0	0	0.00%
Resources				
Revenue	\$ 0	80,000	80,000	0.00%
Proceeds	0	0	0	0.00%
Transfers In	0	0	0	0.00%
Total Resources	\$ 0	80,000	80,000	0.00%
Expenditures				
Salaries & Benefits	\$ 0	0	0	0.00%
Operating Costs	0	0	0	0.00%
Capital Outlay	0	0	0	0.00%
Debt Service	0	0	0	0.00%
Grant / Projects	0	80,000	80,000	0.00%
Transfers Out	0	0	0	0.00%
Total Expenditures	\$ 0	80,000	80,000	0.00%
<i>Ending Balance</i>	\$ 0	0	0	0.00%

BUDGET ADJUSTMENT REQUEST (BAR)

181

<u>Department and Section</u>	<u>Permanent or Temporary</u>	EXHIBIT "B" Continued	
Fire Services	Permanent	<u>Council/Board Resolution No.</u>	

Justification for Request

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES , ON BEHALF OF THE LAS CRUCES FIRE DEPARTMENT, TO ACCEPT LEGISLATIVE APPROPRIATION NO. 15-0766 IN THE AMOUNT OF \$80,000. THROUGH THE NEW MEXICO DEPARTMENT OF FINANCE & ADMINISTRATION (NMDFA) TO PURCHASE VARIOUS FIREFIGHTING EQUIPMENT; TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE CONTRACT AGREEMENT; AND TO AMEND THE CITY'S ADOPTED 2015 16 BUDGET.

MUNIS Comment: LEG. APPR.#15-0766; RESOLUTION

<u>Prepared by</u>	<u>Phone No.</u>	<u>FY to be Adjusted</u>	<u>Date</u>
Robert F. Lundien	541-2106	2015-16	19-Jan-15

Fund	Org	Object	Project	Object Name	Increase \$	Decrease \$
2500	25160010	552003	33075	NM DEPT OF FINANCE & ADMIN	80,000	
2500	25167010	730200	33075	MINOR EQUIPMENT	80,000	
Totals					\$160,000	\$0

<i>By signing, I verify balances and accounts are available in MUNIS.</i>			For use by Administration and Office of Mgmt & Budget		
		<u>Date</u>	Mark A. Winson, ACM / CAO		<u>Date</u>
Administrator / Manager		12/22/15			
Director		<u>Date</u>			12/30/2015
			Daniel Avila, ACM / COO		<u>Date</u>
For use by Office of Mgmt & Budget			Robert L. Garza, City Manager		
<i>Revised 5/05/2015</i>			<u>Date</u>		
<u>Budget Adjustment Number</u>	<u>Posted By</u>	<u>Date</u>			
Period: JE#			Budget and Grant Manager		<u>Date</u>



City of Las Cruces[®]

PEOPLE HELPING PEOPLE

9

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of January 19, 2016
(Adoption Date)

TITLE:

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES, ON BEHALF OF THE LAS CRUCES FIRE DEPARTMENT, TO ACCEPT LEGISLATIVE APPROPRIATION NO. 15-0766 IN THE AMOUNT OF \$80,000.00, THROUGH THE NEW MEXICO DEPARTMENT OF FINANCE & ADMINISTRATION (NMDFA) TO PURCHASE VARIOUS FIREFIGHTING EQUIPMENT; 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 Michelle K. Belone		541-2716	12/15/15
Fire Department Chief Travis Brown		528-3473	12/15/2015
Financial Services Victoria Fredrick		541-2080	12/16/15
Management & Budget Manager Robert Lundien		541-2106	12/22/15
Assistant City Manager /CAO Mark Winson		541-2100	12/30/15
Assistant City Manager/COO Daniel Avila		541-2100	12/30/2015
City Attorney Wm. R. Babington		541-2128	7 JAN 2016
Interim City Clerk Linda Lewis		541-2116	1-8-16