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City of Las Cruces[®]
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Council Action and Executive Summary

Item # 10 Ordinance/Resolution# 10-131 Council District: All

For Meeting of November 2, 2009
 (Adoption Date)

A RESOLUTION REPEALING RESOLUTION 95-184, APPROVING AN AGREEMENT BETWEEN THE LAS CRUCES SISTER CITIES, INC. (FOUNDATION) AND THE CITY OF LAS CRUCES, AND ESTABLISHING A NEW MEMORANDUM OF AGREEMENT BETWEEN THE TWO BODIES.

PURPOSE(S) OF ACTION: The City Council entered into an Agreement with the Sister Cities, Inc. (Foundation) in 1995 for the governance of the relationship between the two organizations and for the furtherance of the mission of Sister Cities: "Promote peace through mutual respect, understanding, & cooperation — one individual, one community at a time." This agreement relied on the input of the Sister Cities Advisory Board, appointed by the City to provide support and guidance to the Foundation. The Board has not been seen to meet since 1995 and so the Agreement is no longer effective. The new Agreement, attached as Exhibit "A" will redefine the relationship and responsibilities between the two groups.

Name of Drafter: Lori Grumet		Department: Public Services		Phone: 528-3477	
Department	Signature	Phone	Department	Signature	Phone
Originating Department		528-3477	Budget		2300
			Assistant City Manager		2271
Legal		528-2123	City Manager		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Information was presented to the City Council on July 20th, at which time consensus and direction to pursue a new Memorandum of Agreement was given. Without input from the Sister Cities Advisory Board, the Las Cruces Sister Cities Foundation continued to pursue activities such as: fundraising through an annual Yard Sale, Golf Tournament, and Renaissance Faire booth; Official exchange trips to Lerdo, Mexico; Visits from Lerdo and Nienburg officials, etc.

Local delegates continued to attend annual International Sister Cities Conferences.

Accountability between the two parties lapsed significantly since the last meeting of the City Board and needs to be re-established in the best interests of the mission of the Foundation and the City of Las Cruces. Additionally the original agreement was open-ended and the

(Continue on additional sheets as required)

new agreement will have an expiration date to encourage periodic examination of the relationship between the two groups.

The new Agreement between the Sister Cities, Inc. (Foundation) and the City will facilitate future growth, transparency and appropriate accountability for the Sister City programs while providing opportunities to revitalize and promote the Sister City mission through activities with Lerdo, Mexico and Nienburg, Germany.

The City Manager will designate a staff liaison to the Foundation. Support for the program will be pursued per direction from Mayor and Council within financial limits of each fiscal year budget.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
N/A	N/A	N/A

1. Resolution.
2. Exhibit "A" --Memorandum of Agreement.
3. Attachment "A" - Las Cruces Sister Cities Foundation, Inc. By-Laws (1992).
4. Attachment "B" - Resolution 95-184 (Reference Only).

OPTIONS / ALTERNATIVES:

1. A "Yes" Vote will implement the Memorandum of Agreement between the Las Cruces Sister Cities Foundation, Inc. and the City of Las Cruces.
2. A "No" Vote will result in the existing Memorandum of Agreement (95-184) continuing without the revisions relative to the elimination of the City Advisory Board.
3. Council may modify the ordinance and provide staff with alternate direction.

RESOLUTION NO. 10-131**A RESOLUTION REPEALING RESOLUTION 95-184, APPROVING AN AGREEMENT BETWEEN THE LAS CRUCES SISTER CITIES, INC. (FOUNDATION) AND THE CITY OF LAS CRUCES, AND ESTABLISHING A NEW MEMORANDUM OF AGREEMENT BETWEEN THE TWO BODIES.**

The City Council of the City of Las Cruces is informed that:

WHEREAS, the Sister Cities Foundation entered into a Memorandum of Agreement in 1995 for the governance of the relationship between the City and the Foundation; and

WHEREAS, the Agreement was predicated upon the input of the Sister Cities Advisory Board, that has not met since that time, rendering the agreement ineffective; and

WHEREAS, the Sister Cities Foundation and the City are desirous to continue with and promote the ideals and mission of Sister Cities International and wish to enter into a new agreement; and

WHEREAS, the new Agreement between the Sister Cities Foundation, Inc. and the City will facilitate future growth, transparency and appropriate accountability for the Sister City programs while providing opportunities to revitalize and promote the Sister City mission through activities with Lerdo, Mexico and Nienburg, Germany; and

WHEREAS, the City Manager will designate a staff liaison to the Foundation; and

WHEREAS, support for the program will be pursued per direction from the Mayor and Council within budgetary limits.

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

Resolution No. 10-131, cont.
Page 2

(I)

THAT Resolution 95-184 establishing a Memorandum of Agreement with the Sister Cities Foundation, Inc. is repealed and a new agreement as reflected in Exhibit "A" attached hereto is enacted.

(II)

THAT the City Manager will designate a staff liaison to the Foundation.

(III)

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

DONE AND APPROVED this _____ day of _____, 2009.

(SEAL)

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

City Attorney

APPROVED:

Mayor

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Archuleta: _____
Councillor Small: _____
Councillor Jones: _____
Councillor Thomas: _____

Memorandum of Agreement
Between the City of Las Cruces and Sister Cities of Las Cruces, Inc.

THIS Memorandum of Agreement is entered into between the City of Las Cruces, hereinafter "City" and Las Cruces Sister Cities Foundation, hereinafter "Foundation". Together the City and Foundation are referred to as the "Parties".

WHEREAS, the Parties have been working since 1982 to develop relationships with Lerdo, Mexico and Nienburg, Germany – designated as Sister Cities by the Las Cruces City Council;

WHEREAS, there being no "official" channel of communication between the Parties, they desire to formalize the relationship between the parties and outline respective responsibilities for the local Sister Cities program activities;

WHEREAS, the City Council of the City of Las Cruces is desirous of continuing with support for the Sister Cities Program as governed by the Sister Cities International organization;

NOW, THEREFORE, the parties hereby mutually agree as follows:

A. The City will:

1. Provide a designated Liaison to the Sister Cities Foundation board to provide assistance in communication with Council and to provide policy guidance.
2. Participate as far as funding allows in Sister City delegations and exchange programs.
3. Provide storage for Sister Cities records and maintain Sister City displays for the enjoyment of the general public.
4. Maintain links to the Sister Cities web pages from City web pages.
5. Publicize the meetings and activities of Sister Cities and encourage citizen participation

B. Las Cruces Sister Cities Foundation will:

1. Provide an annual report to City Council of Sister Cities activities and finances.

2. Maintain a formal relationship with the International Sister Cities Organization.
3. Actively encourage new members to join the existing Foundation Board and local Sister Cities Committee organizations.
4. Recruit general members to the Las Cruces Sister Cities organization.
5. Maintain and update the Sister Cities Website with links to the City of Las Cruces web pages and publish a Sister Cities Newsletter as outlined in the By-laws of the organization.
6. Hold a general membership meeting a minimum of once a year at which time the annual financial condition of the organization will be shared with the membership, and at which elections will be held for Foundation offices, and actively publicize meeting opportunities to the general public.
7. Operate its activities and management according to the requirements of the Las Cruces Sister Cities By-Laws.
8. Incur all expenses according to the Reimbursement Policy approved by the Foundation Board.

C. The Parties will:

1. Meet quarterly, to discuss program progress, community delegations, community student exchanges, and other related business.
2. Cooperate with one another in furtherance with the mission of Sister Cities International within the constraints of the City budget and the Foundation budget.

D. All correspondence relating to this Agreement shall be sent jointly to:

Terrence R. Moore, City Manager
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004

Hale Huber, Acting President
Las Cruces Sister Cities Fdn.
PO BOX 2066
Las Cruces, NM 88004

- E. This Agreement shall not be altered, changed or amended except by written instrument signed by both parties.

- F. By entering into this Agreement, neither party nor their respective "public employees," as defined in the New Mexico Tort Claims Act, waive sovereign immunity or any defense, or limitations of liability pursuant to law.
- G. It is agreed between the parties executing this Agreement that it is not intended by any of the provisions of the Agreement to create on behalf of the public or any member thereof the status of third party beneficiary or to authorize anyone not a party to the Agreement to maintain a suit based upon this Agreement.
- H. Neither party shall assign any interest in this Agreement nor transfer or assign any claims for money due or to become due under this Agreement, without the prior written consent of the other party.
- I. This Agreement shall be construed in agreement with the laws of the State of New Mexico. Both parties shall comply with all applicable federal, state and local laws, and specifically the New Mexico Procurement Code and any time limitations imposed by the State.
- J. If a dispute arises concerning the provisions contained in this Agreement, written notice outlining the complaint shall be provided by the aggrieved party. If the matter has not been informally resolved within ten business days, the services of a mediator shall be mutually enlisted within the next five business days. If a mediator is not agreed upon within this five day period, the contract is to be deemed terminated.
- K. This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.
- L. If any section, paragraph, sentence, clause, word, or phrase of this Agreement is for any reason held to be illegal, unconstitutional, invalid, or unenforceable by a court or agency of competent jurisdiction, said provision shall be considered to be automatically excluded from this agreement and shall not affect the validity of the remaining provisions of this Agreement.
- M. This Agreement may be amended only upon receiving the approval of the governing bodies of the Parties.
- N. Either Party may terminate this Agreement, which shall remain in force for the period of five (5) years, commencing on 6 November, 2009 and ending 30 October 2014, upon ninety (90) days advance written notice.
- O. This Agreement is contingent upon sufficient appropriation and authorization being made by the City and the Foundation for the applicable fiscal year for the performances under this Agreement. The City's determination whether

sufficient appropriations are available shall be accepted by the Foundation and shall be final.

- P. This Agreement cancels and replaces all prior agreements and understandings between the Parties relating to the Sister Cities program activities. No prior condition, agreement or understanding, verbal or otherwise, shall be valid or enforceable unless embodied in this Agreement.

IN WITNESS WHEREOF, each Party has executed this agreement effective Oct 1, 2009.

Terrence R. Moore, City Manager
City of Las Cruces


Hale Huber, Acting President
Las Cruces Sister Cities Fdn.

Approved as to form:


Deputy City Attorney

Las Cruces Sister Cities Foundation, Inc. By-Laws

The following are proposed by-laws for the Las Cruces Sister Cities Foundation, Inc., a not-for-profit corporation, duly organized and existing under and by the virtue of the laws of the State of New Mexico currently operating under the name Las Cruces Sister Cities, Inc. A name change to add the word "Foundation" is required.

ARTICLE I Objectives

The Foundation shall promote and encourage private and public programs to further the development of greater friendship and understanding between the people of Las Cruces and cities of other nations. In carrying out its duties and exercising its powers, the Foundation shall:

- A. Sponsor cultural, educational, economic and social activities which further international community friendships.
- B. Stimulate and sustain participation in and community support for Sister Cities programs approved by the Board of Directors.

ARTICLE II Membership and Dues

- Section 1. Membership in this Foundation shall be open to any individual or organization who supports its objectives and whose dues are current.
- Section 2. Membership dues and classes of membership shall be those that are prescribed by the Board of Directors and approved at the Annual Meeting of the Foundation, following requirements for altering, amending, or repealing amendments.
- Section 3. Each individual member or organizational member shall be entitled to one vote.

ARTICLE III
Board of Directors

- Section 1. The Board of Directors shall consist of elected officers, Group Representatives and Chairs of Standing Committees.
- Section 2. Elected officers of the Foundation shall be a President, First Vice-President, Second Vice President, Third Vice-President, Secretary, and Treasurer. Group Representatives are defined in Article V. Standing Committees are defined in Article VI.
- Section 3. Officers shall be elected by ballot at the Annual Meeting to serve for one year or until their successors are elected. The term of office for all elected officers shall begin July 1.
- Section 4. No member shall hold more than one office at a time.
- Section 5. No officer shall serve more than two consecutive terms.
- Section 6. With the exception of the office of President, vacancies occurring among the elected officers shall be filled by the Foundation Board of Directors. Vacancy of the office of President shall be filled by the First Vice-President.

ARTICLE IV
Duties of Elected Officers

- Section 1. The President shall preside over and conduct all meetings of the Foundation, appoint all committee chairs subject to the approval of the Board of Directors, and be an ex-officio member of all committees, with the exception of the Nominating Committee.
- Section 2. The First Vice-President shall serve as aide to the President and preside at meetings in the absence of the President. The First Vice-President shall also serve at the Chair of the Foundation Finance Committee and shall be responsible for fund raising activities. In the event of the inability of the President to continue serving, the First Vice-President shall assume the position of President.
- Section 3. The Second Vice-President shall serve as aide to the President and preside at meetings in the absence of the President and First Vice-President. The Second Vice-President shall also serve as Program Chair for regular meetings.
- Section 4. The Third Vice-President shall coordinate all membership activities.

- Section 5. The Secretary shall take accurate minutes of all meetings of the Board of Directors and the Foundation at large. The Secretary shall also serve in such capacities as assigned by the President.
- Section 6. The Treasurer shall handle all monies of the Foundation including each Affiliation Committee. This shall include, but not be limited to, collecting and accurately accounting for membership dues; collecting, disbursing, and accurately accounting for, or overseeing same, the monies for each Affiliation Committee. Disbursements for Affiliation Committees shall require the authorization of the President and the Chair of the appropriate Affiliation Committee. The Treasurer shall be a member of the Foundation Finance Committee.

ARTICLE V Group Representatives

- Section 1. Group Representatives shall consist of the Chairs of each formally established Sister Cities Affiliation Committees, the President of the Ambassadors, and the President of the Youth Group.
- Section 2. Group Representatives shall be elected by their respective bodies, shall conduct the necessary business within their own group and shall report at each meeting of the Board of Directors.

ARTICLE VI Standing and Special Committees

- Section 1. The members of each Standing Committee shall be appointed by the President subject to the approval of the Board. The terms of each member shall be for not more than one year beginning July 1 of each year. Vacancies shall be filled by appointments made by the President subject to the approval of the Board. Terms of members filling vacancies shall be the same as the member whose vacancy was filled. The President shall designate one of the members of each Committee as its Chair.
- Section 2. The Foundation Standing Committees, their members and duties shall be as follows:
- A. The Finance Committee shall consist of three members. Two of these members shall be appointed by the President subject to the approval of the Board. The third member shall be the Foundation Treasurer. The duties of the Finance Committee shall be to recommend an annual budget to the Board, be responsible to insure the accurate processing and accounting of all Foundation monies, and

insure that the Foundation's financial obligations, including corporate taxes, are appropriately processed.

- B. The Publicity Committee shall consist of not less than one, nor more than three members. The duties of the Publicity Committee shall be to design and recommend a publicity program to the Board and to carry out the Board approved publicity program. A publicity program shall include, but not be limited to, the publication of a periodical newsletter from the Foundation to its members, Foundation press releases, brochures, and pamphlets. In addition, the Publicity Committee shall support each of the other Standing Committees and Groups as needed and requested.
- C. The Education Liaison Committee shall consist of not less than one, nor more than three members. The duties of the Education Liaison Committee shall work with educational organizations and institutions in the Las Cruces area to further Sister School relations.

Section 3. Special Committees shall perform the required duties assigned and then disband. The Special Committees, their members and duties shall be as follows:

- A. The Auditing Committee shall consist of three members appointed by the President subject to the approval of the Board at least two (2) months prior to the Foundation's Annual Meeting. The Auditing Committee shall audit the Treasurer's accounts at the close of the fiscal year and report to the Board during their first meeting following the end of the fiscal year.
- B. The Nominating Committee shall consist of three members appointed by the President subject to the approval of the Board at least three (3) months prior to the Foundation's Annual Meeting. A written slate of nominees shall be presented to the membership one (1) month prior to the election.

Section 4. Other special committees may be appointed by the President when necessary to carry out the work of the Foundation. Each committee's purpose, members, duties, and term shall be subject to the approval of the Board.

ARTICLE VII Meetings

Section 1. The Foundation Board shall conduct no less than one (1) regular meeting of the membership during each fiscal year. Regularly scheduled meetings shall be announced to the full membership at least seven (7) days and not more than ninety (90) days prior to each meeting.

- Section 2. The Foundation Board shall conduct an Annual Meeting held at least sixty (60) days prior to the end of the fiscal year.
- Section 3. The Foundation Board shall conduct no less than four (4) regular Board of Director meetings during each fiscal year. These regular meetings are open to the membership.
- Section 4. The Foundation Board may hold special meetings as necessary to conduct the business of the Foundation. Special meetings must be announced in writing to the members of the Board at least three days prior to the meeting. The announcement must declare the purpose, time, and location of the special meeting.

ARTICLE VIII Quorum

- Section 1. For any regular or special meeting of the membership, the quorum shall consist of ten (10) percent of the total membership represented in person or by written proxy.
- Section 2. For any regular or special meeting of the Board of Directors, the quorum shall consist of not less than one-third of the Board members present in person.

ARTICLE IX Fiscal Year

The fiscal year shall be from July 1 to June 30.

ARTICLE X Basic Policies

- Section 1. No part of the net earnings of the Foundation shall inure to the benefit of, or be distributed to its members, officers, other private persons, except that the Foundation shall be authorized and empowered to pay reasonable compensation for service rendered and to make payments and distributions in furtherance of the purposes set forth in Article I.
- Section 2. Upon the dissolution of any Affiliation Committee, that Committees monies shall become the property of the Foundation.

Section 3. Upon the dissolution of this corporation, after paying or adequately providing for the debts and obligations of the corporation, the remaining assets shall be distributed to one or more non-profit funds, foundations, or organizations which have established their tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

ARTICLE XI
Parliamentary Authority

Robert's Rule of Order, Newly Revised, when not in conflict with these by-laws, shall govern the proceedings of the Foundation.

ARTICLE XII
Amendments

These by-laws may be altered, amended, or repealed and new by-laws adopted by a majority of the members present at the Annual Meeting or at any special meeting if at least five (5) days' notice is given to the membership of the intention to alter, amend, or repeal, or adopt new by-laws at such meeting. The consent of three-quarters of those members present and voting shall be required to amend the by-laws if such notice has not been given.

RESOLUTION NO. 95- 184

**A RESOLUTION APPROVING AN AGREEMENT BETWEEN
THE LAS CRUCES SISTER CITIES, INC.
(FOUNDATION) AND THE CITY OF LAS CRUCES.**

The City Council is informed:

WHEREAS, Section 6-5A-1 NMSA 1978 requires that any non-profit foundation organized for the sole purpose of aiding a municipal agency must enter into an agreement meeting the requirements of that Section; and

WHEREAS, the foundation will be an aid to the City's Sister Cities efforts.

NOW, THEREFORE, BE IT RESOLVED by the City of Las Cruces as follows:

(I)

THAT the attached agreement is hereby approved and the Mayor of the City of Las Cruces is authorized to execute the same.

(II)

THAT staff be authorized to do all acts necessary to accomplish the purposes of this Resolution and the Agreement.

DONE AND APPROVED this 3rd day of JANUARY, 1995.



Mayor

ATTEST:



City Clerk

(SEAL)

VOTE:

Mayor Smith	<u>Aye</u>
Councillor Ferralez	<u>Aye</u>
Councillor Kennon	<u>Aye</u>
Councillor Valencia	<u>Aye</u>
Councillor Benavidez	<u>Aye</u>
Councillor Tomlin	<u>Aye</u>
Councillor Haltom	<u>Aye</u>

Moved by: Valencia

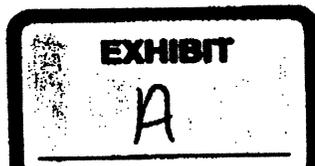
Seconded by: Kennon

AGREEMENT

THIS AGREEMENT is entered into by and between the City Council of the City of Las Cruces ("City") and the Las Cruces Sister Cities, Inc. ("Foundation") for the purpose of meeting the requirements of Section 6-5A-1 NMSA 1978.

The parties specifically agree as follows:

1. The Foundation is a not for profit corporation duly organized and incorporated in the State of New Mexico and is in good corporate standing.
2. The Foundation has been granted an exemption from federal income tax as an organization described in Section 501(c) of the Internal Revenue Code of 1986.
3. The City has determined that it is in its best interests to adopt Sister Cities and to do all acts necessary and has, in the accomplishment of the same, adopted Ordinance No. 1386 establishing a Sister Cities Board.
4. The purpose of the Foundation is, among other things to (1) join together Las Cruces and its Sister Cities, and (2) promote private and public programs which further friendship and understanding.
5. The purpose of the Foundation is supportive of the "duties and powers" of the Sister Cities Board as set forth in Ordinance No. 1386. The purpose of the Foundation may include direct financial aid by the Foundation to the Sister City.



6. The Foundation is an autonomous organization and its only direct legal connection with the City is that the Sister Cities Board may act in an advisory capacity to the Foundation. The City and the Foundation agree, to the maximum extent possible, to share information concerning Sister Cities and Sister Cities' programs.

7. The Foundation agrees that if its gross annual income exceeds \$100,000.00 it will have a financial accounting system considered adequate under customarily and currently accepted accounting standards and that the financial affairs of the organization will be audited annually in accordance with general accepted governmental auditing standards by an independent professional auditor who will be required to furnish to the City, copies of its annual audit, which, exclusive of any lists of donors and its donations, shall be public record, and to make the associated working papers available to the City for its review upon written request for a period of three (3) years after the audit report date. If, however, the gross annual income of the Foundation is less than \$100,000.00 the Foundation agrees to annually file a statement with the City (Director of Finance) in the form of a balance sheet showing the assets of the organization, its liabilities, its income (classified by general source), and its expenditures (classified by objects).

8. Any property or funds transferred by the Foundation to the City shall be subject to all state laws and regulations governing disbursement and administration of public funds and

public property, except to the extent any specific conditions of the transfer are acceptable to the City and do not require actions that are punishable as crimes under state law.

9. The City agrees and states that it has received the Bylaws of the Foundation and has found them acceptable and the Foundation agrees to furnish to the City any amendments or changes to those Bylaws.

10. In the event that the City provides any services in support of the Foundation the City and the Foundation will file a written disclosure of such services and specify the consideration that the City received for said services. The City agrees that for any money that it obtains for the Foundation's purpose stated hereinabove shall be invested with that degree of judgment and care, under the circumstances then prevailing, which men of prudence, discretion and intelligence exercise in the management of their own affairs, not for speculation but for investment, considering the probable safety of their capital as well as the probable income to be derived.

11. This Agreement contains the entire Agreement of the parties and there is no other understandings or agreements other than as specifically set forth herein.

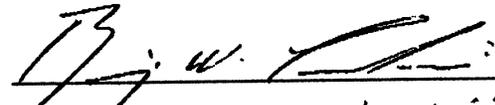
12. This Agreement may be modified by the parties in writing and signed by both parties.

DATED this 3rd day of January, 1995.

CITY OF LAS CRUCES

By 
Mayor

LAS CRUCES SISTER CITIES, INC.
(Foundation)

By 
Benjamin W. Luchini
President, 12/13/94

ARTICLE 5A**Requirements for Receiving Funds from Certain Organizations**

Sec.
6-5A-1. Definitions; requirements for governmental

entities that receive funds or property
from certain organizations.

6-5A-1. Definitions; requirements for governmental entities that receive funds or property from certain organizations.

A. As used in this section:

(1) "agency" means any state agency, department or board, any public institution of higher education or public post-secondary educational institution and any county, municipality or public school district;

(2) "organization" means an organization that has been granted exemption from the federal income tax by the United States commissioner of internal revenue as an organization described in Section 501(c) of the Internal Revenue Code of 1986, as amended or renumbered, and whose principal and authorized purpose is to complement, contribute to and support, aid the function of or forward the purposes of a single agency through financial support, the contribution of services, goods, data or information that help or aid the agency in carrying out its statutory purpose and goals, including, but not limited to, the provision of scholarships to students of educational institutions and the provision of grants to supplement ongoing research or to provide funds for research and programs being carried out by an agency;

(3) "post-secondary educational institution" means an educational institution designated in Article 12, Section 11 of the constitution of New Mexico, and any post-secondary educational institution, which term includes, but is not limited to, an academic, vocational, technical, business, professional or other school, college or university or other organization or person offering or purporting to offer courses, instruction, training or education through correspondence or in person, to any individual within this state over the compulsory school attendance age, if that post-secondary educational institution is directly supported in whole or in part by state or local taxation; and

(4) "transferred" means given or otherwise transferred, with or without consideration.

B. Prior to an agency accepting property or funds that have been transferred to an agency by an organization, the agency and the organization shall enter into a written agreement that includes at least the following:

(1) a concise statement of the organization's purpose and of how that purpose is supportive of the agency's statutory responsibilities and authority;

(2) provisions explicitly describing the relationship of the agency to the organization in connection with such issues as authority, autonomy and information sharing and reporting;

(3) provisions defining the extent to which the organization may complement and support functions that are the statutory responsibility of the agency;

(4) requirements that the organization:

(a) if its gross annual income exceeds one hundred thousand dollars (\$100,000), have a financial accounting system considered adequate under customarily and currently accepted accounting standards and that the financial affairs of the organization be audited annually in accordance with generally accepted governmental auditing standards by an independent professional auditor who would be required to furnish to the agency copies of his annual audit, which, exclusive of any lists of donors or donations, shall be a public record, and to make the associated working papers available to the agency for review upon its written request for a period of three years after the audit report date; or

(b) if its gross annual income is one hundred thousand dollars (\$100,000) or less, file a statement with the agency in the form of a balance sheet showing the assets of the organization, its liabilities, its income, classified by general source, and its expenditures, classified by object;

(5) a provision requiring that any funds or property transferred to an agency by an organization be considered subject to all state laws and regulations governing the disbursement and administration of public funds and public property, except to the extent of any specific conditions of the transfer that are acceptable to the agency and do not require actions that are punishable as crimes under state law;

(6) a provision stating that the agency has reviewed the bylaws of the organization and found them acceptable and a provision requiring that the organization furnish copies of the bylaws to the agency;

(7) a provision requiring specification of the consideration that the agency received from the organization for any agency services provided in support of the organization; and

(8) a provision requiring the application by the organization of the standard described in Section 6-8-10 NMSA 1978 as the standard for evaluating investments of the organization.

C. The written agreement required by Subsection B of this section is not required for each transfer but is a pre-condition of an agency's acceptance of any transfers. The agreement may be amended by mutual written agreement of the agency and the organization.

D. Nothing in this section subjects an organization to the provisions of the Open Meetings Act [Chapter 10, Article 15 NMSA 1978] or makes its records, other than the annual audit required under this section, public records within the purview of Sections 14-2-1 through 14-2-3 NMSA 1978.

History: Laws 1992, ch. 27, § 1.

Effective dates. — Laws 1992, ch. 27 contains no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, is effective on May 20, 1992.

Internal Revenue Code of 1986. — Section 501(c) of the Internal Revenue Code of 1986, referred to in Subsection A(2), appears as 26 U.S.C. § 501(c).

ARTICLE 6

Local Government Finances

- | | |
|--|--|
| Sec. | Sec. |
| 6-6-1. Definitions. | 6-6-10. Violation of expense limit; penalty. |
| 6-6-2. Local government division; powers and duties. | 6-6-11. Yearly expenditures limited to income; Bateman Act. |
| 6-6-3. Local public bodies; duties. | 6-6-12. Exemptions from Bateman Act. |
| 6-6-4. Local government division; research and survey; report to governor and legislature. | 6-6-13. Salaries to be prorated. |
| 6-6-5. Record of approved budget. | 6-6-14. Insufficient funds; prorating salaries and claims; preference for expense of boarding prisoners. |
| 6-6-6. Approved budgets; claims or warrants in excess of budget; liability. | 6-6-15. Void indebtedness; payment from later collections; disposition of surplus. |
| 6-6-7. Limitation on county expenditures during year official's term expires; exceptions. | 6-6-16. Appealed claims; payment. |
| 6-6-8. Repealed. | 6-6-17. Current year same as fiscal year. |
| 6-6-9. Limitation on municipal expenditures during year officials' terms expire. | 6-6-18. Current year; disposition of funds. |
| | 6-6-19. Local government permanent fund. |

6-6-1. Definitions.

"Local public body" means every political subdivision of the state which expends public money from whatever source derived, including but not limited to counties, county institutions, boards, bureaus or commissions; incorporated cities, towns or villages; drainage, conservancy, irrigation or their [other] districts; charitable institutions for which an appropriation is made by the legislature and every office or officer of any of the above. "Local public body" does not include county, municipal, consolidated, union or rural school