

CITY of ALBUQUERQUE

TWENTY-FIRST COUNCIL

COUNCIL BILL NO. R-15-158 ENACTMENT NO. _____

SPONSORED BY: Trudy E. Jones

1 RESOLUTION

2 APPROVING AND AUTHORIZING FUNDS RECEIVED FROM THE NEW MEXICO
3 DEPARTMENT OF PUBLIC SAFETY FOR THE ADMINISTRATION OF THE NEW
4 MEXICO DNA IDENTIFICATION SYSTEM ADMINISTRATIVE CENTER AND
5 PROVIDING FOR AN APPROPRIATION TO THE CITY OF ALBUQUERQUE,
6 POLICE DEPARTMENT.

7 WHEREAS, the City of Albuquerque has as one of its goals to enhance local
8 law enforcement efforts thereby providing for the public safety and welfare; and

9 WHEREAS, under the provisions of the New Mexico DNA Identification Act,
10 29-16-1 to 29-16-13 NMSA 1978, the New Mexico Legislature has designated
11 the Albuquerque Police Department, Scientific Evidence Division, Criminalistics
12 Section as the site for the Administrative Center and there is a suitable
13 Memorandum of Understanding between the New Mexico DNA Identification
14 System Oversight Committee and the City of Albuquerque; and

15 WHEREAS, grant funds in the amount of \$254,536 will be used for
16 personnel costs, supplies, and operational costs related to DNA identification;
17 and

18 WHEREAS, the City of Albuquerque is desirous of accepting these funds for
19 which indirect costs of \$9,379 are necessary to support this grant and are
20 available in the FY/15 Transfer to Operating Grants Fund Program in the General
21 Fund.

22 BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF
23 ALBUQUERQUE:

24 Section 1. That the attached letter from the New Mexico DNA Identification
25 System is hereby made a part of this resolution, is hereby approved and its

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[-Bracketed/Strikethrough Material-] - Deletion

1 submission and filing with the appropriate official or office of the New Mexico
2 Department of Public Safety is in all respects approved.

3 Section 2. That upon approval, funds in the amount of \$254,536 from the
4 New Mexico Department of Public Safety and indirect costs of \$9,379 from the
5 Fiscal Year 2015 Transfer to Operating Grants Fund Program in the General
6 Fund are hereby appropriated to the Albuquerque Police Department for a New
7 Mexico DNA Identification System Grant in the Operating Grants Fund, 265, for
8 Fiscal Year 2015.

9 Section 3. That upon approval of the grant, accrued interest earned of
10 \$1,200 is hereby appropriated to the Albuquerque Police Department for the
11 New Mexico DNA Identification System Grant in the Operating Grants Fund,
12 Fund 265, for Fiscal Year 2015.

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Mayor Richard J. Berry

CITY OF ALBUQUERQUE


Albuquerque, New Mexico

Office of the Mayor

INTER-OFFICE MEMORANDUM

Date: December 8, 2014

TO: Rey Garduño, President, City Council

FROM: Richard J. Berry, Mayor 

SUBJECT: Fiscal Year 2015 DNA Act Funds

For 17 years the New Mexico DNA Identification System (NMDIS) has been administered by the Albuquerque Police Department (APD). In this time, NMDIS has established a successful, statewide database system of DNA samples collected from designated felony offenders. Due to the personal nature of DNA, this program required an act by the Legislature. This act is the DNA Identification Act (the Act), 29-16-1 to 29-16-13 NMSA 1978.

With the enactment, and subsequent amendments to the Act, the Secretary of the Department of Public Safety (DPS), selected the APD Crime Lab as the site for the NMDIS Administrative Center. A Joint Powers Agreement between the DPS and the City was completed June 23, 1998 and then revised on August 11, 2003 and January 3, 2011. Pursuant to changes in the Act in 2013, the Joint Powers Agreement was replaced with a Memorandum of Understanding between the New Mexico DNA Identification System Oversight Committee and the City on January 31, 2014.


The New Mexico DNA Identification System Oversight Committee approved a drawdown of funds in the amount of \$254,536 for Fiscal Year 2015. DNA Act funds will be used for personnel, materials, supplies and contractual services.

Indirect costs of \$9,379 are necessary to support this grant and are available in the Fiscal Year 2015 Transfer to Operating Grants Fund Program in the General Fund.

This Resolution is forwarded to the Council for its action.

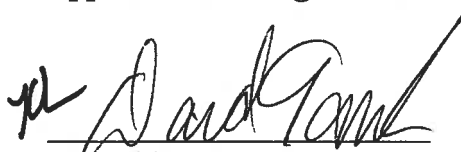
Title/ Subject of Legislation: Fiscal Year 2015 DNA Act Funds

Approved:




Robert J. Perry Date
Chief Administrative Officer 12-30-14

Approved as to Legal Form:



David Tourek
City Attorney

Recommended:



Gorden E. Eden, Jr.
Chief of Police

FISCAL IMPACT ANALYSIS

TITLE: FY2014 DNA Identification Systems Administrative Center Grant

R: O:
FUND: 265

DEPT: Police

- ☐ No measurable fiscal impact is anticipated, i.e., no impact on fund balance over and above existing appropriations.
- ☒ (If Applicable) The estimated fiscal impact (defined as impact over and above existing appropriations) of this legislation is as follows:

| | Fiscal Years | | | Total |
|-------------------------------------|--------------|------|------|------------|
| | 2015 | 2016 | 2017 | |
| Base Salary/Wages | \$ 95,700 | | | \$ 95,700 |
| Fringe Benefits at 52.06% | \$ 49,821 | \$ - | \$ - | \$ 49,821 |
| Subtotal Personnel | \$ 145,521 | \$ - | \$ - | \$ 145,521 |
| Operating Expenses | \$ 110,215 | | | \$ 110,215 |
| Property | \$ - | | | \$ - |
| Indirect Costs 9.80% | \$ 9,379 | \$ - | \$ - | \$ 9,379 |
| Total Expenses | \$ 265,115 | \$ - | \$ - | \$ 265,115 |
| [] Estimated revenues not affected | | | | |
| [x] Estimated revenue impact | | | | |
| Amount of Grant | \$ 255,736 | \$ - | \$ - | \$ 255,736 |
| City Cash Match | \$ - | \$ - | \$ - | \$ - |
| City Inkind Match | \$ - | | | |
| City IDOH | \$ 9,379 | \$ - | \$ - | \$ 9,379 |
| Total Revenue | \$ 265,115 | \$ - | \$ - | \$ 265,115 |

These estimates do not include any adjustment for inflation.

* Range if not easily quantifiable.

Number of Positions created 3

COMMENTS:

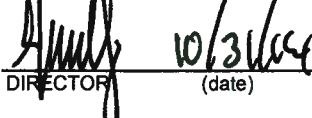
Indirect costs in the amount of \$9,379 are available from the Transfer to Operating Grants Fund Program in the General Fund. Anticipated interest earned of \$1,200 is part of the Fiscal Impact Analysis.

COMMENTS ON NON-MONETARY IMPACTS TO COMMUNITY/CITY GOVERNMENT:

REVIEWED BY:



FISCAL ANALYST

APPROVED:


DIRECTOR (date) 10/31/14

REVIEWED BY:


EXECUTIVE BUDGET ANALYST


BUDGET OFFICER (date) 11-5-14


CITY ECONOMIST

Cover Analysis

1. What is it?

The Albuquerque Police Department is requesting authorization for an appropriation of Convicted Offender DNA fees from the New Mexico Department of Public Safety for use by the New Mexico DNA Identification System Administrative Center.

2. What will this piece of legislation do?

This legislation appropriates a total of \$254,536 in Convicted Offender DNA fees to fund the operation of staffing, training, supplies and equipment as needed for the New Mexico DNA Identification System Administrative Center.

3. Why is the needed?

As designated by State Statute Section 29-16-4 NMSA 1978 and pursuant to an MOU between the New Mexico DNA Identification System Oversight Committee and the City of Albuquerque, the APD Crime Lab has been administering the provisions of the New Mexico DNA Identification Act since 1997. Funds are authorized for use by the Act and are available from the New Mexico Department of Public Safety. These funds are necessary for the APD to continue the work that is currently performed under state statute and the MOU. APD as well as all law enforcement throughout the State benefit from this program.

4. How much will it cost and what is the funding source?

The APD received funds in the amount of \$254,536 from the New Mexico Department of Public Safety for the New Mexico DNA Identification System Administrative Center. Also included is an appropriation in the amount of \$1,200 for anticipated interest earned. Indirect costs of \$9,379 are available from the FY/15 Transfer to Operating Grants Fund Program in the General Fund.

5. What will happen if the project is not approved?

If the project is not approved, the APD will be unable to provide the City and State with DNA offender comparisons of crime scene biological samples.

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NMDIS Administrative Center
% Metropolitan Forensic Science Center
5350 2nd Street, N.W.
Albuquerque, New Mexico 87107
(505) 823-4634 FAX (505) 823-4649

New Mexico DNA Identification System

August 7, 2014

Greg J. Fouratt
Cabinet Secretary
New Mexico Department of Public Safety
P.O. Box 1628
Santa Fe, NM 87504-1628

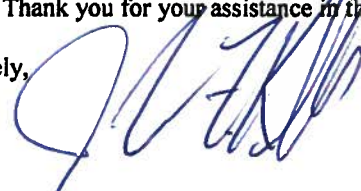
Dear Secretary Fouratt:

On July 15, 2014, the New Mexico DNA Identification System Oversight Committee (Committee) unanimously approved that a drawdown of \$254,536.00 (two hundred fifty-four thousand five hundred thirty six dollars and no cents) from the "DNA Identification System Fund" (Fund 402, Agency 790, Revenue Source 2990), be made, and that these funds shall be transferred by the appropriate means to the Albuquerque Police Department for use by the New Mexico DNA Identification System Administrative Center. Please accept this letter as the official request to effect this drawdown, as soon as is possible. Please mail any check or warrant, made out to the City of Albuquerque, to my attention at the above address, so that I can ensure that it is routed to the appropriate financial officials. These funds will be placed into an interest bearing account.

The authority for this action is the DNA Identification Act (Section 29-16-13 NMSA 1978 and as amended); the Memorandum of Understanding (Section 3) between the Committee, the New Mexico Attorney General, (acting on behalf of the Committee), and the City of Albuquerque, (acting on behalf of its police department) with the effective date of January 31, 2014, related to DNA Fund activities; and the aforementioned resolution of the Committee, as reflected in the meeting minutes.

A copy of the current DNA Act, the Memorandum of Understanding and the minutes of the July 15, 2014, Committee's action are enclosed for your reference. Please contact me at 505-823-4210 if you have any questions, need additional information or if there is any delay in effecting this drawdown and transfer of funds. Thank you for your assistance in this matter.

Sincerely,



John F. Krebsbach, MS
Chairman, New Mexico DNA Identification System Oversight Committee

Enclosures

Fighting Crime through Science

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Original letter as issued on 8-7-14.
Reprinted & signed
11 10-20-14

New Mexico DNA Identification System

DNA OVERSIGHT COMMITTEE MINUTES

Metropolitan Forensic Science Center Conference Room

July 15, 2014.

Members in Attendance: J. Krebsbach (APD); C. Dickey (NMDIS); M. Mikeska (NMDPS); M. McLean (NMAGO); M. Estrada (NMCD); H. Valdez (AODA); A. Wyman (OMI)

Others in Attendance: S. Dominguez

Meeting Called to order by J. Krebsbach at 11:00 am

- I. Approval of minutes from April 22, 2014. Motion made by M. McLean to approve minutes as printed. Motion seconded by M. Mikeska. Vote - Minutes approved.
- II. Public Comment. - None
- III. Committee Reports/Topics for Discussion:
 - A) DPS - M. Mikeska – nothing to report
 - B) APD – J. Krebsbach – nothing to report
 - C) AG – M. McLean – 1 pending Expungement request;
 - D) NMCD –M. Estrada – nothing to report - J. Krebsbach reported that fee collections are up from NMCD.
 - E) OMI – A. Wyman – nothing to report
 - F) NMCDL – not present
 - G) LONMPD – not present
 - H) AODA - H. Valdez – ADOC stopped supporting the Consolidated Query (NM Courts) website. DPS is taking over that website– contact them for login/password help.
 - I) Admin – J. Krebsbach reported on the following:
 - Replacement of Head of the Administrative Center – process of preparing for interviews underway. There are 5 candidates with 2 being out of state. The hope is to be able to conduct interviews the end of July or first part of August.
 - Finances – went over the spreadsheet
 - Legislature – request DPS to effect pass-through of legislative appropriation - Motion was made by M. McLean for the City of Albuquerque to accept the money on behalf of NMDIS for use by NMDIS. Motion seconded by C. Dickey. Vote – motion approved.
 - DNA Fees – request drawdown – Motion made by H. Valdez to approve drawdown as budgeted. Motion seconded by M. McLean. Vote – motion approved
 - Case to use for appeal of waived DNA Fee – still no good one.
 - Statistics - NM and FBI Refusals - 1 pending, Expungements - 1 pending.
 - Other discussion.- NMDIS training in Santa Fe for new Probation/Parole officers continues to be useful.

October 20, 2014

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- IV. Requests, motions or other actions by the Oversight Committee regarding anything discussed in committee reports. – None
- V. Motion for meeting to be adjourned by M. Estrada. Motion seconded by A. Wyman. Meeting adjourned at 11:43 am.
- VI. Next meeting approximately October 21, 2014.

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM (hereinafter referred to as "MOU") is entered into by and between the DNA Identification System Oversight Committee (hereinafter referred to as "Committee"), the New Mexico Attorney General, also acting on behalf of the DNA Identification System Oversight Committee, and the City of Albuquerque, acting on behalf of its police department (hereinafter referred to as "City") pursuant to Section 29-16-4 NMSA 1978, as amended, effective July 1, 2013.

IT IS MUTUALLY AGREED BETWEEN AND AMONG THE PARTIES:

1. PURPOSE OF MEMORANDUM:

The New Mexico Legislature has enacted in Laws 1997, Chapter 105, the DNA Identification Act, Section 29-16-1 et seq., NMSA 1978 (hereinafter referred to as "Act"). The Act establishes the location of the administrative center as the crime laboratory of the law enforcement agency described at Section 29-16-4(C) NMSA 1978. The purpose of this MOU is to provide for the Agreement described at Section 29-16-4(D) NMSA 1978 and to designate the crime laboratory of the police department of the City as that law enforcement agency that administers and operates the DNA Identification System.

2. SPECIFIC SERVICES TO BE PROVIDED:

The City will assume all operational responsibility of the administrative center (hereinafter referred to as "Center") pursuant to the Act, including maintaining the DNA Identification System and administering it pursuant to the provisions of Section 29-16-4 NMSA 1978; cooperating with the Committee established by Section 29-16-5 NMSA 1978 regarding compliance with Committee established rules, regulations, and procedures; overseeing collection of samples and maintenance of records in accordance with the Act, 10.14.200 NMAC and this

Agreement; and performing all other functions required for the efficient, professional operation of the Center.

3. FINANCIAL AGREEMENT BETWEEN THE COMMITTEE AND CITY:

Pursuant to Section 29-16-13 NMSA 1978, the money and investment income in the DNA Identification System Fund (hereinafter referred to as "Fund") shall, in part, be used to pay the expenses incurred by the City in the performance of this Agreement. The City will be strictly accountable for all receipts and disbursements from the Fund. The Center will periodically prepare a generalized budget for anticipated expenditures related to the administration of the Act and a request for approval by the Committee that money from the fund be withdrawn. Upon an approval by the Committee, the Chairperson shall, through an appropriate letter, voucher or other appropriate fiscal procedure, ensure that the approved funds are transferred to the City. Transferred funds shall be deposited into one or more separate accounts, maintained by the City in accordance with the City's Public Purchase Ordinance and its fiscal control statutes related to expenditures, and, whenever possible, such accounts shall be interest bearing.

Any funding designated for use by the Center that is controlled by other governmental entities, i.e. the New Mexico Legislature or the federal government, that does not pass through the Fund shall be transferred, received and expended by the Center in compliance with the specific funding entity's fiscal requirements and in such a way to, as closely as possible, comply with all other aspects of Section 3 of this MOU.

The City shall keep the Committee advised of all expenditures made by the City on a quarterly basis and upon request. The City shall annually certify to the Committee that all money withdrawn from the Fund or received from other sources was expended in accordance

with the provisions of the Act and this MOU. Financial information regarding deposits and disbursements may be subject to an annual audit by the State Auditor.

4. USE OF EQUIPMENT AND FACILITIES:

The City shall provide to the Center any equipment or facilities necessary to the performance of this Agreement. The City may use the funds to purchase equipment in the performance of this MOU in accordance with Section 29-16-13 NMSA 1978. Any equipment, supplies or materials purchased pursuant to this MOU for use by the Center shall become the sole property of the Center regardless of its designated location.

Any equipment, supplies or materials purchased pursuant to this MOU for use, as is allowed pursuant to Section 29-16-13(E) NMSA 1978, shall become the sole property of the respective law enforcement agency, correctional facility, jail, detention facility, judicial agency, the public defender department or the office of the state medical investigator, regardless of its designated location.

5. REVIEWS AND REVISION:

This MOU may be reviewed and revised as needed. Any modification of this MOU or additional obligation assumed by any party in connection with this MOU shall be binding only if: A.) the New Mexico Legislature makes a change in the DNA Identification Act, Section 29-16-1 et seq., or, B.) the modification is in writing and signed by each party or an authorized representative of each party.

6. DURATION AND TERMINATION OF THIS MEMORANDUM:

This MOU shall become effective when it has been signed by all parties and shall remain in full force until rescinded or terminated by the Committee or the City in accordance with this MOU. Future amendments to the Act shall not invalidate this MOU.

This MOU shall be rescinded at any time, such rescission being in writing and signed by all parties, and that a reasonable and suitable alternate MOU becomes effective when it has been signed by all parties." Pursuant to the relocation clause of Section 29-16-4(C) NMSA 1978, the Committee or the City may at any time, and with cause, terminate this MOU by providing three hundred sixty five (365) days written notice to the other party. If a reasonable and suitable alternate MOU cannot be agreed upon within the period following the written notice of termination, all surplus money shall be returned to the DNA Identification System Fund within ninety (90) days of termination.

7. CONTROL OF PERSONNEL:

The City shall provide the personnel necessary to effect the purposes of this MOU and acknowledges it will be responsible for claims or damages arising from personal injury or damage to persons or property to the extent they result from the negligence of its employees. In addition to the Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, and any amendments thereto, the liability of the City in the performance of this MOU shall be subject to Section 29-16-7 NMSA 1978. Nothing in this MOU shall be deemed to create any additional liability or waive any immunities and limitations of the Tort Claims Act, Section 41-4-1 et seq., NMSA 1978, or any amendments thereto.

8. RECORDS TO BE MAINTAINED:

The City shall maintain records necessary to perform the purpose of the Act, as directed by the Committee and as requested by the Attorney General or the State Auditor. All DNA records and samples are confidential and shall not be disclosed to the public or any public official except as authorized in Section 29-16-8 NMSA 1978.

The City shall expunge from the DNA Identification System and from CODIS any sample and DNA records in accordance with Sections 29-16-10 and 29-16-10.1 NMSA 1978, as amended.

9. LEGAL CONTINGENCIES:

The parties agree that the Committee and the City shall first work together to resolve any disputes arising out of this MOU. A dated and written notice of a dispute shall be prepared and delivered to all parties. If the dispute cannot be resolved within thirty (30) days, then either party may make a demand for arbitration by filing such demand in writing with the other party within ninety (90) days after the dispute first arose. Thereafter, the dispute shall be submitted to non-binding arbitration in the venue of its choice. Nothing in this section prohibits the parties from exercising their full rights under the law.

10. MISCELLANEOUS:

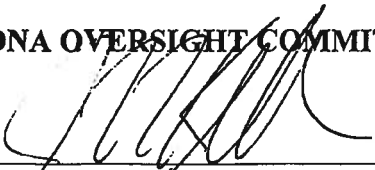
This MOU shall constitute the entire agreement between and among the parties and any prior understanding or representation of any kind preceding the date of this MOU shall not be binding upon either party except to the extent incorporated in this MOU.

The invalidity of any portion of this MOU will not and shall not be deemed to affect the validity of any other provision. If any provision of this MOU is held to be invalid, the parties agree that the remaining provisions shall be deemed to be in full force and effect as if they had been executed by both parties subsequent to the deletion, severance or vacation of the invalid provision.

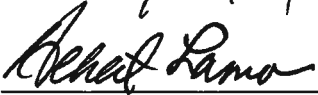
The titles to the paragraphs of this MOU are solely for the convenience of the parties and shall not be used to explain, modify, simplify, or aid in the interpretation of the provisions of this MOU.

IN WITNESS WHEREOF, each party to this MOU has caused it to be executed on the date indicated below.

DNA OVERSIGHT COMMITTEE



John F. Krebsbach
Chairperson

Date: 1/21/14


Albert Lama, Chief Deputy
New Mexico Attorney General

Date: 1/27/14

CITY OF ALBUQUERQUE


Robert J. Perry
Chief Administrative Officer

Date: 1/31/14


Allen J. Banks
Interim Chief of Police

Date: 1-30-14

Reviewed By:


Kathryn Levy
Deputy City Attorney

Date: 1-30-14