City of Las Cruces®

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Council Action and Executive Summary

Item # 11 **Ordinance/Resolution#** 10-166 **Council District:** ___

For Meeting of February 2, 2010

TITLE:

A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE COOPERATIVE PROJECT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO DEPARTMENT OF TRANSPORTATION TO FUND THE RIGHT OF WAY AND RECONSTRUCTION OF MAIN STREET FROM GRIGGS AVENUE TO LOHMAN AVENUE.

PURPOSE(S) OF ACTION: **Acceptance of First Amendment to Original Agreement**

Name of Drafter: Louis Grijalva Verified By Amber Vaughn AV		Department: Public Works Project Development		Phone: 528-3479	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Public Works		528-3333	Budget		2300
			Assistant City Manager		2271
Legal	2-1-2010		City Manager		2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) entered into a Cooperative Project Agreement with the New Mexico Department of Transportation (NMDOT), for the Right of Way and Reconstruction of Main Street from Griggs Avenue to Lohman Avenue Project (NMDOT Project STP-9991-2(1), Control Number 1100070), pursuant to Resolution 09-278, signed and approved by City Council May 18, 2009.

Per page 11, Section Eighteen of the Cooperative Project Agreement, both parties are granted rights to make alterations and revisions to the said Agreement. NMDOT has submitted a First Amendment to Cooperative Project Agreement requesting the following changes:

(Continue on additional sheets as required)

1. Page 1, Section One: Verbiage to include, "...the City's P, S & E Package authorized for obligation by FHWA and outlined in Section Two of this Agreement."
2. Page 1, Section Two: Revision of date from '2008/2009' to '2009/2010' and to include the following:
   "2. The City shall pay all Project costs that exceed the total funding amount." And,
3. Page 10, Section Sixteen, Paragraph 1: A complete revision of the verbiage.

Except for the above mentioned amendments, the original Cooperative Project Agreement shall remain in full force and effect.

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
State Street Imp Grants Fund 4212 42806030-854121-70W01	$ 1,176,000.00	$ 1,176,000.00

1. Resolution.
2. Resolution 09-278, Attachment "A".
3. Original Cooperative Project Agreement, Attachment "B".
4. Letter from NMDOT, dated November 10, 2009, Attachment "C".
5. First Amendment to Cooperative Project Agreement, Exhibit "A" (3 Copies).

OPTIONS / ALTERNATIVES:

1. Accept the First Amendment to the NMDOT Cooperative Project Agreement.
2. Reject the First Amendment to the NMDOT Cooperative Project Agreement.

(Continue on additional sheets as required)

RESOLUTION NO. 10-166

A RESOLUTION APPROVING THE FIRST AMENDMENT TO THE COOPERATIVE PROJECT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO DEPARTMENT OF TRANSPORTATION TO FUND THE RIGHT OF WAY AND RECONSTRUCTION OF MAIN STREET FROM GRIGGS AVENUE TO LOHMAN AVENUE.

The City Council is informed that:

WHEREAS, the City of Las Cruces and the New Mexico Department of Transportation entered into a Capital Cooperative Agreement to fund a City capital project on July 2,2009; and

WHEREAS, the project and the respective funding amount was as follows:

1. Project STP-9991-2(1), $1,176,000.00 for Right of Way and reconstruction of Main Street from Griggs Avenue to Lohman Avenue in Las Cruces in Dona Ana County.

WHEREAS, Page 11, Section Eighteen, of the original Agreement allows both parties to make alterations and revisions to the said Agreement; and

WHEREAS, it has become necessary to amend the said Agreement to change date and extend deadlines; and

WHEREAS, it has become necessary to amend the said Agreement to remove Page 1, Section One in its entirety and insert the following:

The purpose of this Agreement is to specify and delineate the rights and duties of the parties hereto as described in the Project Identification Form, Statewide Transportation Improvement Program (STIP), the City's P, S & E Package authorized for obligation by FHWA and outlined in Section Two of this

Agreement. This Project shall hereinafter be referred to interchangeably as "Project" or "Project Control No. 1100070." This Project is a joint and coordinated effort for which the Department and the City each have authority or jurisdiction; and

WHEREAS, it has become necessary to amend the said Agreement to remove Page 1, Section Two in its entirety and insert the following:

1. The total funding for Project Control No. 1100070, is One Million One Hundred Seventy Six Thousand Dollars ($1,176,000.00) to be funded in proportional share by the parties hereto as follows:

A. <u>2009/2010 Section 129 Demo ID NM085 (STP) Funds</u>

<u>Department's 100% share</u> $1,176,000

For Right of Way and reconstruction of Main Street

From Griggs Avenue to Lohman Avenue.

C. <u>The Total Project Funding</u> **<u>$1,176,000</u>**

2. The City shall pay all costs that exceed the total funding amount; and

WHEREAS, it has become necessary to amend the said Agreement to remove Page 10, Section Sixteen, Paragraph 1 in its entirety and replace the following in lieu thereof:

1. This Agreement shall terminate on **September 30, 2014.** Neither party shall have obligation under this Agreement after said date except as stated in Section Six of this Agreement.

2. The Department may, at its option, terminate this Agreement if the funds identified in Section Two of this Agreement have not been contractually committed between the City and a contractor within one year from the date the funds have been authorized by the FHWA.
3. The Department will review on a quarterly basis inactive projects. An inactive project for this purpose means a project for which no expenditures have been charged against Federal funds for the past 12 months.
4. If the Department determines a project to be inactive, the Department may, as directed by FHWA, redirect the unexpended balance as per 23 CFR 630.106.
5. The Department may, at its option, terminate this Agreement if the City fails to comply with any provision of this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

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

(I)

THAT the First Amendment to the Capital Cooperative Agreement attached as Exhibit "A", is hereby approved.

(II)

THAT the Mayor is hereby authorized to execute the First Amendment to the Capital Cooperative Agreement on behalf of the City.

(III)

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

DONE AND APPROVED this 2nd day of February, 2010.

APPROVED:

(SEAL)

_____
Mayor

ATTEST:

_____
City Clerk

VOTE:
Mayor Miyagishima: ____
Councillor Silva: ____
Councillor Connor: ____
Councillor Pedroza: ____
Councillor Small: ____
Councillor Sorg: ____
Councillor Thomas: ____

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:

Deputy City Attorney

RESOLUTION NO. 09-278

A RESOLUTION ACCEPTING THE COOPERATIVE PROJECT AGREEMENT FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE MAIN STREET RECONSTRUCTION PROJECT IN THE AMOUNT OF $1,176,000.00 AND TO AMEND THE FISCAL YEAR 2008/2009 BUDGET.

The City Council is informed that:

WHEREAS, the 2008/2009 Statewide Transportation Improvement Program (STIP) appropriated $1,176,000.00 to the City of Las Cruces to fund Project STP-9991-2(1), Control Number 1100070 for right-of way acquisition and the reconstruction of Main Street from Griggs Avenue to Lohman Avenue in Las Cruces in Dona Ana County; and

WHEREAS, the New Mexico Department of Transportation requires that the City enter into an agreement to facilitate the receipt and expenditure of these funds.

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

(I)

THAT the agreement for the Cooperative Project Agreement between the City of Las Cruces and the New Mexico Department of Transportation to fund the Main Street Reconstruction Project in the amount of $1,176,000.00 is authorized.

(II)

THAT the Fiscal Year 2008/2009 Budget is hereby amended as outlined on the attached Exhibit "A".

(III)

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

DONE AND APPROVED this 18th day of May 2009.

(SEAL)

APPROVED:

Mayor

ATTEST:

Deputy City Clerk

VOTE:

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

Moved by: Connor

Seconded by: Silva

APPROVED AS TO FORM:

City Attorney

09-211

ATTACHMENT "B"

Contract Number D12749
Vendor Number 0000054342
Project Number STP-9991-2(1)
Control Number 1100070

COOPERATIVE PROJECT AGREEMENT

This Agreement is made and entered into this 2ND day of July, 2009, by and between the New Mexico Department of Transportation, herein referred to as "Department," and the City of Las Cruces, herein referred to as "City."

In consideration of the covenants contained herein and pursuant to the NMSA 1978, Section 67-3-28, the parties agree as follows:

SECTION ONE: PURPOSE

The purpose of this Agreement is to specify and delineate the rights and duties of the parties hereto as described in the Project Identification Form, Statewide Transportation Improvement Program (STIP), and outlined in Section Two of this Agreement. This Project shall hereinafter be referred to interchangeably as "Project" or "Project Control No. 1100070." The Project is a joint and coordinated effort for which the Department and the City each have authority or jurisdiction.

SECTION TWO: PROJECT FUNDING BY PARTIES

1. The total funding for Project Control No. 1100070, is One Million One Hundred Seventy Six Thousand Dollars ($1,176,000) to be funded in proportional share by the parties hereto as follows:

A. **2008/2009 Section 129 Demo ID NM085 (STP) Funds Department's 100% share** — $1,176,000
For Right of Way and reconstruction of Main Street From Griggs Avenue to Lohman Avenue.

B. **The Total Project Funding** — **$1,176,000**

2. The **City** shall pay all Project costs that exceed the total funding amount.

SECTION THREE: CITY SHALL

1. Act in the capacity of lead agency for the Project.
2. Utilize the project control number in all correspondence and submittals to the Department.
3. Pay all costs, perform all labor, and supply all material for the Project.
4. Provide a representative from its organization who shall serve as the single point of contact to the Department.
5. Adopt a written resolution of support for the Project, including an assumption of ownership, liability, maintenance responsibility, related amenities, and availability of required matching funds.
6. Obtain approval of Plans Specifications and Estimate (PS&E) Package which include the following:
   a. Construction Plans
   b. Engineer's Estimate/Engineers Opinion of Probable Cost
   c. Specifications
   d. Contract Book
7. Obtain written authorization from the Department prior to advertising the Project for bids or commencing with in kind labor for the project.
8. Advertise, let, and supervise the construction of Project Control No. 1100070.
9. If the project is Bid, require its engineer to prepare a final detail estimate of the work, indicating the bid items, the quantity in each item, the unit bid price, and cost of the items based on such bid price.
10. If the project will be constructed with City resources, prepare a detail of equipment, labor, and a project schedule, and submit to the Department's District Office.
11. Obtain Department concurrence in award.
12. Agree that reimbursement requests shall be submitted to the Department's District Office so that details of the quantities allowed on various items of work shall be shown for each progress payment. All detail payment requests shall be in the Department's approved federal aid format and shall be submitted to the Department's District Office on a monthly basis.
13. Agree that the Department has the option to terminate this Agreement if the City's submittal of the Certification Package is not received by the Department's Regional Division Manager or Designee by August 15th of the year in which the project funds are programmed. The Certification Package shall remain in the City's project file

for a minimum of five years and shall contain the following documents as applicable:

a. Signed Certification of Pre-Construction Phase **(Appendix F-1);**
b. Estimate of T/LGA Project Pay-Out **(Appendix F-2)**;
c. The PS&E assembly;
d. Environmental clearance documentation from FHWA;
e. Documentation of concurrence by the State Historic Preservation Officer
f. Right of way certification documentation; and
g. Utility certification documentation.

14. Agree that if current federal fiscal year funding has not been authorized by FHWA by **September 30th**, this Agreement shall terminate, unless prior federal fiscal year funding has been previously authorized. If the City cannot meet the Federal Fiscal year deadline, and the money is reprogrammed for the next fiscal year this agreement will remain in effect.
15. Be responsible for preliminary engineering, environmental documentation, right of way activities, project development, utility coordination, project construction, and construction management and testing.
16. Be responsible for all applicable design, pre-construction and maintenance activity including, but not limited to the following:

a. utility coordination and relocation;
b. drainage and storm drain design;
c. geotechnical design;
d. pavement design;
e. traffic design;
f. structural design;
g. environmental and archaeological clearances;
h. right of way mappings;
i. right of way acquisition;
j. hazardous materials site(s) and contamination investigations;
k. public involvement;
l. agency coordination;
m. permit application;
n. blading;
o. shaping;
p. snow removal;
q. gravel;

r. repair of washouts; and

s. chip sealing.

17. Develop and execute the Project in accordance with the Department's current Tribal/Local Government Agency Handbook.

18. Cause all designs in accordance with **Appendix A**, "Preliminary Engineering/Construction Engineering" to be performed under the direct supervision of a Registered New Mexico Professional Engineer and/or Registered New Mexico Architect, as required by NMSA 1978, Sections 61-23-21 (1999) and 61-15-1 (1987).

19. Design the Project in accordance with **Appendix C**, "Design Standards," which is hereby incorporated in this Agreement.

20. Comply with **Appendix D**, "Survey and Right of Way Acquisitions Requirements," which is hereby incorporated in this Agreement.

21. Comply with **Appendix E**, "Construction Phase Duties and Obligations," which is hereby incorporated in this Agreement, for construction projects.

22. Submit all required environmental documents to the Department's Environmental Section. The Department shall coordinate all activities related to environmental certifications through the FHWA.

23. Warrant, covenant, and agree that the City will comply with conditions and terms contained in **Appendices A through F-2**. The City will perform any and all applicable obligations contained herein.

24. Complete the environmental process in accordance with state and federal guidelines and regulations including the National Environmental Policy Act, FHWA Technical Advisory T 6640.8, 23 CFR 771, and the Guidelines for Preparing Environmental Documents. This effort includes, but will not be limited to:

    a. If applicable, be responsible for the Location Corridor Study, as described in **Appendix B**. Initiate and cause to be prepared, the Initial Corridor Analysis Report "Phase A Report," the Location Study Report "Phase B Report," and Environmental Documents "Phase C."

    b. Determining the appropriate level of effort for completing the environmental process.

    c. Completing the necessary consultations with the State Historic Preservation Officer (SHPO) and other consulting or interested parties, pursuant to Section 106 of the National Historic Preservation Act or state cultural resource statutes.

d. Conducting and documenting hazardous materials investigations according to the Department's Environmental Geology Section's Hazardous Materials Assessment Handbook.

e. Conducting and documenting the appropriate public notifications and public involvement activities.

f. Submittal of the appropriate environmental documents by a qualified environmental professional to the Department. A qualified environmental professional shall be an individual with at least four years of full-time paid experience in environmental investigations, including analyzing and preparing documentation needed to meet FHWA approval requirements for the National Environmental Policy Act (NEPA) and related legislation.

g. Maintain on file all supporting documentation including social, economic and environmental evaluations (SEE), biological evaluations, wetland determinations, public involvement and agency coordination, and hazardous materials investigations for a minimum of five years after project completion.

h. Produce and distribute to regulatory agencies and interested parties the appropriate number of copies of environmental documents.

SECTION FOUR: DEPARTMENT SHALL

1. Assign a representative to provide technical assistance in developing, monitoring and overseeing of this project.
2. Provide the City, as requested, a list of qualified environmental professionals who have demonstrated their qualifications to the Department.
3. Provide copies of environmental guidelines, Location Corridor Study Procedures, laws, and regulations as requested.
4. Review NEPA and related environmental documentation for completeness but not accuracy.
5. Transmit NEPA documents to the FHWA for review and approval.
6. Review cultural resource technical reports and SHPO and agency consultation, and provide comments to the City as necessary. The City remains responsible for official consultation with the SHPO and other consulting or interested parties.
7. Review required certification documents for completion prior to requesting obligation of federal funding. Review of documents by the Department does not relieve the City or its consultants of their responsibility for errors and omissions.

SECTION FIVE: BOTH PARTIES AGREE

Upon termination of this Agreement, the City shall account for any remaining property, materials or equipment that belongs to the Department, and dispose of it as directed by the Department.

SECTION SIX: PROJECT RESPONSIBILITY

The City is solely responsible for ensuring that the project is carried out to completion.

SECTION SEVEN: SOLE JURISDICTION

The roadway shall remain part of the state highway system. The Department shall maintain ownership over the state or federal route and shall maintain the route with its own funds.

SECTION EIGHT: LEGAL COMPLIANCE

The City shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental issues, workplace safety, employer-employee relations and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The City shall ensure that the requirements of this compliance are made a part of each subcontract on this Project at all tiers.

SECTION NINE: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND POLICY

In accordance with Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) or as may be amended, the City shall agree to abide by and take all necessary and reasonable steps to comply with the following:

1. DBE Policy – It is the policy of the Department to implement the provisions of 49 CFR 26, other pertinent regulations, and source legislation. The objectives are:
    a. To ensure nondiscrimination in the award and administration of United States Department of Transportation DOT-assisted contracts in the DOT's highway, transit, and airport financial assistance programs.
    b. To create a level playing field on which Disadvantaged Businesses (DBE's) can fairly compete for DOT-assisted contracts.
    c. To ensure that DOT's DBE Program is narrowly tailored in accordance with applicable law.

d. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBE's.

e. To help remove barriers to the participation of DBE's in DOT-assisted contracts.

f. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

2. DBE Obligations – The Department will establish the state DBE goal on an annual basis. The City is responsible for contacting the Department's Office of Equal Opportunity Programs (OEOP) to obtain the current annual DBE goal.

a. Means for Attaining the State Goal – The Department will meet the state DBE goal on federally assisted projects through race neutral measures. There will be no individual project goals on federally assisted projects unless an analysis of DBE utilization indicates that the goal falls substantially short of the annual goal and that good faith efforts have not been fulfilled. In the event that Department adopts race conscious measures to attain the state DBE goal, the City shall be required to implement the individual project goal established by the Department.

b. Record Keeping Responsibilities – The City is responsible to appoint a DBE liaison officer and assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the Department's OEOP at the following address:

New Mexico Department of Transportation
OEOP
Aspen Plaza, Suite 107
1596 Pacheco Street
Santa Fe, New Mexico 87505
1-800-544-0936 or 505-827-1774

3. Department's DBE Program – The Department's DBE Program, 18.28.2 NMAC, as required by 49 CFR 26 and as approved by DOT, is incorporated herein by reference and made part of this Agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the City of its failure to carry out the terms and conditions of the DBE Program the Department may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for

enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

4. Recipient/City Assurances – Each contract the City enters into with a construction contractor, design consultant, other consultant or recipient on a DOT-assisted project shall ensure that such contract and subcontracts shall include the following assurances:

   a. Recipient shall not discriminate on the basis of race, age, color, religion, national origin, sex, disability, veteran status, or sexual orientation in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR 26. The Department shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and the administration of DOT-assisted contracts. The Department's DBE Program, as required by 49 CFR 26 and as approved by DOT, is incorporated herein by reference and made part of this Agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the recipient of its failure to carry out its approved program the DOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

   b. The recipient shall not discriminate on the basis of race, age, color, religion national origin, sex, disability, veteran status, or sexual orientation in the performance of this Agreement. The recipient shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the recipient to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Department deems appropriate.

SECTION TEN: THIRD PARTY BENEFICIARY CLAUSE

No provision of this Agreement creates in the public, or any member thereof, a third party beneficiary nor authorizes anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION ELEVEN: NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Department or the City arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

SECTION TWELVE: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS

There shall be strict accountability for all receipts and disbursements relating hereto. The City shall maintain all records and documents relative to the Project for a minimum of five years after completion of the Project. The City shall furnish the Department, State Auditor, or appropriate federal auditors, upon demand, any and all such records relevant to this Agreement and allow them the right to audit all records, which support the terms of this Agreement. If an audit finding determines that specific funding use was inappropriate or not related to the Project, the City shall reimburse that portion to the Department within thirty days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expenses supported by such insufficient documentation shall be reimbursed to the Department within thirty days.

SECTION THIRTEEN: AUTHORIZATION OF EXPENDITURES

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the State Legislature, or the Congress of the United States, if federal funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the State Legislature, or the Congress of the United States, this Agreement shall terminate upon written notice given by the Department to the City. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, obligated by FHWA, encumbered, and approved for expenditure by the Department. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

SECTION FOURTEEN: REIMBURSEMENT FOR EXPENDITURES INCURRED

The Department's District Office shall reimburse the City upon receipt of payment requests for the purposes stated in Section Two, with supporting documentation as determined and/or approved by the Department, certifying that costs have been incurred in compliance with this Agreement. Such invoices shall be submitted to the Department District office on a monthly basis. Payment requests shall be certified by the City authenticating that the requests accurately reflects work completed, amount due,

remaining Agreement balance, and project control number. All expenses must be actual rather than estimated and must be listed on the payment request as charged. Only those expenses that are properly documented and deemed eligible will be reimbursed under this Agreement. Incomplete submittals will be returned to the City for corrections. The Department's District Office will not reimburse the City for any costs incurred prior to the full execution of the Agreement and obligation of federal funding, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Costs incurred prior to FHWA authorization require additional justification as per Title 23 CFR Part 1.9. Final payment requests shall be submitted to the Department's District Office within six months of completion of the project and prior to the termination date identified within Section Sixteen.

SECTION FIFTEEN: TERMS OF THIS AGREEMENT

This Agreement constitutes the entire Agreement between the parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this Agreement and not enforceable pursuant to this Agreement. Performance of all duties and obligations herein shall conform with and shall not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

SECTION SIXTEEN: TERMINATION

1. This Agreement shall terminate on **September 30, 2013.** Neither party shall have obligation under this Agreement after said date except as stated in Section Six of this Agreement.
2. The Department may, at its option, terminate this Agreement if the funds identified in Section Two of this Agreement have not been contractually committed between the City and a contractor within one year from the date the funds have been authorized by the FHWA.
3. The Department will review on a quarterly basis inactive projects. An inactive project for this purpose means a project for which no expenditures have been charged against Federal funds for the past 12 months.
4. If the Department determines a project to be inactive, the Department may, as directed by FHWA, redirect the unexpended balance as per 23 CFR 630.106.
5. The Department may, at its option, terminate this Agreement if the City fails to comply with any provision of this Agreement. By such termination, neither party

may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

SECTION SEVENTEEN: SEVERABILITY

In the event that any portion of this Agreement is determined to be void, unconstitutional, or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

SECTION EIGHTEEN: AMENDMENT

This Agreement shall not be altered, modified, supplemented, or amended except by an instrument in writing and executed by the parties hereto.

In witness whereof, the parties have set their hands and seal the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____ Date: 7/2/09
Deputy Secretary

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

By: _____ Date: 4-2-09
Assistant General Counsel

CITY OF LAS CRUCES

By: _____ Date: 5/28/09
Mayor

ATTEST

By: _____ Date: 5/28/09
Deputy City Clerk

APPROVED AS TO FORM BY THE CITY ATTORNEY

By: _____ Date: 27 May 09
City Attorney

Preliminary Engineering/Construction Engineering

1. The City may select design consultants for studies and preliminary engineering and construction engineering. Preliminary engineering or construction engineering, consultant selection procedures shall be in accordance with Federal Regulations, 23 CFR 172 and the State Procurement Code, NMSA 1978, Chapter 13, unless the City is a Home Rule City, in which case their Procurement Code shall be followed.
2. Costs incurred for Preliminary/Construction Engineering may be reimbursed if funding for design is stipulated in Section Two of the Project Agreement, programmed into the Statewide Transportation Improvement Program (STIP), authorized and obligated under the design phase, and comply with applicable provisions listed in paragraph 1 above.
3. On occasion, state funds are used to fund the design for, and in advance of, a federal aid construction project. Stand-alone projects funded with these funds, such as Municipal Arterial Program (MAP), Severance Tax (ST), or General Fund (GA) are normally certification projects that require very minimal oversight by the Department. However, if these state funds are used for preliminary engineering for a federal aid construction project, the associated Request for Proposal's and Architectural/Engineering Contracts must follow the same procedures as if federal funds were being used.
4. Engineering consultants shall prepare a final fee estimate of any work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. The City shall keep this on file for a minimum of five years.
5. Requests for Proposals (RFP)s for federally funded professional engineering services shall be reviewed and approved by Department's Regional Division Manager or Designee before the RFP is advertised. After approval, the local entity can advertise the RFP and can enter into contract with the consultant as per the NMDOT Consultant Services Procedures Manual or their own procedures that comply with the Title 23 CFR Part 172. After the contract is in place the federal funds will be authorized by FHWA. If the City uses their own funds for design or construction engineering, no approvals for the consultant selection or process are required.
6. Reimbursements to the City for preliminary engineering or construction engineering will only be made in accordance with reimbursement provisions of this Agreement, and based upon appropriate, timely submittals by the City of APPENDIX F-1., and compliance with applicable provisions listed in Appendix A of this Agreement.

Costs incurred prior to FHWA authorization require additional justification as per Title 23 CFR Part 1.9.

7. The City's Project Manager shall keep the Department's Regional Division Manager or Designee and ADE or representative apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence to the Department's Regional Division Manager or Designee and ADE in a timely manner.
8. The City shall invite the FHWA Area Engineer, Department's Regional Division Manager or Designee, District Office ADE or representative, and Construction Liaison Engineer (CLE) to participate in any design reviews, pre-construction conference and any pre-paving and partnering meetings.

Location Corridor Study Guidelines

The City Shall:

1. Be responsible for the Location Corridor Study, preliminary design, environmental documentation, and preliminary right of way activities.
2. Agree to comply with the Department's Location Study Procedures, Phases A, B, and C.
   a. **PHASE A – INITIAL CORRIDOR STUDY**
   Shall determine the need for the project, define the full range of viable alternates, identify social, economic, environmental constraints, and select the most practical alignments for further study.
   b. **PHASE B – DETAILED ALTERNATE EVALUATION**
   Shall refine alternate alignments and generate feasible designs for each alternate at a conceptual level and provide adequate detail information to serve as a basis for the preparation of the environmental document and the selection of the final alternate.
   c. **PHASE C – ENVIRONMENTAL DOCUMENTATION**
   Shall complete the environmental documentation process, subsequent circulation and public hearing procedures in accordance with the Action Plan and federal requirements.
3. Initiate and cause to be prepared the Initial Corridor Analysis Report "Phase A Report," the Location Study Report "Phase B Report," and Environmental Documentation "Phase C."
4. Require its engineering consultant to prepare a final fee estimate of the work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. The City shall keep this on file for a minimum of five years.
5. Secure the Department's approval of the Initial Corridor Analysis Report "Phase A Report," the Location Study Report "Phase B Report," and Environmental Documentation "Phase C." The Department shall coordinate all related activities through the FHWA.

Design Standards

I. Roadway Projects (Paving, landscaping, parking lots, etc.)

1. The design shall provide for all facilities as required by law (ADA compliance, bicycle paths, etc. See NMSA 1978, Sections 67-3-62 to 67-3-64, as amended) and New Mexico Department of Transportation-Pedestrian Access Details (NMDOT-PAD).
2. The pavement shall be designed for a 20-year life as a minimum for new construction or reconstruction, or for a 10-year life as a minimum for rehabilitation.
3. The Department's Standard Specifications for Highway and Bridge Construction, 2007 edition "Orange Book" or 2000 Edition "Blue Book," shall be used for projects on the State Highway System or the National Highway System and supplemental specifications.
4. The following documents shall be used as a minimum in the design of this Project for projects **on the State Highway System or the National Highway System.** Current New Mexico APWA or City standards may be used on City facilities. Asterisked (*) items shall be used on **all** roadway projects.
   - *a. FHWA Manual on Uniform Traffic Control Devices, 2003 edition as amended;
   - b. AASHTO A Policy on Geometric Design of Highways and Streets, 2004 edition "Green Book;"
   - c. AASHTO Guide for the Development of Bicycle Facilities, 1991 edition;
   - d. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways, 2001;
   - e. Department's Urban Drainage Design Criteria;
   - f. Department's Geotechnical Manual, September 1990;
   - *g. Department's Tribal/Local Government Agency Handbook, latest edition;
   - h. Department's Hazardous Materials Assessment Handbook, latest edition;
   - *i. Department's Location Study Procedures, August 2000;
   - *j. Department's Right of Way Handbooks, May 2005;
   - *k. Department's Right of Way Mapping Development Procedures, latest edition;
   - *l. AASHTO Guide to Design of Pavement Structures, latest edition; and
   - m. Department's Pedestrian Access Details (NMDOT-PAD), latest edition.

II. Architectural Projects (Transportation Related Buildings, etc.)

1. The design shall provide for all facilities as required by law (ADA compliance, bicycle paths, etc. See NMSA 1978, Sections 67-3-62 to 67-3-64, as amended).
2. The structure(s) or artwork shall be designed for a 20-year life as a minimum for new construction or reconstruction, or for a 10-year life as a minimum for rehabilitation.
3. The applicable Uniform Building Code, National Electrical Code, National Plumbing Code or any other Federal or State Codes shall be utilized for the design and construction of any Building or structure rehabilitation project(s).
4. The following documents shall be used as a minimum in the design of this Project for projects **on the State Highway System or the National Highway System.** Current New Mexico APWA or City standards may be used on City facilities. Asterisked (*) items shall be used on **all** architectural projects.
   - *a. FHWA Manual on Uniform Traffic Control Devices, 2003 edition as amended;
   - b. AASHTO A Policy on Geometric Design of Highways and Streets, 2004 edition "Green Book;"
   - c. AASHTO Guide for the Development of Bicycle Facilities, 1991 edition;
   - d. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways, 2001;
   - e. Department's Urban Drainage Design Criteria;
   - f. Department's Geotechnical Manual, September, 1990;
   - g. Department's Hazardous Materials Assessment Handbook, latest edition;
   - *h. Department's Location Study Procedures, August 2000;
   - *i. Department's Right of Way Handbooks, May 2005;
   - j. Department's Right of Way Mapping Development Procedures, latest edition;
   - k. AASHTO Guide to Design of Pavement Structures, 1993 edition;
   - *l. Uniform Building Code, latest edition;
   - *m. Uniform Plumbing Code, latest edition;
   - *n. Uniform Mechanical Code, latest edition;
   - *o. National Electrical Code, latest edition;
   - p. U. S. Department of Interior, National Park Service Preservation Assistance Division, Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings, 1983 edition; and
   - q. Department's Pedestrian Access Details (NMDOT-PAD), latest edition.

Survey and Right of Way Acquisition Requirements

1. All Department Right of Way Handbooks, particularly Volume VII Tribal/Local Government Agency (TLGA), shall be adhered to for all right of way operations, including title search, property survey, right of way mapping, appraisal, appraisal review, acquisition (including donations), relocation, and right of way certification. *Only qualified personnel may undertake right of way functions.* The T/LGA, i.e., City Government staff or consultants may not perform any right of way functions unless the following conditions are first met:
   a. The City submits to the Department's Right of Way Bureau a listing of persons proposed to perform the individual right of way functions, along with their qualifications reflecting right of way experience and training.
   b. The City submits the name of a contact person for right of way functions and submits a progress schedule for said activities.

   Upon written request from the City, the Right of Way Bureau will supply the names of the right of way contractors currently doing business with the Department. Right of way functions performed prior to making the above submittals will jeopardize federal funding for this Project.
2. All right of way surveying, mapping, and monumentation shall be performed by a licensed professional surveyor experienced in right of way projects and shall conform with the Minimum Standards for Surveying in New Mexico adopted by the New Mexico State Board of Registration for Professional Engineers and Surveyors in February, 1994, as provided in NMSA 1978, Sections 61-23-1 to 61-23-32, as amended.
3. Right of way surveying, mapping, and monumentation shall be performed in accordance with the Department's Surveying Manual, the Right of Way mapping Development Procedures, latest edition, and subsequent Department guidelines, policies, and procedures. Right of way maps and documents must be 100% complete prior to review by the Department's Lands Engineering Section. Information, additional guidance, and early assistance can be obtained from the Lands Engineering Section Supervisor at (505) 827-5420. Early contact is recommended in order to facilitate and expedite the right of way acquisition process.
4. Title reports shall be obtained and prepared to meet Department format and standards for all affected right of way parcels. Title reports shall be submitted to the Lands Abstracting Unit of the Right of Way Bureau for review prior to the final right of way map submittal according to the Right of Way Acceptance Plan (Volume

VII) Tribal/Local Government Agency. Non-compliance with the state and/or federal requirements may result in loss of project funds.

5. Appraisals shall not begin until the Department approves the right of way maps. City or contracted (fee) appraisers shall not be used prior to making the submittals in paragraph one above.

6. All real property appraisals shall be developed and reported in accordance with the right of way regulations, policies, and procedures of the Department, and the Uniform Standards of Professional Appraisal Practice (USPAP) and where federal funds are involved, 49 CFR 103 and 104. All appraisal and appraisal review actions are subject to Department and FHWA review (see Right of Way Acceptance Plan). Non-compliance with state, federal and/or USPAP requirements may result in loss of project funds.

7. Before the initiation of negotiations, the City shall, through a proper appraisal, establish an amount which it believes is just compensation for the real property to be acquired. The City shall not utilize the same individual/firm to conduct both the appraisals and the appraisal reviews. Upon the completion of the acquisition function, the City shall inform the Acquisition Unit Supervisor and schedule an on-site review of the work. The Department will review the work to render an opinion as to the apparent conformance of City work with federal and state statutes and regulations (see Right of Way Acceptance Plan). In the event that a significant amount of the work is found to be unacceptable, no approval of the right of way function will be issued for the Project until the Department is satisfied that the work meets the requirements.

8. The City shall maintain all records and documents relating to the right of way acquisition for a minimum of five years and shall record all transfer of ownership documents with the City Clerk. Department and FHWA personnel shall be provided access to project right of way files upon reasonable notice.

9. The City shall furnish the Department with a written certification (Right of Way Certification) stating that the right of way acquisition (and relocations, if applicable) has been performed in compliance with federal and state laws and regulations.

10. The City shall be responsible for certifying to the Department that all right of way work has been performed according to the required federal and state statutes and regulations.

Construction Phase Duties and Obligations

1. The City shall be responsible for all construction engineering; including project supervision, surveying, inspection, and testing. The City shall comply with the Department's Construction Procedures Handbook for Federal-Aid Local Government Projects, and Chapter 7 of the Department's Tribal/Local Government Agency Handbook.
2. The City's general conditions, standard drawings, and specifications may be used if approved by the Department prior to initiating the procurement process.
3. Mix designs, price reduction guidelines, daily production, and test reports shall be as per the Department's or City's established procedures as approved by the Department, depending on the governing specifications. The American Standard Testing Methods (ASTM) equivalents of the American Association of State Highway and Transportation Officials (AASHTO) test methods are acceptable. Technician and Training Certification Program (TTCP) procedures are acceptable.
4. The Department's Minimum Acceptance Testing requirements, as identified in the Department's Construction Procedures Handbook for Federal Aid Local Government Projects shall be adhered to, as directed by District lab personnel (Compliance), and as per the following:
   a. The City's lab personnel or consultant may perform project acceptance testing of materials in accordance with the City's procedures and requirements, if approved by the Department. All test reports shall be available for review by the Department and FHWA (if applicable).
   b. Independent assurance testing is required and is the sole responsibility of the City and shall be done by an independent lab not responsible for acceptance testing. Periodic independent assurance testing may be conducted by the Department's District personnel to ensure material and construction compliance.
   c. The Department's District lab personnel shall inspect the City's lab, or the consultant's lab if a consultant is used for project acceptance testing, independent assurance testing, aggregate source acceptance, and concrete mix designs, relative to equipment and procedures used by the City and/or their consultant.
   d. The City's Engineer shall certify that all materials incorporated into the project meet or exceed the specification requirements. The Department's District Engineer in turn shall certify projects to FHWA (if applicable) based on the City's certification.

e. Upon request, the Department's Assistant District Engineer (ADE) or representative shall furnish copies of the Minimum Acceptance Requirements for federal-aid projects to the City for guidance at the pre-construction conference.

f. All personnel doing sampling and testing for Acceptance/Independent Assurance on federally funded projects shall be certified by the Technical Training and Certificate Program (TTCP) pursuant to the TTCP Manual.

5. The City Engineer shall certify with each reimbursement request that the Certificates of Compliance are on file with the City Engineer's Office, for products and materials incorporated into the Project and for the quantities shown on the progress payment estimate. The Department may periodically conduct an audit of the Certificates of Compliance as per SECTION 106.4 of the Department's Standard Specifications. Department personnel may occasionally check the City's procedures for handling of all Certificates of Compliance.

6. The City Engineer shall certify with each reimbursement request that the items shown on the estimate have been completed in accordance with the contract requirements.

7. The Department may periodically audit the City's source documents for each project. The Department's established guidelines are shall be used to prepare the Source Document Books. Department or FHWA (if applicable) personnel may periodically review the City's procedures for documentation.

8. Change Orders:

a. Changes to conform to the field conditions may be warranted; however, these changes shall be discussed with and approved by the Department prior to implementation, in accordance with the Department's Change Order Procedures. The change order shall be submitted soon thereafter to the Project Manager. All decreases/increases shall be documented on factor sheets, which may be obtained from the Department and attached to the change order. No payment shall be made for additional quantities until the Department approves the change orders.

b. "Extra Work" for which there is no unit bid price shall be negotiated and the price shall be supported by a cost breakdown, the Department's average unit bid price, or the City's average unit price list on comparable projects. "Extra Work" shall not be performed unless approved by the Department and approved by FHWA, if participation is requested. If, "Extra Work" cannot be negotiated by the preceding manner, then the Contractor may be required to

do similar work on a "Force Account" basis as per the Department's specifications.

c. Change orders for non-participating work shall be submitted to the Department for review and approval. If the work impacts the scope of work, contract time in excess of pro-rated time, and/or additional contracted funds, it shall require Department approval.

9. The Department shall assign personnel to assist the City in complying with the procedures and stipulations contained herein.

10. The City shall identify a Project Manager to the Department as the single point of contact and shall be in responsible charge of the Project.

11. The City's Project Manager shall keep the Department's ADE or representative routinely apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence to the Department's ADE in a timely manner.

Certification of Pre-Construction Phase

Control No. 1100070

Project No. STP-9991-2(1)

I, _____, in my capacity as _____ of _____ do hereby certify with reference to the aforementioned Project Control Number as follows:

1. That the City has complied with all applicable terms, conditions and certification requirements of this Agreement.
2. That the City has completed environmental coordination and obtained FHWA approval of the environmental document and has completed the consultation process with the State Historic Preservation Officer, as required by law. Furthermore, the City has complied with Section Three, paragraph 24, items a through h.
3. That the City has complied with all applicable requirements listed in Appendix A – Preliminary Engineering/Construction Engineering.

In witness whereof, _____ in his/her capacity as _____ of _____ does hereby certify the aforementioned matters stated herein are true to his/her knowledge and belief and does hereby set his/her hand and seal this day and year specified below:

CITY OF LAS CRUCES

By: _____ Date: _____
Mayor

ATTEST

By: _____ Date: _____
City Clerk

When complete, please send APPENDIX F-1 and F-2 to:

Gabriela C. Apodaca, Assistant Regional Division Manager
NMDOT South Regional Division
750 N. Solano
Las Cruces, New Mexico 88001

New Mexico Department of Transportation
Estimate of T/LGA Project Pay-Out

Project Control Number **1100070**

Project Number **STP-9991-2(1)**

Project Termini **MAIN STREET FROM GRIGGS AVE TO LOHMAN AVE**

Total Project Cost (Funded under this Project Agreement) **$ ****
(Including gross receipts tax)

Month & Year	Monthly Pay-Out
** TOTAL -> -> ->	$

ATTACHMENT "C"

RECEIVED

NOV 30 2009

CITY OF LAS CRUCES
PW/PROJECT DEVELOPMENT

New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

Local Government Agreement Unit
P.O. Box 1149, South Building 1 North
Santa Fe, New Mexico 87504-1149
(505) 827-3229 fax
Kimberly Wildharber (505) 827-5309
Eddie Pacheco (505) 827-5325
Sharon Hoback (505)827-5608

November 10, 2009

Mr. Louis H. Grijalva
Project Development Administrator
City of Las Cruces
575 S. Alameda Blvd., Room 216
Las Cruces, New Mexico 88005

RE: Control Number: 1100070 Project Number: STP-9991-2(1)

Dear Mr. Grijalva:

Enclosed for your coordination of signatures are three originals of the First Amendment to Cooperative Project Agreement referenced above. Please return them to my attention at the address shown above.

Also, please Do Not fill in the date on the first page of the enclosed amendments. An original will be mailed to you at the time they are fully executed.

If you have any questions concerning the amendment or if I can be of further assistance, please contact me at the telephone number listed above.

Sincerely,

Kimberly Wildharber
Contract Manager

ep

Enclosures

c: Frank Guzman, District 1 Engineer
Gabriela C. Apodaca, Assistant Regional Division Manager

Bill Richardson
Governor

Gary L. J. Giron
Cabinet Secretary

Commission

Johnny Cope
Chairman
District 2

Jim Franken
Vice Chairman
District 4

Doug Peterson
Commissioner
District 3

Roman Maes III
Commissioner
District 5

Jackson Gibson
Commissioner
District 6

John Hummer
Commissioner
District 1

Contract Number _____
Vendor Number **0000054342**
Project Number **STP-9991-2(1)**
Control Number **1100070**

FIRST AMENDMENT TO COOPERATIVE PROJECT AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2009, by and between the New Mexico Department of Transportation, herein referred to as "Department," and the City of Las Cruces, herein referred to as "City."

RECITALS

Whereas, the Department and the City entered into a Cooperative Project Agreement on July 2, 2009, attached as Exhibit "A" and made part of this Amendment; and,

Whereas, page 11, Section Eighteen, of the Agreement allows both parties to make alterations and revisions to the said Agreement; and,

Whereas, it has become necessary to change date and extend deadlines; and,

Whereas, the Department and the City agree that the original Cooperative Project Agreement be amended.

In consideration of the covenants contained herein and pursuant to NMSA 1978, Section 67-3-28, the parties agree as follows:

1. Page 1, Section One, delete in its entirety and insert the following:

The purpose of this Agreement is to specify and delineate the rights and duties of the parties hereto as described in the Project Identification Form, Statewide Transportation Improvement Program (STIP), the City's P, S & E Package authorized for obligation by FHWA and outlined in Section Two of this Agreement. This Project shall hereinafter be referred to interchangeably as "Project" or "Project Control No. 1100070." This Project is a joint and coordinated effort for which the Department and the City each have authority or jurisdiction.

2. Page 1, Section Two, delete in its entirety and insert the following:

1. The total funding for Project Control No. 1100070, is One Million One Hundred Seventy Six Thousand Dollars ($1,176,000.00) to be funded in proportional share by the parties hereto as follows:

A. <u>2009/2010 Section 129 Demo ID NM085 (STP) Funds</u>

<u>Department's 100% share</u> $1,176,000

For Right of Way and reconstruction of Main Street
From Griggs Avenue to Lohman Avenue.

C. <u>The Total Project Funding</u> <u>$1,176,000</u>

2. The City shall pay all Project costs that exceed the total funding amount.

3. Page 10, Section Sixteen, Paragraph 1 delete in its entirety and replace the following in lieu thereof:

1. This Agreement shall terminate on **September 30, 2014.** Neither party shall have obligation under this Agreement after said date except as stated in Section Six of this Agreement.
2. The Department may, at its option, terminate this Agreement if the funds identified in Section Two of this Agreement have not been contractually committed between the City and a contractor within one year from the date the funds have been authorized by the FHWA.
3. The Department will review on a quarterly basis inactive projects. An inactive project for this purpose means a project for which no expenditures have been charged against Federal funds for the past 12 months.
4. If the Department determines a project to be inactive, the Department may, as directed by FHWA, redirect the unexpended balance as per 23 CFR 630.106.
5. The Department may, at its option, terminate this Agreement if the City fails to comply with any provision of this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

Except for the above amendments the original Cooperative Project Agreement shall remain in full force and effect unless expressly amended or modified by this First Amendment.

In witness whereof, the parties have set their hands and seal the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By:_____ Date:_____
Deputy Secretary

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

By:_____ Date: 11/10/09
Assistant General Counsel

City of Las Cruces

By:_____ Date:_____
Mayor

ATTEST

By:_____ Date:_____
City Clerk

APPROVED AS TO FORM BY THE CITY ATTORNEY

By:_____ Date:_____

City Attorney