

143  
**City of Las Cruces**  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

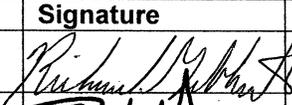
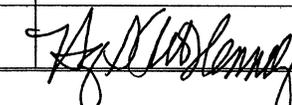
Item # 14 Ordinance/Resolution# 09-10-572 Council District: 1-6

For Meeting of May 17, 2010

(Adoption Date)

**TITLE:** A RESOLUTION APPROVING A CHANGE ORDER TO THE PROFESSIONAL SERVICES CONTRACT WITH JAMES DUNCAN AND ASSOCIATES, INC. TO EXTEND THE CONTRACT PERIOD TO DECEMBER 31, 2011, TO REVISE THE LAND USE ASSUMPTIONS, AND TO REVISE THE DRAFT IMPACT FEE CAPITAL IMPROVEMENTS PLAN AND AMENDING THE CONTRACT AMOUNT OF \$206,884.68 (INCLUDES NMGRT) AS ESTABLISHED IN RESOLUTION NUMBER 09-309 TO \$215,506.00 PLUS APPLICABLE TAX.

**PURPOSE(S) OF ACTION:** Approve a change order to the contract with James Duncan and Associates, Inc. to extend the contract period, to revise the Land Use Assumptions, to revise the Impact Fee Capital Improvements Plan and amend the contract amount.

<b>Name of Drafter:</b> Loretta M. Reyes, PE 		<b>Department:</b> Public Works/Engineering Services		<b>Phone:</b> 528-3171	
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Public Works		3333	Budget		2300
			Assistant City Manager		2271
Legal		2128	City Manager		2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

In August 2006, the City of Las Cruces (City) awarded a contract to James Duncan and Associates, Inc. to review the City's Development Fee Ordinance and to conduct a study for the proposal and implementation of impact fees for transportation systems, drainage systems, and public safety facilities. It is increasingly important that major road, drainage, and public safety infrastructure be in place to meet the needs of our growing community. One financing option under consideration is impact fees. Before impact fees can be established, it is necessary to conduct a fee study to establish reasonable fees that will enable the City to finance improvements that will support an established level of service. The fee study will also recommend a level of service that may be reasonable to support future growth.

James Duncan and Associates, Inc. presented the draft *Capital Improvement Plan for Major Road, Drainage and Public Safety Impact Fees (IFCIP)* to the City Council at the March 9, 2009 work session. The IFCIP is the fee study that documents the calculation of the proposed impact fees for major roads, drainage, and public safety. The City Council made several comments and requested additional information. This resulted in a second work session on April 8, 2009, at which the consultant and City staff addressed comments from the March 9, 2009 work session as well as the following issues: establishing one service area with two assessment districts; removal of state roads from the major road inventory; priority corridors; and, phasing of the fees. Moreover, additional information was provided

to the City Council so that they could provide direction on how to proceed with the implementation of impact fees for major road, drainage, and public safety, with most of this discussion focused on residential development. To address the affect of the major road, drainage, and public safety impact fees on commercial development, the City Council held a third work session on May 6, 2009. At this work session, City Council provided direction to City staff to proceed with the impact fee process, to generate service area/geographic options based on their feedback and to take these options forward to the Capital Improvements Advisory Committee (CIAC) for their feedback and recommendation to the City Council.

James Duncan and Associates, Inc. reviewed and compiled the information collected from each work session into a list of service area/geographic options as follows:

- City-wide Fees
- Two-Tier Road Fees
- "Growth Area" Only Fees

Before the IFCIP can be finalized, it is necessary for the City Council to choose one of these service area/geographic options on which to base the major road, drainage, and public safety impact fees. James Duncan and Associates, Inc. prepared a summary document of the above listed options (see Exhibit "B"). This document summarizes each service area/geographic option with a table listing the actions that will have to be taken in order to move forward with each option (e.g., Do the land use assumptions have to be revised?, etc.). The summary provides information in a concise format to use in making a decision on which option to use to calculate the impact fees in the IFCIP document.

Staff presented the summary document to the Capital Improvements Advisory Committee (CIAC) for the first time on November 19, 2009. The CIAC further discussed the options and the summary document at their December 17, 2009 meeting. After much discussion, the CIAC made a recommendation to accept and support service area/geographic option 3: "Growth Area" Only Fees.

On January 11, 2010, James Duncan and Associates, Inc. presented the information in the summary document to the City Council at a work session. The City Council reviewed and discussed the service area/geographic options, the information in the summary document, and the CIAC recommendation. The City Council provided additional comments and requested additional information including, but not limited to, how the fees were calculated; the possibility of giving credit for infrastructure that has already been built; and, what the fees may be for each service area/geographic option. The resultant consensus from the City Council was to schedule this topic for the February 17, 2010 work session for further discussion.

On February 17, 2010, City staff and James Duncan and Associates, Inc. presented information that addressed the City Council comments from the January 11, 2010 work session. After further discussion, the City Council directed staff to proceed with exempting the "In-fill" area of the city (as in service area/geographic Option 3: "Growth Area" Only Fees); keeping the public safety fee as a city-wide fee; and, to consider excluding or showing the West Mesa Industrial Park separately. With this direction, both the Land Use Assumptions and IFCIP document must be revised. The cost for the added work is \$22,500.00 plus applicable tax.

James Duncan and Associates, Inc. is not a New Mexico resident business and is, therefore, not subject to New Mexico gross receipts tax (NMGRT) as applied to New Mexico resident businesses. Instead, this firm is subject to the lower New Mexico compensating tax rate of 5%. Because the contract amount

of \$206,884.68, as established in Resolution No. 09-309 (see Exhibit "C"), incorrectly included the higher NMGRT rates of 7.125% and 7.375%, it is necessary to correct the contract amount. This resolution will amend the contract amount of \$206,884.68 (which included the higher NMGRT rates) to \$215,506.00 plus applicable tax. Overpayments will be reconciled between the City and James Duncan and Associates, Inc. on a subsequent invoice for work completed. The amended contract amount will be transacted via a contract amendment document incorporated as Exhibit "D". For clarification, the contract amount as of Resolution 09-309, without applicable tax, was \$193,006.00 and is basis from which the requested change order amount of \$22,500.00 is added resulting in a new contract amount of \$215,506.00 plus applicable compensating tax.

Public Works/Engineering Services staff recommends the approval of the amendment to the contract amount, the contract time extension, and the change order in the amount of \$22,500.00 plus applicable tax to the professional services contract with James Duncan and Associates, Inc. to perform the additional work necessary to revise the Land Use Assumptions and IFCIP.

### **SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Expenditure</b>	<b>Budget Amount</b>
General Fund 1000 10226010-722190	\$22,500 plus applicable tax	\$179,819.00

1. Resolution.
2. Exhibit "A", Purchasing Manager's Request to Contract.
3. Exhibit "B", Memorandum dated November 16, 2009 titled, "Impact Fees-Geographic Options"
4. Exhibit "C", Resolution No. 09-309.
5. Exhibit "D", Contract Addendum with Amended Scope of Services.

### **OPTIONS / ALTERNATIVES:**

1. Vote "Yes." This action will approve the amendment to the contract amount, the contract extension, and change order in the amount of \$22,500.00 plus applicable compensating tax to the contract with James Duncan and Associates, Inc. to revise the Land Use Assumptions and Impact Fee Capital Improvements Plan.
2. Vote "No." This action will not approve the change order and the contract amendment and will require staff to re-evaluate the remaining tasks on the current contract to fit this additional work within the remaining budget. This could jeopardize the impact fee project and require staff to place the project on hold indefinitely.
3. Modify the resolution and direct staff accordingly.
4. Table the Resolution.

RESOLUTION <sup>146</sup>NO: 09-10-572

**A RESOLUTION APPROVING A CHANGE ORDER TO THE PROFESSIONAL SERVICES CONTRACT WITH JAMES DUNCAN AND ASSOCIATES, INC. TO EXTEND THE CONTRACT PERIOD TO DECEMBER 31, 2011, TO REVISE THE LAND USE ASSUMPTIONS, AND TO REVISE THE DRAFT IMPACT FEE CAPITAL IMPROVEMENTS PLAN AND AMENDING THE CONTRACT AMOUNT OF \$206,884.68 (INCLUDES NMGR) AS ESTABLISHED IN RESOLUTION NUMBER 09-309 TO \$215,506.00 PLUS APPLICABLE TAX.**

The City Council is informed that:

**WHEREAS**, in August 2006, the City of Las Cruces (City) awarded a contract to James Duncan and Associates, Inc. to conduct a study for the proposal and implementation of impact fees for transportation systems, drainage systems, and public safety facilities by Resolution 05-06-272; and

**WHEREAS**, James Duncan and Associates, Inc. and City staff presented the draft IFCIP to the City Council at the March 9, 2009 work session at which the City Council made several comments and requested additional information; and

**WHEREAS**, a second work session was held on April 8, 2009 to discuss the establishment of one service area with two assessment districts; removal of state roads from the major road inventory; priority corridors; and, phasing of the fees, with most of this discussion focused on residential development; and

**WHEREAS**, a third work session was held on May 6, 2009 to address the affect of the major road, drainage, and public safety impact fees on commercial development; and

**WHEREAS**, on May 6, 2009 the City Council provided direction to proceed with the impact fee process, to generate service area/geographic options based on their feedback, and to take these options forward to the CIAC for their feedback and recommendation to the City Council; and

**WHEREAS**, James Duncan and Associates, Inc. compiled the feedback from each work session into a summary document (Exhibit "B") that describes three service area/geographic options: City-wide Fees, Two-Tier Road Fees, and "Growth Area" Only Fees with a table listing actions that will have to be taken in order to move forward with each option; and

**WHEREAS**, the summary document is to be used by the CIAC and the City Council in making a decision on which option to use to calculate the impact fees in the IFCIP document; and

**WHEREAS**, City staff presented the summary document to the CIAC on November 19, 2009 and December 17, 2009 to obtain feedback and a final recommendation; and

**WHEREAS**, on December 17, 2009, the CIAC made a recommendation to accept and support service area/geographic Option 3: "Growth Area" Only Fees; and

**WHEREAS**, James Duncan and Associates, Inc. and City staff presented the summary document and the CIAC recommendation to the City Council on January 11, 2010 and February 17, 2010; and

**WHEREAS**, on February 17, 2010, the City Council directed staff to proceed with exempting the "In-fill" area of the city (service area/geographic Option 3: "Growth Area" Only Fees); keeping the public safety fee as a city-wide fee; and, to consider excluding or showing the West Mesa Industrial Park separately; and

**WHEREAS**, both the Land Use Assumptions and IFCIP document must be revised as a result of the direction by City Council. The cost for the added work is \$22,500.00 plus applicable tax; and

**WHEREAS**, as part of this change order, the contract period will be extended to December 31, 2010; and

**WHEREAS**, James Duncan and Associates, Inc. is not a New Mexico resident business and is therefore, not subject to New Mexico gross receipts tax (NMGRT). Instead, this firm is subject to the lower New Mexico compensating tax rate of 5%; and

**WHEREAS**, the contract amount as established in Resolution 09-309 (Exhibit "C") incorrectly included the higher NMGRT rates of 7.125% and 7.375%. The contract amount will be amended from \$206,884.68 (includes higher NMGRT rates) to \$215,506.00 plus applicable tax; and

**WHEREAS**, the amended contract amount will be transacted via a contract amendment document incorporated as Exhibit "D"; and

**WHEREAS**, for clarification, the contract amount as of Resolution 09-309, without applicable tax, was \$193,006.00 and is the basis from which the requested change order amount of \$22,500.00 is added resulting in a new contract amount of \$215,506.00 plus applicable tax; and

WHEREAS, staff recommends the approval of the amendment to the contract amount, the contract time extension, and the change order in the amount of \$22,500.00 plus applicable tax to the professional services contract with James Duncan and Associates, Inc. to perform the additional work necessary to revise the Land Use Assumptions and IFCIP.

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

(I)

THAT the amendment to the contract amount, the contract extension, and the change order in the amount of \$22,500.00 plus applicable tax to the professional services contract with James Duncan and Associates, Inc. to perform the additional work necessary to revise the Land Use Assumptions and IFCIP is hereby approved.

(II)

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

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 2010.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

VOTE:

\_\_\_\_\_  
City Clerk

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Connor: \_\_\_\_\_

Moved by: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

Seconded by: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Thomas: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
City Attorney

# CITY OF LAS CRUCES

## PURCHASING MANAGER'S REQUEST FOR CHANGE ORDER

For Meeting of: May 17, 2010

Resolution No.: 09-10-572

### Change Order to Existing Contract For The Updating Development Impact Fee Contract

The Las Cruces City Council is provided the following information concerning this request:

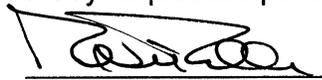
#### BID/RFP SOLICITATION INFORMATION:

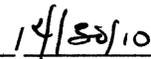
1. Original Bid/RFP & Due Date: RFP #05-06-272/ July 5, 2006
2. Description of Bid/RFP: Updating Development Impact Fees
3. Contract Award: Resolution No.08-09-431/December 4, 2009
4. Contract Revision:
 

Previous Contract Award Amount:	\$193,006.00
Change Order Amount:	\$22,500.00
New Contract Amount:	\$215,506.00
5. Contractor: James Duncan and Associates
6. Using Department: Public Works/Engineering Services
7. Contract Duration: December 31, 2011

#### PROCUREMENT CODE COMPLIANCE:

The City of Las Cruces Procurement Code was administered in the conduct of this procurement and approval to change the above contract is hereby requested pursuant to Section 24-228.

  
Purchasing Manager

  
Date

#### CONFIRMATION OF FUND ENCUMBRANCE:

REQUISITION OR PURCHASE ORDER NUMBER:	10101290
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## MEMORANDUM

**TO:** Loretta Reyes, Engineering Services Administrator, City of Las Cruces, NM  
**FROM:** Clancy Mullen, Executive Vice-President, Duncan Associates  
**DATE:** November 16, 2009  
**RE:** Impact Fees – Geographic Options

This memorandum is intended to provide background information to the City of Las Cruces ("City") on various geographic options related to the proposed impact fees for major roads, public safety and drainage.

### Basic Concepts and Legal Framework

There are two basic kinds of geographic areas in impact fee systems: assessment districts and benefit districts. An assessment district is an area that is subject to a single, uniform impact fee schedule. A benefit district is an area where fees are spent within the same geographic area in which they were collected.

The New Mexico Development Fees Act does not mention assessment or benefit districts. Instead, it has a number of provisions relating to "service area," which is defined as "the area within the corporate boundaries or extraterritorial jurisdiction of a municipality or the boundaries of a county to be served by the capital improvements or facility expansions specified in the capital improvements plan designated on the basis of sound planning and engineering standards." Provisions relating to service areas include the following.

- o Land Use Assumptions must be developed for each service area.
- o The impact fee study (Capital Improvements Plan) must identify existing improvements, existing level of service and existing deficiencies within each service area.
- o Impact fees collected within a service area must be accounted for by service area, and spent on improvements attributable to growth in the service area (but not necessarily physically located in the service area).

Note that the Development Fees Act does not explicitly require that a service area function as either an assessment district or a benefit district. For example, the City could define the entire city as one service area/benefit district, while dividing it into two assessment districts, to reflect the different impacts of development in different areas on the same common set of facilities. On the other hand, the City could define the entire city as a single service area/assessment district, subject to a single fee schedule, while dividing it into multiple benefit districts. Other configurations are also possible.

Keeping this conceptual framework in mind, several geographic options can be analyzed for the City's proposed major road, public safety and drainage impact fees.

**Option 1: City-Wide Fees**

Under this option, all three fees would apply uniformly throughout the city. The entire city would be designated as a single service area for each of the three impact fee facilities, serving as both an assessment and benefit district. This is consistent with the Land Use Assumptions that have already been developed and approved on June 19, 2008 by the Capital Improvements Advisory Committee. It is also a reasonable approach, since the facilities under consideration tend to be integrated systems that provide benefit city-wide. Major roadway facilities are a network of arterials and collectors that facilitate cross-town and regional travel. Public safety facilities are part of an interdependent network that provides service, and service redundancy, city-wide. Stormwater facilities are major conveyances that collect regional runoff. Each of these facility types tends to provide a uniform level of service, and is managed as part of a city-wide service delivery system.

A single, city-wide service area is the most common for medium-sized cities like Las Cruces. Comparison with other cities in New Mexico shows that only Albuquerque has multiple service areas. Others cities have service areas of a size comparable to that proposed for Las Cruces. A multitude of small service areas can make it difficult to collect sufficient funds in any one service area to be able to fund major improvements.

<b>NUMBER OF IMPACT FEE SERVICE AREAS</b>		
Major Cities in New Mexico		
City	Square Miles	Number of Service Areas
Albuquerque	180.6	5
Las Cruces	76.4	1
Santa Fe	73.4	1
Rio Rancho	37.3	1

Source – Duncan Associates. Square miles is for 2000, except for Las Cruces which is 2008. Albuquerque service areas include five for drainage, two for public safety and eight for roads.

**Option 2: Two-Tier Road Fees**

The City Council has expressed an interest in an alternative major road impact fee assessment methodology, where the impact fee is differentiated by location – a lower impact fee in the core area of the city, which has largely infill development potential, and a higher fee outside of the infill area, where large-scale development can occur. In January 1998, the City Council adopted the Infill Policy Plan, which was intended to “provide guidelines and incentives for the development of vacant and possibly underutilized parcels or those parcels ready for redevelopment with Las Cruces’ urban core area.” The Plan defines the infill area as the area bounded by I-25 on the east, University Avenue on the south, Valley Drive on the west and Hoagland Road, Alameda Boulevard, Three Crosses Avenue and North Main Street on the north (see figure on following page). This area could serve as an assessment district for major road impact fees.

INFILL AREA MAP



Under this approach, there would be a single, city-wide service area/benefit district for major road impact fees, but two assessment districts. Public safety and drainage impact fees would apply city-wide, but there would be two major road impact fee schedules. Lower fees would be assessed in the infill area and higher fees in the rest of the city (the area of the city outside the infill area will be referred to as the "growth area"), based on data documenting the differences in travel behavior. Because infill residents have shorter trip lengths and more frequently use other modes of travel, they have less impact on the major road system than development in the growth area. Consequently, under this approach, rather than everyone paying a city-wide average road impact fee, development in the infill area would pay a lower-than-average fee, and development in the growth area would pay a higher-than-average fee.

Since the entire city would be defined as the major road impact fee service area, there would be no need to revisit the city-wide Land Use Assumptions that have already been developed. In the absence of projected land use data for each of the two assessment districts, total revenue for the two-tier approach could not be calculated precisely. However, since most new development will be likely to occur in the growth area, the growth fee schedule could be applied to city-wide land use projections to approximate future major road impact fee revenues.

### Option 3: "Growth Area" Only Fees

There is no requirement, either in the *Development Fees Act* or national case law, for impact fees to apply to all areas of a local government's jurisdiction. Some communities charge impact fees only in areas that are experiencing substantial growth, while exempting older, more developed areas where most of the infrastructure is already in place. Under this option, no fees would be collected in the infill area. To accomplish this, the service area would be defined as the entire area within the city limits, except for the infill area (this is the same as the "growth area" in Option 2). The "growth area" service area would function as an assessment district, within which a single impact fee schedule would apply to all new development. It is recommended that the service area also function as the benefit district.

The change from a city-wide service area in Options 1 and 2 to a "growth area" service area in Option 3 has some significant implications. The *Development Fees Act* requires that land use assumptions be prepared for each service area, and that an inventory be prepared of existing capital facilities located with each service area. Complying with these provisions would require substantial revisions to the Land Use Assumptions and Capital Improvements Plan. Impact fee funds collected in the "growth area" would not be used to make improvements in the infill area.

### Summary

Three options have been presented for the geographic structure of the proposed major road, public safety and drainage impact fees. Salient characteristics of each of these options are summarized below.

- **Option 1: City-Wide Fees** is the standard approach that was taken in the original draft of Las Cruces' impact fees study. This option has already been prepared and is ready for adoption.
- **Option 2: Two-Tier Road Fees** would charge lower road fees in the infill area and higher fees in the rest of the city. This option has already been calculated and could be ready for adoption in short order.

- **Option 3: Growth Area Only Fees** would charge the three fees only in the “growth area.” This option would require substantial revisions to the approved Land Use Assumptions and Capital Improvements Plan in order to comply with State law requirements. However, the fees in this area would be similar to the fees under Option 2, with the exception that public safety fees would be lower if central facilities are excluded.

<b>Characteristic</b>	<b>Option 1: City-Wide Fees</b>	<b>Option 2: Two-Tier Road Fees</b>	<b>Option 3: Growth Area Only Fees</b>
Land Use Assumptions	No change needed	No change needed	Revise
Service Areas	1 (city-wide)	1 (city-wide)	1 (growth area)
Assessment Districts	1 (city-wide)	roads: 2 (infill & growth area) others: 1 (city-wide)	1 (growth area)
Benefit Districts	1 (city-wide)	1 (city-wide)	1 (growth area)
Road Fee Amounts	Base line	lower in infill area/ higher in growth area	same as growth area in Option 2
Public Safety Amounts	Base line	No change	Lower (exclude central facilities)
Drainage Fee Amounts	Base line	No change	No change

**RESOLUTION NO: 09-309**

**A RESOLUTION APPROVING A CHANGE ORDER TO THE IMPACT FEE CONTRACT WITH DUNCAN ASSOCIATES TO REVISE THE DRAFT IMPACT FEE CAPITAL IMPROVEMENTS PLAN DOCUMENT, TO ADD ADDITIONAL CONSULTANT TRIPS, AND TO ADD A TIME AND EXPENSE BUDGET TO COVER THE COST FOR IMPLEMENTATION ASSISTANCE IN THE AMOUNT OF \$50,800.00 PLUS \$3,746.50 (NMGRT) FOR A TOTAL AMOUNT OF \$54,546.50 BRINGING THE TOTAL CONTRACT AMOUNT TO \$206,884.68 (INCLUDING NMGRT).**

The City Council is informed that:

**WHEREAS**, in August 2006, the City of Las Cruces (City) awarded a contract to Duncan Associates to review the City's Development Fee Ordinance and to conduct a study for the proposal and implementation of additional impact fees for transportation systems, drainage systems, and public safety facilities; and

**WHEREAS**, the Development Fees Act requires that Land Use Assumptions (LUA) and an Impact Fee Capital Improvements Plan (IFCIP) be completed before impact fees can be implemented; and

**WHEREAS**, the LUA document was approved for recommendation to the City Council by the Capital Improvements Advisory Committee (CIAC) on June 19, 2008; and

**WHEREAS**, the draft IFCIP report was completed on March 3, 2009 and was presented to the City Council by Duncan Associates on March 9, 2009; and

**WHEREAS**, the City Council made several comments, requested additional information, and requested another work session to further discuss impact fees for transportation, drainage and public safety for residential development; and

**WHEREAS**, a second work session was held on April 8, 2009 at which presentations were made by City staff and Duncan Associates in response to the feedback received from the City Council on March 9, 2009; and

Resolution No: 09-309

Page 2

**WHEREAS**, a third work session was held on May 6, 2009 at which presentations were given by City staff and Duncan Associates regarding Impact Fees 101, commercial impact fees, examples of impact fees versus current development costs, and how impact fees relate to Vision 2040; and

**WHEREAS**, as a result of the three work sessions, City staff was directed to modify the draft IFCIP to address issues such as service area, assessment districts, infill area exemption, impact fee phasing, modifying the capital improvements plan project list, etc. that were brought forward and discussed at all three work sessions; and

**WHEREAS**, additional trips will be added to the contract to accommodate additional meetings that will be held with the CIAC, Stakeholders, and the City Council to discuss the new draft IFCIP and a time and expense budget will be added to cover costs associated with additional implementation assistance related to additional IFCIP study revisions, presentation/trip preparation, weekly conference calls, and other required work; and

**WHEREAS**, the additional work to modify the draft IFCIP document will cost \$10,737.50 (including NMGRT); the additional seven (7) trips will cost \$33,071.50 (including NMGRT); and, the time and expense budget will be established in the amount of \$10,737.50 (including NMGRT) for a total cost of \$54,546.50 (including NMGRT); and

**WHEREAS**, the change order will increase the total contract amount from \$152,338.18 (including NMGRT) to \$206,884.68 (including NMGRT); and

**WHEREAS**, staff recommends approval of this change order to the contract with Duncan Associates in the amount of \$50,800.00 plus \$3,746.50 NMGRT for a total cost of \$54,546.50.

Resolution No: 09-309  
Page 3

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

(I)

THAT the change order for the additional work to modify the draft IFCIP; to add seven (7) trips to the contract to accommodate additional meetings; and, to add a time and expense budget to cover costs associated with additional implementation assistance related to additional IFCIP study revisions, presentation/trip preparation, weekly conference calls, etc. is hereby approved in the amount of \$50,800.00 plus \$3,746.50 NMGR for a total cost of \$54,546.50.

(II)

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

DONE AND APPROVED this 15th day of June, 2009.

(SEAL)

APPROVED:

  
Mayor Pro Tem

ATTEST:

  
City Clerk

VOTE:

Mayor Miyagishima:	<u>Absent</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Archuleta:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Jones:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

Moved by: Connor

Seconded by: Jones

Approved as to Form:

  
City Attorney

158  
AMENDMENT TO  
PROFESSIONAL SERVICES AGREEMENT

Exhibit "D"

This agreement amendment made and entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between the City of Las Cruces, New Mexico, hereinafter referred to as "City" and James Duncan and Associates, Inc., hereinafter referred to as "Consultant", amends the Professional Services Agreement that was entered into on June 8, 2006.

**1. PERIOD OF SERVICE**

The term of the agreement is extended until December 31, 2011.

**2. SCOPE OF SERVICES**

The scope of services is hereby amended to add additional services in the form of two additional tasks as follows:

**Task 11: Land Use Assumption Revisions.**

Consultant will revise draft Land Use Assumption for Transportation, Drainage, and Public Safety impact fees to address comments by the City of Las Cruces City Council. These revisions will include updating all projections based on most current available data, including recent trends and the draft comprehensive plan. In addition, land use assumptions will be prepared for two service areas: a city-wide service area for public safety impact fees and a growth area service area (i.e., excluding the infill area) for transportation and drainage impact fees.

Deliverable: Revised Land Use Assumptions

**Task 12: Impact Fee Capital Improvements Plan (IFCIP) Revisions.**

Consultant will revise draft Impact Fee Capital Improvement Plan for Transportation, Drainage, and Public Safety impact fees to address comments by the City of Las Cruces City Council. These revisions will calculate fees based on the growth area service area for transportation and drainage, and the city-wide service area for public safety. These revisions will base the revised transportation impact fees on the cost of arterial road improvements only, excluding the costs of right-of-way, collector roads and arroyo crossings, on a reduced level of service of a 1-to-1 ratio of vehicle-miles of capacity to vehicle-miles of demand, and on the most recent available cost information for arterial street improvements. The revised drainage impact fees will be based on the cost of arterial arroyo crossings only, and will use a transportation-based methodology, so that they can be adopted as part of the transportation impact fee or as a separate drainage impact fee restricted to arterial arroyo crossings. The public safety impact fees will continue to be based on the methodology used in the previous draft.

Deliverable: Revised Impact Fee Capital Improvements Plan

**Cost Summary**

<b>Task</b>	<b>Total Cost</b>
Task 1: Project Organization and Data Collection	\$8,580.00
Task 2: Capital Plan Review	\$12,000.00
Task 3: Land Use Assumptions	\$17,560.00
Task 3.1 Land Use Assumptions Revisions	\$5,060.00
Task 4: Draft Capital Improvements Plan	\$31,140.00
Task 5: Final Capital Improvements Plan	\$20,240.00
Task 5.1: Capital Improvements Plan Revisions	\$19,906.00
Task 6: Ordinance and Administration	\$10,120.00
Task 7: Additional Meetings (8)	\$17,600.00
Task 8: Impact Fee Capital Improvement Plan (IFCIP) Revisions	\$10,000.00
Task 9: Additional Meetings (14 one-person trips @ \$2,200)	\$30,800.00
Task 10: Implementation Assistance	\$10,000.00
Task 11: Land Use Assumptions Revisions	\$12,500.00
Task 12: Impact Fee Capital Improvements Plan Revisions	\$10,000.00
<b>TOTAL</b>	<b>\$215,506.00</b>

(not including applicable tax)

3. COMPENSATION

Consultant is not a New Mexico resident business and is therefore, not subject to New Mexico gross receipts tax (NMGR) as applied to New Mexico resident businesses. Instead, Consultant is subject to the lower New Mexico compensating tax rate.

Because the contract amount of \$206,884.68 as established in Resolution No. 09-309 incorrectly included higher NMGR rates, this amendment revises the contract amount of \$206,884.68 to \$215,506.00 plus applicable tax. Overpayments will be reconciled between the City and the Consultant on a subsequent invoice for work completed.

For clarification, the contract amount as of Resolution 09-309, without applicable tax, was \$193,006.00 and is the basis from which the requested change order amount of \$22,500.00 is added resulting in a new contract amount of \$215,506.00 plus applicable tax.

For the additional services to be added to the contract by this amendment and provided by Consultant, City shall compensate Consultant the amount of \$22,500.00 plus applicable tax.

IN WITNESS WHEREOF, City and Consultant have caused this instrument to be signed by their respective duly authorized officers.

CITY OF LAS CRUCES

JAMES DUNCAN AND ASSOCIATES, INC.

BY: \_\_\_\_\_  
Robert Telles, Purchasing Manager

By: \_\_\_\_\_  
James B. Duncan, President

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney