



**City of Las Cruces**  
PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 17 Ordinance/Resolution# 10-316 Council District: NA

For Meeting of June 21, 2010  
(Adoption Date)

**TITLE:** A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) IN THE AMOUNT OF \$31,000.00 TO FUND FISCAL YEAR 2011 OPERATIONS OF THE RIDESHARE PROGRAM AND AMENDING THE BUDGET TO REFLECT THE AGREEMENT.

**PURPOSE(S) OF ACTION:** Approve agreement with NMDOT to continue funding for the Rideshare Program and adjust the budget to reflect withdrawal of NM Natural Resources Department funding.

|  |                    |  |                        |                        |              |
|--|--------------------|--|------------------------|------------------------|--------------|
| <b>Name of Drafter:</b><br>Christine Logan |                    | <b>Department:</b> Community Development |                        | <b>Phone:</b> 541-2286 |              |
| <b>Department</b>                          | <b>Signature</b>   | <b>Phone</b>                             | <b>Department</b>      | <b>Signature</b>       | <b>Phone</b> |
| Community Development                      | <i>[Signature]</i> | 528-3067                                 | Budget                 | <i>[Signature]</i>     | 541-2281     |
| Public Services                            |                    | 528-3477                                 | Assistant City Manager | <i>[Signature]</i>     | 541-2271     |
| Legal                                      | <i>[Signature]</i> | 541-2128                                 | City Manager           | <i>[Signature]</i>     | 541-2076     |

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

The City of Las Cruces has operated the Rideshare Program as a function of the Transit Department since 1989. The goal of the Program is to promote the use of transportation that conserves energy, reduces pollution, and reduces traffic congestion. City efforts have targeted individual commuters and encouraged the use of carpools and ridesharing. The program has been funded at \$60,000 to \$70,000 each year with contributions from the New Mexico Energy, Minerals and Natural Resources Department, the New Mexico Department of Transportation, and City matching funds. Last year the organizations provided \$30,000, \$31,000, and \$7,030, respectively for a total annual budget of \$68,030 (\$36,443 personnel and \$31,587 operating).

The New Mexico Energy, Minerals and Natural Resources Department is unable to contribute to the Program in FY2011. The New Mexico Department of Transportation has agreed to continue their funding commitment but can not increase it. Obviously, changes must be made in order to meet the program goals with approximately half the funding. The City proposes to do so by modifying the target of the promotion efforts – shifting to an employer based approach rather than trying to reach individual commuters. The program would be staffed (as a part-time position) in the Economic Development section of Community Development Department rather than with Roadrunner Transit. There it would tie into the business registration process and established business outreach efforts.

New Mexico Department of Transportation has agreed to an employer based approach and City staff has worked with DOT representatives to modify the scope of work to reflect the appropriate goals and objectives as well as to accommodate the reduced staffing capability. The attached MOU reflects those changes and lays out the funding and performance requirements for the year.

As the FY2011 budget was being prepared and approved by Council, the elimination of the NM Natural Resources Department funding had not been confirmed so the budget included a status quo proposal for the Rideshare Program. Adoption of the attached budget adjustment would reflect that only NMDOT and the City of Las Cruces are contributing to the Program.

**SUPPORT INFORMATION:**

| <b>Fund Name / Account Number</b>                 | <b>Amount of Expenditure</b> | <b>Budget Amount</b> |
|---|------------------------------|----------------------|
| 2760 State Operating Grants<br>27184040 RideShare | \$31,000.00                  | \$31,00.00           |
| 1000 General Fund<br>10104050 Economic Dev        | \$5,283.00                   | \$5,283.00           |
| 5920 Transit Fund<br>59685050 RideShare           | -\$54,517.00                 | -\$54,517.00         |

1. Resolution
2. Memorandum of Understanding between the New Mexico Department of Transportation and the City of Las Cruces as Exhibit "A"
3. Budget Adjustment as Exhibit "B"

**OPTIONS / ALTERNATIVES:**

1. Vote YES on the Resolution and approve the MOU. The Rideshare Program would continue as a part-time, employer based promotion effort.
2. Vote NO on the Resolution to reject the MOU. Direct staff to negotiate a different agreement with NM DOT or to discontinue participation in the Rideshare Program for FY2011.
3. Modify the terms of the MOU or the budget adjustment then adopt the Resolution.
4. Table the Resolution and/or instruct staff to pursue an alternative direction.

**RESOLUTION NO. 10-316**

**A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) IN THE AMOUNT OF \$31,000.00 TO FUND FISCAL YEAR 2011 OPERATIONS OF THE RIDESHARE PROGRAM AND AMENDING THE BUDGET TO REFLECT THE AGREEMENT.**

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

**WHEREAS**, the Rideshare Program has provided information and education on alternative transportation since 1989; and

**WHEREAS**, the City of Las Cruces has entered into agreements over the years with New Mexico Department of Transportation (NMDOT) and the New Mexico Energy, Minerals, and Natural Resources Department (NMNRD) to fund the Rideshare Program; and

**WHEREAS**, NMNRD will not be funding the program in fiscal year 2011 but NMDOT has proposed a Memorandum of Understanding (MOU) in the amount of \$31,000.00 to continue funding for the Program; and

**WHEREAS**, NMDOT requires a minimum of a 10% match for it's funding and the adopted TIP for FY2011 committed the City to contributing \$5,283.00 for the Rideshare operations.

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

**(I)**

**THAT** the Mayor is authorized to execute the MOU attached as Exhibit "A" on behalf of the City.

**(II)**

**THAT** the FY2011 Budget for the Rideshare Program be amended as reflected on the attached Exhibit "B".

**(III)**

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

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 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:

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

**FISCAL YEAR 2010/2011**

**MEMORANDUM OF AGREEMENT**

**BETWEEN**

**THE NEW MEXICO DEPARTMENT OF TRANSPORTATION**

**AND**

**THE CITY OF LAS CRUCES**

THIS AGREEMENT is made and entered into this \_\_\_ day of \_\_\_\_\_, 2010, by and between the State of New Mexico, hereinafter referred to as "STATE", acting through its New Mexico Department of Transportation, Transit and Rail Division, hereinafter referred to as "DEPARTMENT", and THE CITY OF LAS CRUCES, hereinafter referred to as CITY.

**WHEREAS**, Section 126(d) of the Surface Transportation Assistance Act of 1978 declares that special effort should be made to promote commuter modes of transportation which conserve energy, reduce pollution, and reduce traffic congestion; and

**WHEREAS**, the State of New Mexico desires to participate in the Section 126(d) Program; and

**WHEREAS**, the State of New Mexico desires to participate in the Congestion Mitigation and Air Quality (CMAQ) Program, pursuant to 23 U.S.C. Section 149, et. seq.; and

**WHEREAS**, the Governor of New Mexico has designated the New Mexico

Department of Transportation to receive and administer the Federal funds under this program; and

**WHEREAS**, the CITY has expressed a desire to obtain financial assistance to promote ridesharing programs, and Transportation Demand Management programs using Federal-aid urban system funds, and said application has been approved by the DEPARTMENT; and:

**WHEREAS**, the DEPARTMENT, under the authority granted by NMSA 1978, Section 67-3-69, and the CITY wish to enter into and execute a contract for the purpose of implementing a Section 126(d) Project for Federal reimbursement;

**NOW, THEREFORE**, in consideration of the foregoing recitals, the mutual covenants, promises, agreements and representations herein, the parties agree as follows:

**SECTION 1. PURPOSE OF AGREEMENT**

The purpose of this Agreement is to provide for the undertaking of promoting ridesharing and Transportation Demand Management activities (hereinafter referred to as "Project") by the CITY and to state the terms, conditions and mutual understandings of the parties as to the manner in which the Project will be undertaken and completed.

**SECTION 2. SCOPE OF PROJECT**

The CITY shall undertake and complete the Project as described in its Application, attached hereto as Exhibit "A", which is incorporated herein by reference, and made part of this Agreement.

**SECTION 3. COST OF PROJECT**

The DEPARTMENT shall pay to the CITY for services rendered an amount

not to exceed the sum of \$31,000 in Surface Transportation Program funds. The CITY shall provide local matching and operational funds in the amount of \$5,283. The project budget is attached hereto as Exhibit "B" and is incorporated herein by reference and made a part of this Agreement. Expenses incurred during the term of this Agreement will be reimbursable.

**SECTION 4. TERM OF AGREEMENT**

This Agreement shall be in effect July 1, 2010, through JUNE 30, 2011, or until the total amount of Federal funding of this Agreement is expended, whichever comes first. Federal funds not expended by JUNE 30, 2010, shall revert back to the DEPARTMENT. Funds will not be reimbursable to the CITY until Federal Fiscal Year 2010/2011 obligation authority becomes available to the DEPARTMENT, approximately October, 2009.

**SECTION 5. STATE GENERAL APPROPRIATION FUNDS NOT TO BE OBLIGATED**

Nothing herein shall be construed as obligating State general appropriation funds for payment of any debt or liability of any nature arising hereunder. The parties expressly recognize that all payments are to be made by the DEPARTMENT solely from Federal funds made available to the DEPARTMENT for said purpose(s).

**SECTION 6. PROCUREMENT REQUIREMENTS**

The CITY shall make purchases of all Project equipment financed in whole or in part pursuant to this Agreement in accordance with the procedures set forth by the DEPARTMENT and the Federal Highway Administration, hereinafter referred to as FHWA and applicable State law and regulations.

The DEPARTMENT shall concur in writing with the bid award prior to any Agreement or contract being executed for the purchase of services or capital equipment for the Project exceeding \$2,500.

**SECTION 7. TERMINATION FOR CAUSE**

The DEPARTMENT, has the option to terminate this AGREEMENT in whole or in part if the SUBGRANTEE fails to comply with any provisions of this AGREEMENT. Termination shall be effected by serving a notice of termination on the SUBGRANTEE setting forth the manner in which the SUBGRANTEE is in default. By such termination neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the AGREEMENT.

The DEPARTMENT in its sole discretion may, in the case of a termination for breach or default, allow the SUBGRANTEE a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the SUBGRANTEE has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the SUBGRANTEE has not begun and proceeded in good faith to correct the breach, the DEPARTMENT may declare the SUBGRANTEE in default and terminate the Agreement effectively immediately. The DEPARTMENT shall retain any and all other remedies available to it under law. Upon termination of this AGREEMENT, the SUBGRANTEE shall return the Program equipment as specified in Section 2. "SCOPE OF THE PROJECT."

In the event of termination for cause, the CITY shall not be entitled to any reimbursement of the CITY's share of the purchase cost of capital equipment or damages. The CITY further agrees not to sue the State of New Mexico for

damage thereof. Upon cancellation of this Agreement, the CITY shall return the Project equipment as specified in Section 2. SCOPE OF PROJECT.

#### **SECTION 8. SUBCONTRACTS**

The CITY shall not assign any portion of the work to be performed under this Agreement, or execute any contract, amendment or change order thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written approval of the DEPARTMENT.

Should subcontract(s) be authorized by the DEPARTMENT, the subcontractor(s) shall be subject to all provisions of this Agreement. It shall be the CITY's responsibility to duly inform the subcontractor(s) by means of a contract or other legally binding document stipulating the subcontractor's responsibility to this Agreement.

All subcontracts funded in whole or in part by 23 CFR Part 656 funds shall include in its entirety the language contained in Section 17 (DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY) of this Contract.

#### **SECTION 9. AUDIT**

The CITY shall grant the DEPARTMENT, the State and the Federal government or any of their duly authorized representatives the right of access to any books, documents, papers and records of the CITY or his subcontractor which are directly pertinent to this Contract for the purpose of making audits, examination excerpts, and transcriptions.

The CITY agrees to reimburse the DEPARTMENT for any expenditure under this Agreement for which it received payment or reimbursement, as applicable, which

is disallowed by an audit exception by the DEPARTMENT, the State or Federal Government.

The CITY shall ensure that an annual audit of the Project based on the CITY's fiscal year shall be conducted pursuant to OMB Circular A-110 or A-133, whichever is applicable. Prior to initiation of the annual audit, the CITY shall inform the DEPARTMENT of the firm proposed to conduct the audit and the DEPARTMENT shall approve the proposed audit firm. The CITY agrees to provide the DEPARTMENT with a copy of the audit report concerning any portion of the Contract period, as soon as it is released, but in no case later than six months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the CITY fail to produce the annual audit, the DEPARTMENT may, at its option, commission such an audit payable out of Project funds.

#### **SECTION 10. AUDIT EXCEPTIONS**

If Federal or State audit exceptions are made relating to this Agreement, the CITY shall reimburse all costs incurred by the State of New Mexico and the DEPARTMENT associated with defending against the audit exceptions or performing an audit or follow-up audit including but not limited to: audit fees, court costs, attorneys fees based upon reasonable charges in the community, travel costs, penalty assessments, and all other costs of whatever nature.

Immediately upon notification from the DEPARTMENT, the CITY shall reimburse the amount of the audit exception and any other related costs directly to the grantor or the DEPARTMENT as specified by the DEPARTMENT in the notification.

**SECTION 11. RETENTION OF RECORDS**

The CITY shall maintain all books, documents, papers, accounting records, and other evidence pertaining to costs incurred on the Project, and shall make all such materials available to the DEPARTMENT, the Federal Highway Administration, the Comptroller General of the United States or their representatives at any reasonable time during the term of this Agreement and at the DEPARTMENT's offices, and for three (3) years from the date of the last expenditure report.

**SECTION 12. AMENDMENT**

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

**SECTION 13. SCOPE OF AGREEMENT**

This Agreement incorporates all of the agreements, covenants, and understandings between the parties hereto concerning the subject matter hereof, and all such covenants, agreements, and understandings have been merged into this written Agreement. No prior agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**SECTION 14. APPROPRIATIONS**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the New Mexico Department of Transportation and the Federal Highway Administration for performance of this Agreement. If sufficient appropriation and authorization are not made, this Agreement shall terminate upon written notice being given by the DEPARTMENT to the CITY.

The DEPARTMENT's decision as to whether sufficient appropriations are available shall be accepted by the CITY and shall be final.

**SECTION 15. EQUAL OPPORTUNITY COMPLIANCE**

The CITY agrees to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the CITY agrees to assure that no person in the United States shall, on the grounds of race, religion, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied the benefits, or be otherwise subjected to discrimination under, any program or activity performed under this Agreement. If the CITY is found to not be in compliance with these requirements during the term of this Agreement, the CITY agrees to take appropriate steps to correct these deficiencies.

**SECTION 16. CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE**

The Department and CITY shall comply with all federal, state and local laws and ordinances applicable to the work called for herein. The Department and CITY further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Executive Order 12898 entitled "Federal Actions Environmental Justice in Minority Populations and Low-income Populations", the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11246 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 and as supplemented by

the Department of Labor regulations (41 CFR 60). Accordingly, 49 CFR 21 is applicable to this Agreement and incorporated herein by reference.

**SECTION 17. 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:

**(A) 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:

1. 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;
2. To create a level playing field on which DBEs can fairly compete for DOT-assisted contracts;
3. To ensure that DOT's DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. To assist the development of firms that can complete successfully in the marketplace outside the DBE Program.

**(B) DBE Obligations:** The Department will establish the state DBE goal on an annual basis. The CITY shall contact the Department's Office of Equal Opportunity Programs to obtain the current goal.

1. **Means of 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 the 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.

2. **Record Keeping Responsibilities:** The CITY is responsible to assure that its DBE liaison officer completes and submits the appropriate forms required by the DBE Program to the Department's project manager or to the Department's Office of Equal Opportunity Program Bureau (OEOPB) at the following address:

New Mexico Department of Transportation  
 OEOPB  
 Aspen Plaza, Suite 107  
 1596 Pacheco Street  
 Santa Fe, New Mexico 87505

**(C) Department's DBE Program:** The Department's DBE Program, 18 NMAC 28.2 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 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

**(D) 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:

1. Recipient shall not discriminate on the basis of race, color, national origin, or sex 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 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

2. The recipient shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. 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 18. REVERSION OF SURPLUS FUNDS**

There shall be strict accountability for all receipts and disbursements relating hereto. If upon termination of this Agreement there is any property, materials, or equipment belonging to the DEPARTMENT, the CITY shall account for the same and dispose of them as directed by the DEPARTMENT.

**SECTION 19. OFFICIALS NOT TO BENEFIT**

No member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

**SECTION 20. REPORTING REQUIREMENTS**

The CITY shall keep satisfactory records with regard to the use of the property and shall submit to the DEPARTMENT, as requested, such information as is required by the DEPARTMENT in order to assure compliance with this Agreement and shall immediately notify the DEPARTMENT in all cases where Project equipment is used in a manner substantially different from that described in the Project Description.

Quarterly Reporting - A "Quarterly Report" and certification that the project

equipment is still being used in accordance with the terms of the Agreement shall be submitted to the DEPARTMENT by the CITY not later than the 25th of the month following the end of the quarter.

During the period of performance under this Agreement, the CITY shall maintain, at its own expense, the Project equipment at a high level of cleanliness, safety, and mechanical soundness. The DEPARTMENT and FHWA shall have the right to conduct periodic inspections for the purpose of confirming proper maintenance pursuant to this Agreement.

The CITY agrees to notify the DEPARTMENT immediately of any vehicular accidents, thefts or vandalism involving any Project equipment. Failure of the CITY to notify the DEPARTMENT shall be considered a material breach of contract subject to the provisions of Section 7. TERMINATION FOR CAUSE.

#### **SECTION 21. METHOD OF PAYMENT**

The DEPARTMENT shall reimburse the CITY for the DEPARTMENT'S share of the eligible expenses upon receipt of invoices, with sufficient supporting documentation as determined and/or approved by the DEPARTMENT, indicating that expenses have been paid, such invoices to be submitted on a quarterly basis and received by the DEPARTMENT by the 25th day of the month following the end of a quarter. All expenses must be actual rather than estimated and listed on the invoice as charged. Rounding up or down, other than the total, is not permitted due to the possibility of audit exceptions. Only those expenses or percentage thereof, properly documented and deemed eligible, will be reimbursed under this program.

**SECTION 22. THIRD PARTY BENEFICIARY CLAUSE**

This Agreement is not intended by any of the provisions of any part of the Agreement to create in the public, or any member thereof, a third party beneficiary or to authorize 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 23. NEW MEXICO TORT CLAIMS ACT**

By entering into this AGREEMENT, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this AGREEMENT. Any liability incurred in connection with this AGREEMENT is subject to the immunities and limitations of the New Mexico Tort Claims Act, Sections 41-4-1, et seq., NMSA 1978, as amended. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. The CITY and its "public employees" as defined in the New Mexico Tort Claims Act, the DEPARTMENT and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and/or do not waive any limitation of liability pursuant to law. No provision in this AGREEMENT modifies and/or waives any provision of the New Mexico Tort Claims Act.

**SECTION 24. JURISDICTION**

This Agreement and all work hereunder shall be subject to the laws, rules, regulations and decrees of the State of New Mexico.

**SECTION 25. SEVERABILITY**

In the event 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 26. LOBBYING CERTIFICATION**

- A. As required by the U.S. DOT regulations, (New Restrictions on lobbying), at 49 CFR 20.110, the CITY'S authorized representative certifies to the best of his or her knowledge and belief that for each application for Federal assistance exceeding \$100,000: (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the CITY, to any person for influencing or attempting to influence an officer or employee or any agency, a Member of Congress, an officer or employee of any Congress, or an employee of a Member of Congress pertaining to the award of any Federal assistance, or extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative Agreement, and (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application to FTA for Federal assistance, the CITY assures that it will complete and submit standard Form-LLL, (Disclosure Form to Report Lobbying), including the information required by the form's instructions.
- B. The CITY understands that this certification is a material representation

of fact upon which reliance is placed and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The CITY also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each failure.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates below specified.

NEW MEXICO DEPARTMENT OF TRANSPORTATION "DEPARTMENT"

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Max E. Valerio, P.E.,  
Deputy Secretary of Programs & Infrastructure

CITY OF LAS CRUCES "CITY"

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Kenneth E. Miyagishima  
Mayor, City of Las Cruces

Approved as to form and legal sufficiency by Department's Office of General Counsel

By: Javier Lopez Date: 6-01-2010  
Javier Lopez  
Assistant General Counsel

Approved as to form

By: \_\_\_\_\_ Date: \_\_\_\_\_  
City Attorney

**EXHIBIT A**

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## **PROGRAM GOALS AND OBJECTIVES**

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**Goal 1:** Educate the public regarding available modes of transportation and the benefits of utilizing alternatives to single occupant, petroleum-based transportation.

Objective 1: promote energy conservation through increased vehicle occupancy rates.

Objective 2: promote improved air quality through reduction of mobile source emissions related to SOV use.

Objective 3: promote reduction in traffic congestion and associated roadway maintenance costs through reduction in vehicle miles traveled.

Objective 4: describe individual and community benefits of carpooling, van pooling, use of public transportation, use of non-motorized transportation, and reducing motorized transportation use.

**Goal 2:** Provide the public with information about available carpooling, van pooling, non-motorized and public transportation options in the region.

Objective 1: participate in public outreach activities.

Objective 2: conduct media campaign to promote RIDESHARE objectives.

Objective 3: distribute educational and promotional material directly to the community.

**Goal 3:** Increase the use of carpooling, van pooling, non-motorized transportation, public transit and other transportation alternatives in the region.

Objective 1: increase use of multiple occupant vehicles.

Objective 2: encourage use of local and regional public transit.

Objective 3: encourage use of non-motorized transportation when appropriate

Objective 4: reduce incidence of unnecessary motorized transportation.

### **TASKS**

**Task 1:** Develop and conduct marketing and promotional activities to support program goals and objectives.

- Prepare RIDESHARE program information that can be stored electronically and distributed electronically or in printed form
- Participate in a minimum of five (5) marketing and promotional events per year, including at least one (1) event per quarter.
- Maintain telephone directory listing for the RIDESHARE program.
- Provide new public service announcements about the program each quarter.
- Provide local media outlets with quarterly information about RIDESHARE goals and program activities .

**Task 2: Provide current public transportation information and referrals for interested persons.**

- Utilize an appropriate voice-mail messaging system
- Refer inquiries when appropriate to other programs
- Utilize an official City website to promote and assist RIDESHARE activities
- Provide interested persons with promotional program materials.

**Task 3: Work cooperatively with business, community, and government entities in the region to facilitate the increased use of alternatives to single occupancy vehicle use, including public transportation, carpools and vanpools.**

- Maintain an electronic database that includes public information officer contact information for large business, community, and governmental entities in the region
- Work directly with the public information officers to support the Goals of this program
- Provide business, community, and government entities with RIDESHARE program information and with contact information for public transportation providers operating in the area.

**Task 4: Maintain an electronic data base of communications with business, community, and government entities, including the following information:**

- The date of communication
- The name of the entity communicated with
- The number of and types of alternatives to single occupancy vehicles promoted by or available through the entity
- The immediate and potential results of the communication.

**Task 5: Reporting on Program Activities. Provide NMDOT with Quarterly Reports and RIDESHARE invoices. Quarterly reports shall be submitted in hard copy and shall include:**

- The program's current electronic data base of public information officer contact information
- A summary of the program's communications with business, community and government entities, including the number of and types of alternatives to single occupancy vehicles promoted by or available through the entity and the immediate and potential results of the communications.
- The number of, location of and a summary of the content of educational presentations given
- The number, source of media used and general content of media releases achieved.

## FY2011 BUDGET

## RIDESHARE

|                               |          |                               |                     |
|-------------------------------|----------|-------------------------------|---------------------|
| <b>Program Revenue</b>        |          |                               |                     |
| NMDOT                         |          |                               | \$ 31,000.00        |
| CLC 10% match                 |          |                               | \$ 5,283.00         |
|                               |          | <b>Total Program Funding</b>  | <b>\$ 36,283.00</b> |
| <br>                          |          |                               |                     |
| <b>Coordinator Salary</b>     |          |                               |                     |
| est. 18 hours/week \$11.50/hr | \$10,750 |                               | \$ 10,750.00        |
| <b>Operating Expenses</b>     |          |                               |                     |
| Postage and Freight           |          | \$500                         |                     |
| Advertising                   |          | \$12,000                      |                     |
| Copy Fees                     |          | \$300                         |                     |
| Printing                      |          | \$3,000                       |                     |
| Purchased Services General    |          | \$5,000                       |                     |
| travel                        |          | \$500                         |                     |
| Dues                          |          | \$250                         |                     |
| Supplies General              |          | \$3,183                       |                     |
| Software                      |          | \$800                         | \$25,533            |
|                               |          | <b>Total Program Expenses</b> | <b>\$ 36,283.00</b> |

**CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011**

| FUND  |                          |                       |            |                        |
|---|--------------------------|-----------------------|------------|------------------------|
| General<br>Fund 1000                        |                          |                       |            |                        |
|   | FY 2009/10<br>Projected* | FY 2010/11<br>Adopted | Adjustment | FY 2010/11<br>Adjusted |
| <b>BEGINNING BALANCE</b>                    | \$ 16,662,967            | 12,947,440            |            | 12,947,440             |
| <b>REVENUES</b>                             |                          |                       |            |                        |
| 512011 to 015 & 911500 Gross Receipts Taxes | \$ 54,879,000            | 56,049,000            |            | 56,049,000             |
| 511010 Property Taxes                       | 8,569,756                | 8,877,080             |            | 8,877,080              |
| 514010 to 50 Franchise Fees                 | 2,842,370                | 2,915,738             |            | 2,915,738              |
| 546301 to 560 Administrative Transfers      | 2,020,234                | 3,351,888             |            | 3,351,888              |
| 533001 Police Fines                         | 1,071,311                | 1,096,724             |            | 1,096,724              |
| 521002 Subdivision Fees                     | 140,725                  | 145,650               |            | 145,650                |
| All Other Revenues                          | 6,002,451                | 7,602,986             |            | 7,602,986              |
| <b>TOTAL REVENUES</b>                       | \$ 75,525,847            | 80,039,066            | 0          | 80,039,066             |
| <b>TOTAL RESOURCES</b>                      | \$ 92,188,814            | 92,986,506            | 0          | 92,986,506             |
| <b>EXPENDITURES</b>                         |                          |                       |            |                        |
| Administration                              | \$ 1,953,171             | 2,047,233             |            | 2,047,233              |
| Community Development                       | 1,760,676                | 1,888,156             | 5,283      | 1,893,439              |
| Facilities                                  | 11,899,670               | 13,162,835            |            | 13,162,835             |
| Financial Services                          | 3,419,995                | 3,184,058             |            | 3,184,058              |
| Fire  | 8,691,161                | 8,801,781             |            | 8,801,781              |
| Human Resources                             | 961,195                  | 918,216               |            | 918,216                |
| Information Technology                      | 0                        | 3,707,397             |            | 3,707,397              |
| Judicial                                    | 1,293,271                | 1,553,066             |            | 1,553,066              |
| Legal                                       | 1,670,491                | 1,674,131             |            | 1,674,131              |
| Legislative                                 | 906,507                  | 722,295               |            | 722,295                |
| Police                                      | 19,997,641               | 18,445,316            |            | 18,445,316             |
| Public Services                             | 5,765,018                | 5,921,342             |            | 5,921,342              |
| Public Works                                | 5,600,821                | 5,424,882             |            | 5,424,882              |
| Reserves                                    | 1,847,566                | 1,834,437             |            | 1,834,437              |
| Transfers                                   | 13,474,191               | 9,720,122             | (2,017)    | 9,718,105              |
| <b>Total General Fund Expenditures</b>      | \$ 79,241,374            | 79,005,267            | 3,266      | 79,008,533             |
| Adjustment due to change in accruals.       | 0                        | 0                     | 0          | 0                      |
| <b>ENDING BALANCE</b>                       | \$ 12,947,440            | 13,981,239            | (3,266)    | 13,977,973             |
| <b>Required 1/12th Reserve</b>              | 6,603,448                | 6,583,772             | 0          | 6,584,044              |
| <b>UN-RESERVED ENDING BALANCE</b>           | \$ 6,343,992             | 7,397,467             | (3,266)    | 7,393,929              |

\*Projected based on 8 months actual through February 28, 2010 and 4 months projected.

## EXHIBIT B CONTINUED

**CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011**

| <b>General Fund Reserve Section</b>                     |    |                                  |                               |                                |
|---|----|----------------------------------|-------------------------------|--------------------------------|
|   |    | <b>FY 2009/10<br/>Projected*</b> | <b>FY 2010/11<br/>Adopted</b> | <b>FY 2010/11<br/>Adjusted</b> |
| <b>RESERVES FOR:</b>                                    |    |                                  |                               |                                |
| 1. Salary Increases:                                    |    |                                  |                               |                                |
| 610106 Reserve for Blue Collar Bargaining Unit Increase | \$ | 33,712                           | 44,722                        | 44,722                         |
| 610106 Reserve for Police Bargaining Unit Increases     |    | 147,564                          | 145,885                       | 145,885                        |
| 610106 Reserve for Fire Bargaining Unit Increases       |    | 102,453                          | 81,965                        | 81,965                         |
| 610106 Reserve for Non-Represented Increases            |    | 0                                | 274,625                       | 274,625                        |
| 2. Services   |    |                                  |                               |                                |
| 722190 Purchased Services                               | \$ | 268,493                          | 200,000                       | 200,000                        |
| 722194 Special Programs Public Services                 |    | 80,000                           | 0                             | 0                              |
| 722248 Admin Charge - County                            |    | 77,128                           | 79,894                        | 79,894                         |
| 722248 Admin Charge - GRT                               |    | 530,000                          | 539,000                       | 539,000                        |
| 722310 City Manager Contingency                         |    | 50,000                           | 20,000                        | 20,000                         |
| 723100 Building or Land Rental                          |    | 99,870                           | 0                             | 0                              |
| 3. Payments to Other Government Entities                |    |                                  |                               |                                |
| 772900 Office of Emergency Management                   | \$ | 69,346                           | 69,346                        | 69,346                         |
| 772900 Council of Governments                           |    | 14,000                           | 14,000                        | 14,000                         |
| 4. Payments for Other Government Programs               |    |                                  |                               |                                |
| 772900 Mesilla Valley Economic Development Alliance     | \$ | 200,000                          | 200,000                       | 200,000                        |
| 722190 City Contribution to Doña Ana Arts Council       |    | 0                                | 40,000                        | 40,000                         |
| 705105 Low Income Utility Assistance Program            |    | 100,000                          | 75,000                        | 75,000                         |
| 705110 Affordable Housing Impact Fee Assistance         |    | 75,000                           | 50,000                        | 50,000                         |
| <b>Total Reserves</b>                                   | \$ | <b>1,847,566</b>                 | <b>1,834,437</b>              | <b>1,834,437</b>               |
| 5. Transfers to Other Funds                             |    |                                  |                               |                                |
| 951005 Fund 1005 Engineering Services                   | \$ | 1,765,410                        | 960,000                       | 960,000                        |
| 951010 Fund 1010 Airport Operations                     |    | 270,000                          | 320,000                       | 320,000                        |
| 951015 Fund 1015 Permit Services                        |    | 295,679                          | 670,683                       | 670,683                        |
| 951200 Fund 1200 Vehicle Acquisition                    |    | 1,500,000                        | 0                             | 0                              |
| 952330 Fund 2440 Prisoner Care                          |    | 1,780,000                        | 2,000,000                     | 2,000,000                      |
| 952760 Fund 2760 State Operating Grants                 |    | 0                                | 0                             | 0                              |
| 952815 Fund 2815 TIDD Dedicated Revenue                 |    | 470,637                          | 0                             | 0                              |
| 953275 Fund 3275 HUD Section 108 (MONAS)                |    | 0                                | 147,925                       | 147,925                        |
| 954001 Fund 4001 Capital Improvement Reserve            |    | 650,000                          | 585,000                       | 585,000                        |
| 954012 Fund 4012 Facility State Grants                  |    | 23,448                           | 0                             | 0                              |
| 954201 Fund 4201 Streets General Fund                   |    | 39,283                           | 0                             | 0                              |
| 954XXX Fund 4XXX TIDD Capital Projects                  |    | 1,000,000                        | 0                             | 0                              |
| 965920 Fund 5920 Transit                                |    | 1,134,067                        | 1,264,576                     | 1,262,559                      |
| 966340 Fund 6340 Liability Claims                       |    | 1,741,487                        | 1,489,396                     | 1,489,396                      |
| 772900-97410 Fund 7410 MVRDA                            |    | 1,326,486                        | 1,326,486                     | 1,326,486                      |
| 772900-97420 Fund 7420 Metro Narcotics                  |    | 225,543                          | 225,543                       | 225,543                        |
| 772900-97440 Fund 7440 Animal Service Center            |    | 802,151                          | 650,513                       | 650,513                        |
| 9XXXXX Fund 2715 DLCP (Res 10-041)                      |    | 0                                | 80,000                        | 80,000                         |
| 952710 Fund 2710 Bldg Payment                           |    | 450,000                          | 0                             | 0                              |
| <b>Total Transfers Out</b>                              | \$ | <b>13,474,191</b>                | <b>9,720,122</b>              | <b>9,718,105</b>               |
| <b>GRAND TOTAL RESERVE SECTION</b>                      | \$ | <b>15,321,757</b>                | <b>11,554,559</b>             | <b>11,552,542</b>              |

\*Projected based on 8 months actual through February 28, 2010 and 4 months projected.

## EXHIBIT B CONTINUED

**CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011**

Page 1 of 2

| FUND                                  | DIVISION                 |                       | FUND TYPE  |                        |
|---------------------------------------|--------------------------|-----------------------|------------|------------------------|
|                                       | Public Services          |                       | Enterprise |                        |
| Transit<br>Fund 5920                  |                          |                       |            |                        |
|                                       | FY 2009/10<br>Projected* | FY 2010/11<br>Adopted | Adjustment | FY 2010/11<br>Adjusted |
| <b>RESOURCES</b>                      |                          |                       |            |                        |
| Beginning Balance                     | \$ 175,027               | 309,103               |            | 309,103                |
| <b>REVENUES</b>                       |                          |                       |            |                        |
| 543711 NMSU Bus Subsidy               | \$ 204,411               | 204,411               |            | 204,411                |
| 543712 Bus Fares                      | 142,776                  | 143,000               |            | 143,000                |
| 543714 Token Fares                    | 7,908                    | 7,900                 |            | 7,900                  |
| 543715 Bus Passes                     | 49,606                   | 50,000                |            | 50,000                 |
| 543716 Mesilla Subsidy                | 30,145                   | 17,500                |            | 17,500                 |
| 543717 Advertising Revenues           | 0                        | 27,000                |            | 27,000                 |
| 543731 Dial A Ride Bus Fares          | 5,217                    | 5,200                 |            | 5,200                  |
| 543732 Dial A Ride Bus Tokens         | 17,987                   | 18,000                |            | 18,000                 |
| 551004 Federal Transit Administration | 1,313,400                | 1,313,400             |            | 1,313,400              |
| 551004 Federal Transit Capital        | 946,683                  | 0                     |            | 0                      |
| 552007 Rideshare State Hwy            | 24,966                   | 31,000                | (31,000)   | 0                      |
| 552008 NMEMNR - Rideshare             | 30,000                   | 21,500                | (21,500)   | 0                      |
| 560046 Transit Donations Dial-A-Ride  | 1,714                    | 0                     |            | 0                      |
| 592001 Other Reimbursed Expenses      | 100                      | 100                   |            | 100                    |
| <b>Total Revenues</b>                 | \$ 2,774,913             | 1,839,011             | (52,500)   | 1,786,511              |
| <b>Total Resources</b>                | \$ 2,949,940             | 2,148,114             | (52,500)   | 2,095,614              |
| <b>EXPENDITURES</b>                   |                          |                       |            |                        |
| Transit Department                    |                          |                       |            |                        |
| Administration 59685010               |                          |                       |            |                        |
| Personnel                             | \$ 254,571               | 236,668               |            | 236,668                |
| Operating                             | 152,377                  | 171,000               |            | 171,000                |
| Capital                               | 71,178                   | 0                     |            | 0                      |
| Depreciation                          | 136,564                  | 248,230               |            | 248,230                |
| Total - 59685010                      | \$ 614,690               | 655,898               | 0          | 655,898                |
| Fixed Route 59685020                  |                          |                       |            |                        |
| Personnel                             | \$ 1,218,881             | 1,317,039             |            | 1,317,039              |
| Operating                             | 661,229                  | 710,233               |            | 710,233                |
| Capital                               | 385,000                  | 0                     |            | 0                      |
| Depreciation                          | 315,258                  | 133,900               |            | 133,900                |
| Total - 59685020                      | \$ 2,580,368             | 2,161,172             | 0          | 2,161,172              |
| Dial-A-Ride 59685030                  |                          |                       |            |                        |
| Personnel                             | \$ 832,651               | 766,352               |            | 766,352                |
| Operating                             | 220,076                  | 213,588               |            | 213,588                |
| Capital                               | 496,000                  | 0                     |            | 0                      |
| Depreciation                          | 25,547                   | 0                     |            | 0                      |
| Total - 59685030                      | \$ 1,574,274             | 979,940               | 0          | 979,940                |

\*Projected based on 8 months actual through February 28, 2010 and 4 months projected.

## EXHIBIT B CONTINUED

**CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011**

Page 2 of 2

| FUND  | DIVISION                 |                       | FUND TYPE       |                        |
|---|--------------------------|-----------------------|-----------------|------------------------|
|   | Public Services          |                       | Enterprise      |                        |
| Transit<br>Fund 5920                                | FY 2009/10<br>Projected* | FY 2010/11<br>Adopted | Adjustment      | FY 2010/11<br>Adjusted |
| Bus Maintenance 59685040                            |                          |                       |                 |                        |
| Personnel   | \$ 360,885               | 321,010               |                 | 321,010                |
| Operating   | 63,472                   | 66,413                |                 | 66,413                 |
| Capital   | 180,400                  | 0                     |                 | 0                      |
| Depreciation  | 933                      | 0                     |                 | 0                      |
| Total - 59685040                                    | \$ 605,690               | 387,423               | 0               | 387,423                |
| Rideshare 59685050                                  |                          |                       |                 |                        |
| Personnel   | \$ 37,003                | 32,723                | (32,723)        | 0                      |
| Operating   | 29,783                   | 21,794                | (21,794)        | 0                      |
| Total - 59685050                                    | \$ 66,786                | 54,517                | (54,517)        | 0                      |
| <b>Total Expenditures</b>                           | <b>\$ 5,441,808</b>      | <b>4,238,950</b>      | <b>(54,517)</b> | <b>4,184,433</b>       |
| <b>OTHER FINANCING SOURCES (USES)</b>               |                          |                       |                 |                        |
| Transfer from Fund 1000 - General Fund              | \$ 1,134,067             | 1,264,576             | (2,017)         | 1,262,559              |
| Transfer from Fund 1200 - VAF Fund                  | 132,350                  | 0                     |                 | 0                      |
| Transfer from Fund 2171 - Older Americans Act Fund  | 71,752                   | 73,885                |                 | 73,885                 |
| Transfer from Fund 2810 - Gasoline Tax Fund         | 1,000,000                | 530,000               |                 | 530,000                |
| Transfer to Fund 1000 - General Fund for Bldg R & M | (15,500)                 | (15,500)              |                 | (15,500)               |
| Transfer to Fund 6340 - Liability Claims Fund       | 0                        | 0                     |                 | 0                      |
| <b>Total Other Financing Sources (Uses)</b>         | <b>\$ 2,322,669</b>      | <b>1,852,961</b>      | <b>(2,017)</b>  | <b>1,850,944</b>       |
| <b>ENDING BALANCE With Non-Cash Expense</b>         | <b>\$ (169,199)</b>      | <b>(237,875)</b>      | <b>0</b>        | <b>(237,875)</b>       |
| Plus: Non-Cash Expense                              | 478,302                  | 382,130               | 0               | 382,130                |
| <b>ENDING BALANCE</b>                               | <b>\$ 309,103</b>        | <b>144,255</b>        | <b>0</b>        | <b>144,255</b>         |

\*Projected based on 8 months actual through February 28, 2010 and 4 months projected.

## EXHIBIT B CONTINUED

**CITY OF LAS CRUCES  
ADOPTED BUDGET FY 2010/2011**

| <b>FUND</b>                                 | <b>DIVISION</b>                  |                               | <b>FUND TYPE</b>       |                                |
|---|----------------------------------|-------------------------------|------------------------|--------------------------------|
| <b>State Operating Grants<br/>Fund 2760</b> | <b>Finance</b>                   |                               | <b>Special Revenue</b> |                                |
|   | <b>FY 2009/10<br/>Projected*</b> | <b>FY 2010/11<br/>Adopted</b> | <b>Adjustment</b>      | <b>FY 2010/11<br/>Adjusted</b> |
| <b>RESOURCES</b>                            |                                  |                               |                        |                                |
| Beginning Balance                           | \$ 0                             | 0                             | 0                      | 0                              |
| <b>REVENUES</b>                             |                                  |                               |                        |                                |
| 552013-21002 Branigan Library State Aid     | \$ 7,116                         | 4,062                         | 0                      | 4,062                          |
| 552007-17001 - NM Dept. of Transportation   | 0                                | 0                             | 31,000                 | 31,000                         |
| <b>Total Revenues</b>                       | \$ 7,116                         | 4,062                         | 31,000                 | 35,062                         |
| <b>Total Resources</b>                      | \$ 7,116                         | 4,062                         | 31,000                 | 35,062                         |
| <b>EXPENDITURES</b>                         |                                  |                               |                        |                                |
| 27205120-21002 Branigan Library State Aid   | \$ 7,116                         | 4,062                         | 0                      | 4,062                          |
| 27184040-17001 Rideshare Program            | 0                                | 0                             | 31,000                 | 31,000                         |
| <b>Total Expenditures</b>                   | \$ 7,116                         | 4,062                         | 31,000                 | 35,062                         |
| <b>ENDING BALANCE</b>                       | \$ 0                             | 0                             | 0                      | 0                              |

\*Projected based on 8 months actual through February 28, 2010 and 4 months projected.