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

Item # 18 Ordinance/Resolution# 10-317 Council District:

For Meeting of June 21, 2010
 (Adoption Date)

TITLE:

A RESOLUTION TO ACCEPT THE UPDATED CONTRACT AWARD FROM NEW MEXICO DEPARTMENT OF TRANSPORTATION IMPROVEMENT PROGRAM (STIP) FOR THE NOVATION OF COOPERATIVE PROJECT AGREEMENT FOR THE MAIN STREET RECONSTRUCTION PROJECT IN THE AMOUNT OF \$1,176,000.00. THERE IS NO CITY MATCH REQUIREMENT.

PURPOSE(S) OF ACTION: To accept the contract from the Department of Transportation Improvement Program (STIP) for the right-of-way acquisition and reconstruction of Main Street from Griggs Avenue to Lohman Avenue in Las Cruces, Doña Ana County, New Mexico. STIP number STP-9991-2(1), Control Number 1100070.

Name of Drafter: Amber Vaughn <i>av</i>		Department: Public Works		Phone: (575) 528-3228	
Department Public Works	Signature <i>[Signature]</i>	Phone (575) 528-3333	Department Budget	Signature <i>[Signature]</i>	Phone (575) 541-2300
Grants Administration Office	Signature <i>[Signature]</i>	Phone (575) 541-2281	Assistant City Manager	Signature <i>[Signature]</i>	Phone (575) 541-2271
Legal	Signature <i>[Signature]</i>	Phone (575) 541-2028	City Manager	Signature <i>[Signature]</i>	Phone (575) 541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On July 2, 2009 the City of Las Cruces and the New Mexico Department of Transportation entered into a Cooperative Project Agreement for the Main Street reconstruction, Project STP-9991-2(1), Control Number 1100070 in the amount of \$1,176,000.00. The original agreement has become overly complex because of prior obligations and deliverables, necessitating a Novation to replace the original contract with an Agreement that more adequately addresses the current needs.

The Novation will become active upon execution by Deputy Secretary of the New Mexico Department of Transportation. This document will then be active until September 30, 2014 unless otherwise amended.

(Continue on additional sheets as required)

SUPPORT INFORMATION:

Fund Name / Account Number	Amount of Expenditure	Budget Amount
State Street Improvements/ 4212 42806030-854121-70W01	N/A	\$1,176,000.00

1. No budget adjustment required. Allocated funds were approved and are available in the FY 2010-2011 budget.
2. No Funds to be expended.
3. These are not American Recovery and Reinvestment Act funds.
4. There is no match requirement of any type for the City.
5. Resolution
6. Exhibit "A" NMDOT letter dated May 25, 2010
7. Exhibit "B" Novation of Cooperative Project Agreement

OPTIONS / ALTERNATIVES:

1. Approve the resolution to accept the updated contract award from New Mexico Department of Transportation Improvement Program (STIP) for the Novation of Cooperative Project Agreement for the Main Street Reconstruction project in the amount of \$1,176,000.
2. Do Not Approve the resolution to accept the updated contract award from New Mexico Department of Transportation Improvement Program (STIP) for the Novation of Cooperative Project Agreement for the Main Street Reconstruction project in the amount of \$1,176,000.00. No funding will be received and the City will have to seek funding for the project from other sources.
3. Return the CAES with recommended changes/direction to the Novation prior to submission.

(Continue on additional sheets as required)

RESOLUTION NO. 10-317

A RESOLUTION TO ACCEPT THE UPDATED CONTRACT AWARD FROM NEW MEXICO DEPARTMENT OF TRANSPORTATION IMPROVEMENT PROGRAM (STIP) FOR THE NOVATION OF COOPERATIVE PROJECT AGREEMENT FOR THE MAIN STREET RECONSTRUCTION PROJECT IN THE AMOUNT OF \$1,176,000.00. THERE IS NO CITY MATCH REQUIREMENT.

The City Council is informed that:

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

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

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

(I)

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

(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.

(SEAL)

APPROVED:

Mayor

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

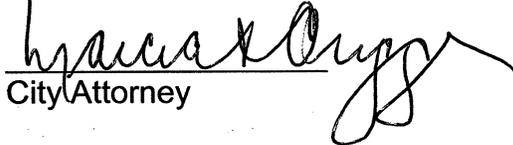
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

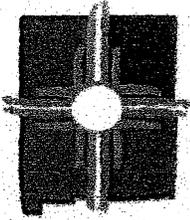
Councillor Thomas: _____

APPROVED AS TO FORM:

AST


City Attorney

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New Mexico DEPARTMENT OF
TRANSPORTATION
 MOBILITY FOR EVERYONE

RECEIVED

JUN 03 2010

CITY OF LAS CRUCES
 PW/PROJECT DEVELOPMENT

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

May 25, 2010

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

RE: Control Number: 1100070

Dear Mr. Grijalva:

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

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

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

Sincerely,

Kimberly Wildharber
 Contract Manager

ep

Enclosures

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

Bill Richardson
 Governor

Gary L. J. Giron
 Cabinet Secretary

Commission

Johnny Cope
 Chairman
 District 2

Jim Franken
 Vice Chairman
 District 4

Doug Peterson
 Commissioner
 District 3

Roman Maes III
 Commissioner
 District 5

Jackson Gibson
 Commissioner
 District 6

John Hummer
 Commissioner
 District 1

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Contract Number	<u>D12749</u>
Vendor Number	<u>0000054342</u>
Control Number	<u>1100070</u>

NOVATION OF COOPERATIVE PROJECT AGREEMENT

This Novation is made and entered into this ____ day of _____, 2010, by and between the New Mexico Department of Transportation, herein referred to as "Department," and the City of Las Cruces, herein referred to as "City."

RECITALS

Whereas, the Department and the City entered into a Cooperative Project Agreement on July 2, 2009, which is incorporated into this novation; and,

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

Whereas, all project control, account, and contract number will remain; and,

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

Whereas, the original Agreement has over time become overly complex because of prior obligations and deliverables, necessitating a Novation to replace the original contract with an Agreement that more adequately addresses the current needs of the parties; and,

Whereas, the additional provisions addressed through this Novation Agreement shall become effective on the date it is executed by the Department's Cabinet Secretary, the Parties will comply with, observe and respect any tasks, duties, obligations and responsibilities that were incurred and still exist under the original Cooperative Project Agreement dated July 2, 2009; and,

Whereas, the parties will treat this Novation as the current working contract and ignore previous versions that have been superseded by this Novation.

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

SECTION ONE: PURPOSE

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

SECTION TWO: PROJECT FUNDING BY PARTIES

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

A.	<u>2008 Section 129 Demo ID NM085 (STP) Funds</u>	
	<u>Department's 100% share</u>	\$1,176,000
	For right of way and reconstruction of Main Street from Griggs Avenue to Lohman Avenue.	
B.	<u>The Total Project Funding</u>	<u>\$1,176,000</u>

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

SECTION THREE: CITY SHALL

1. Act in the capacity of lead agency for the Project.
2. Utilize the control number in all correspondence and submittals to the Department.
3. Pay all costs, perform all labor, and supply all material for the Project.
4. Provide a Project Manager to the Department who shall serve as the single point of contact to the Department.
5. Adopt a written resolution of support for the Project, including an assumption of liability, maintenance responsibility, related amenities, and availability of required matching funds.

6. Obtain approval from the Department's Regional Division Manager or Designee of Plans Specifications and Estimate (PS&E) Package which include the following:
 - a. Construction Plans
 - b. Engineer's Estimate/Engineers Opinion of Probable Cost
 - c. Specifications
 - d. Contract Book
7. Obtain written authorization from the Department prior to advertising the Project for bids or performing work with the City's own personnel, equipment, and /or resources.
8. Advertise, let, and supervise the construction of Project Control No. 1100070.
9. Require City's engineer of record to prepare a final detail estimate of the work, indicating the bid items, the quantity in each item, the unit bid price, and cost of the items based on such bid price, if the project is bid.
10. Prepare a detail of equipment, labor, and a project schedule, and submit to the Department's District Office, if the project will be constructed with City resources.
11. Obtain Department concurrence in award.
12. Register and enter all required data into B2GNow and LCPTracker (mandatory EEO software programs) and contractually require its prime contractor and subcontractors to do the same.
13. Submit reimbursement requests in the Department's approved federal aid format to include details of the quantities allowed on various items of work on a monthly basis.
14. Agree the Department has the option to terminate this Agreement if the City's submittal of the Certification Package is not received by the Department's Regional Division Manager or Designee by August 15th of the year in which the project funds are programmed. The Certification Package shall remain in the City's project file for a minimum of five years and shall contain the following documents as applicable:
 - a. Signed Certification of Pre-Construction Phase (**Appendix F-1**);
 - b. Estimate of T/LGA Project Pay-Out (**Appendix F-2**);
 - c. The PS&E assembly;
 - d. Environmental clearance documentation from FHWA;
 - e. Documentation of concurrence by the State Historic Preservation Officer;
 - f. Right of way certification documentation;
 - g. Utility certification documentation; and,
 - h. Intelligent Transportation Systems (ITS) documentation.

15. Agree that if current federal fiscal year funding has not been authorized by FHWA by **September 30th**, this Agreement shall terminate, unless prior federal fiscal year funding has been previously authorized. If the City cannot meet the Federal Fiscal year deadline, and the money is reprogrammed for the next fiscal year this Agreement will remain in effect.
16. Be responsible for preliminary engineering, environmental documentation, right of way activities, project development, utility coordination, project construction, and construction management and testing.
17. Be responsible for all applicable design, pre-construction and maintenance activity including, but not limited to the following:
 - a. utility coordination and relocation;
 - b. drainage and storm drain design;
 - c. geotechnical design;
 - d. pavement design;
 - e. traffic design;
 - f. structural design;
 - g. environmental and archaeological clearances;
 - h. right of way mappings;
 - i. right of way acquisition;
 - j. hazardous materials site(s) and contamination investigations;
 - k. public involvement;
 - l. agency coordination;
 - m. permit application;
 - n. blading;
 - o. shaping;
 - p. snow removal;
 - q. gravel;
 - r. repair of washouts; and,
 - s. chip sealing.
18. Develop and execute the Project in accordance with the Department's current Tribal/Local Government Agency Handbook.
19. Insure all designs comply with **Appendix A**, "Preliminary Engineering/Construction Engineering" to be performed under the direct supervision of a Registered New Mexico Professional Engineer and/or Registered New Mexico Architect, as required by NMSA 1978, Sections 61-23-21 (1999) and 61-15-1 (1987).

20. Design the Project in accordance with **Appendix C**, "Design Standards," which is hereby incorporated in this Agreement.
21. Comply with **Appendix D**, "Survey and Right of Way Acquisitions Requirements," which is hereby incorporated in this Agreement.
22. Comply with **Appendix E**, "Construction Phase Duties and Obligations," which is hereby incorporated in this Agreement, for construction projects.
23. Submit all required environmental documents to the Department's Environmental Section. The Department shall coordinate all activities related to environmental certifications through the FHWA.
24. Warrant, covenant, and agree that the City will comply with conditions and terms contained in **Appendices A through F-2**. The City will perform any and all applicable obligations contained herein.
25. Complete the environmental process in accordance with state and federal guidelines and regulations including the National Environmental Policy Act, FHWA Technical Advisory T 6640.8, 23 CFR 771, and the Guidelines for Preparing Environmental Documents. This effort includes, but will not be limited to:
 - a. If applicable, be responsible for the Location Corridor Study, as described in **Appendix B**. Initiate and cause to be prepared, the Initial Corridor Analysis Report "Phase A Report," the Location Study Report "Phase B Report," and Environmental Documents "Phase C";
 - b. Submittal of a scope of work to the Department's Environmental design Division to determine the level of effort needed for completing the environmental certification process;
 - c. If a cultural resources survey is required, the City shall submit the cultural resources report to the Department's Environmental Design Division;
 - d. Conducting and documenting hazardous materials investigations according to the Department's Environmental Geology Section's Hazardous Materials Assessment Handbook;
 - e. Conducting and documenting the appropriate public notifications and public involvement activities;
 - f. Submittal of the appropriate environmental documents by a qualified environmental professional to the Department's Environmental Design Division for certification. A qualified environmental professional shall be an individual with at least four years of full-time paid experience in environmental investigations, including analyzing and preparing

- documentation needed to meet FHWA approval requirements for the National Environmental Policy Act (NEPA) and related legislation;
- g. Maintain on file all supporting documentation including social, economic and environmental evaluations (SEE), biological evaluations, wetland determinations, public involvement and agency coordination, and hazardous materials investigations for a minimum of five years after project completion; and,
 - h. Produce and distribute to regulatory agencies and interested parties the appropriate number of copies of environmental documents.

SECTION FOUR: DEPARTMENT SHALL

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

SECTION FIVE: BOTH PARTIES AGREE

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

SECTION SIX: PROJECT RESPONSIBILITY

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

SECTION SEVEN: SOLE JURISDICTION

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

SECTION EIGHT: LEGAL COMPLIANCE

The City shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies in the performance of this Agreement. These laws include, but are not limited to: FHWA Memorandums; 23 CFR Part 630.106 Authorization to proceed and project monitoring; 23 CFR Part 630.112 Agreement Provisions; 23 U.S.C. 106 Project approval and oversight [as amended by SAFETEA-LU section 1904]; Single Audit Act Amendments of 1996 (P.L. 104-156)/OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; 49 CFR Part 18 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; Titles VI and VII of the Civil Rights Act of 1964 and related statutes; the Disadvantaged Business Enterprise Program (49 CFR 26); the External Equal Opportunity/Contractor Compliance Program, including On-the-Job training requirements (23 CFR 230); and the Americans with Disabilities Act (42 USC 12101-12213, 28 CFR 35 and 36) as amended. Additionally, the City shall comply with all applicable federal, state and local laws and regulations governing environmental issues, workplace safety, employer-employee relations and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The City shall ensure that the requirements of this compliance are made a part of each contract and subcontract on this Project at all tiers.

SECTION NINE: DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM OBLIGATIONS

1. DBE Goal Setting - In accordance with 49 CFR Part 26, The Department establishes an overall state DBE goal on an annual basis. In the event the Department assigns a project specific DBE goal, the City is required to meet that established DBE goal through its contractors. The City shall ensure that DBE provisions and goals are included in its invitations to bid and resulting contracts.
2. Record Keeping Responsibilities – The City is responsible to appoint a DBE liaison officer and assure that its DBE liaison officer completes and submits required DBE Program forms and information to the Department's Office of Equal Opportunity Programs (OEOP). The OEOP can be contacted as follows:

New Mexico Department of Transportation
 OEOP
 Aspen Plaza, Suite 107
 1596 Pacheco Street
 Santa Fe, New Mexico 87505
 Phone: 1-800-544-0936 or 505-827-1774
 Fax: 505-827-1779

3. Sanctions – Compliance with the DBE provisions is mandatory. Failure to comply with the DBE provisions shall be treated as a violation of this Agreement. Further, if the City fails to comply with the DBE provisions, the Department may impose sanctions as provided in 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

SECTION TEN: ON-THE-JOB TRAINING (OJT) PROGRAM OBLIGATIONS

1. OJT Goal Setting - In the event the Department assigns a project specific OJT goal, the City is required to meet that established OJT goal through its contractors. If a project specific OJT goal is assigned, the City shall include the Department's Apprentice/Trainee Special Provisions (May 13, 2009) in the City's Invitation to Bid and resulting contracts. The City shall also ensure that an OJT Plan and Training Schedule is provided to the Department at the pre-construction conference.
2. Record Keeping Responsibilities – The City is responsible to appoint or have its prime contractor appoint an OJT liaison officer who is responsible for ensuring compliance with the OJT goal, plan and training schedule. OJT compliance efforts will be reported to the Department's Project Manager and tracked through the LCPTTracker software.
3. Sanctions – Compliance with the OJT provisions is mandatory. Failure to comply with the OJT provisions shall be treated as a violation of this Agreement. Further, if the City fails to comply with the OJT provisions, the Department may impose sanctions and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).

SECTION ELEVEN: EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM OBLIGATIONS

1. City Assurances – Each contract the City enters into with a construction contractor, design consultant, other consultant or recipient on a DOT-assisted project, and any subcontract thereto, shall include the following assurances:
 - a. The City shall not discriminate on the basis of race, age, color, religion national origin, sex, disability, veteran status, or sexual orientation in the performance of this Agreement. The City shall comply with all applicable civil rights requirements in the award and administration of NMDOT-assisted contracts. Failure by the City 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. Further, the Department may impose sanctions and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).
 - b. The City hereby agrees that as a condition to receiving Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (herein referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the City received Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by subsection 21.7 (a)(1) of the Regulations.
2. More specifically, and without limiting the above general assurance, the City hereby gives the following specific assurances with respect to its highway/roads/streets program:
 - a. That the City agrees that each “program” and each “facility” as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to

- a “program”) conducted, or will be (with regard to a “facility”) operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
- b. That the City shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and make in connection with all highway/roads/streets program and, in adapted form in all proposals for negotiated agreements.
 - c. That the City shall insert the provisions of Appendix G-1 of this assurance in every contract subject to the Act and the Regulations.
 - d. That the City shall insert the clauses of Appendix G-2 of this assurance, as a covenant running with the land, in any deed from the united States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
 - e. That where the City receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
 - f. That where the City receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
 - g. That the City shall include the appropriate clauses set forth in Appendix G-3 of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the City with other parties: (a) for the subsequent transfer of real property acquired or improved under highway/roads/streets program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under the highway/roads/streets program.
 - h. That this assurance obligates the City for the period during which Federal Financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the City or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services of benefits; or (b) the period during which the City retains ownership or possession of the property.

- i. The City shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other Citys, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
 - j. The City agrees that the United States has a right to seek judicial enforcement with regard to any matter under the Act, the Regulations, and this assurance.
3. The City shall sign and submit the Attached Appendix G to the Office of Equal Oppurtunity of the NMDOT as identified within the Appendix. By signing Appendix G ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the City.
 4. The City shall require Recipients to sign and submit Equal Employment Opportunity (EEO) Program Obligations Recipient Assurance documents for each contract the City enters into with a construction contractor, design consultant, other consultant or recipient on a DOT-assisted project, and any subcontract thereto.

SECTION TWELVE: THIRD PARTY BENEFICIARY CLAUSE

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

SECTION THIRTEEN: NEW MEXICO TORT CLAIMS ACT

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

SECTION FOURTEEN: OFFICE OF INSPECTOR GENERAL REVIEWS

The City shall provide information to ensure all bidders are aware of the reporting and oversight required and are bound by the conditions from the time of bid submission. The

following contract provisions must be included in all City prime contracts, subcontracts, and other contracts for services for an Federally funded project.

- a. **Inspector General Reviews.** Any inspector general of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using federal funds. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned.
- b. **Access of Offices of Inspector General to Certain Records and Employees.** With respect to each contract or grant awarded using federal funds, any representative of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized to examine any records of the contractor or grantee, any of its subcontractors or sub grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub grant; and to interview any officer or employee of the contractor, grantee, sub grantee, or agency regarding such transactions.
 - i. Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the Contractor or any of Contractor's subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or subcontract.
 - ii. Allow the Comptroller General and his representatives to interview any officer or employee of the Contractor or any of Contractor's subcontractors, or of any State or local government agency administering the contract, regarding such transactions.
 - iii. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an inspector general.
- c. **New Mexico Department of Transportation/Office of Inspector General.** As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), dated June 2006, the Department's Office of Inspector General (OIG) has the authority to carry out all duties required to collect information, conduct audits, special studies and investigations. The duties are the same as those specified in federal law: Office of Inspector General, 23 USC §302 (the capability to carry out the duties required by law); 23 USC §112 (contracting for engineering and design services); 23 USC §106 (project

approval); 23 USC 112 - Sec. 112, (letting of contracts); 23 USC 113 - Sec. 113 (prevailing rate of wage); 23 USC 114 - Sec. 114 (construction); 23 CFR 635 & 23 CFR 636 (design build); 23 CFR 637 (construction inspection approval). The duties of the Department's OIG also arise from the responsibility all state Departments of Transportation have for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U.S.C. 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

SECTION FIFTEEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS

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

SECTION SIXTEEN: AUTHORIZATION OF EXPENDITURES

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

SECTION SEVENTEEN: REIMBURSEMENT FOR EXPENDITURES INCURRED

The Department's District Office shall reimburse the City upon receipt of payment requests for the purposes stated in Section Two, with supporting documentation as determined and/or approved by the Department, certifying that costs have been incurred in compliance with this Agreement. Such invoices shall be submitted to the Department District Office on a monthly basis. Payment requests shall be certified by the City authenticating that the requests accurately reflect work completed, amount due, remaining Agreement balance, and project control number. All expenses must be actual rather than estimated and must be listed on the payment request as charged. Only those expenses that are properly documented and deemed eligible will be reimbursed under this Agreement. Incomplete submittals will be returned to the City for corrections. The Department's District Office will not reimburse the City for any costs incurred prior to the full execution of the Agreement and obligation of federal funding, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. Costs incurred prior to FHWA authorization require additional justification as per Title 23 CFR Part 1.9. Final payment requests shall be submitted to the Department's District Office within six months of completion of the project and prior to the termination date identified within Section Nineteen.

SECTION EIGHTEEN: TERMS OF THIS AGREEMENT

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

SECTION NINETEEN: TERMINATION

1. This Agreement shall terminate on **September 30, 2014**. Neither party shall have obligation under this Agreement after said date except as stated in Section Six of this Agreement.
2. The Department may, at its option, terminate this Agreement if the funds identified in Section Two of this Agreement have not been contractually committed between the City and a contractor within one year from the date the funds have been authorized by the FHWA.

- 3. The Department will review inactive projects on a quarterly basis inactive projects. An inactive project for this purpose means a project for which no expenditures have been charged against Federal funds for the past 12 months.
- 4. If the Department determines a project to be inactive, the Department may, as directed by FHWA, redirect the unexpended balance as per 23 CFR 630.106.
- 5. The Department may, at its option, terminate this Agreement if the City fails to comply with any provision of this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

SECTION TWENTY: SEVERABILITY

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

SECTION TWENTY ONE: AMENDMENT

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

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Deputy Secretary

Date: _____

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

By: *Juan Lopez*
Assistant General Counsel

Date: 5-24-2010

CITY OF LAS CRUCES

By: _____
Mayor

Date: _____

ATTEST

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM BY THE CITY ATTORNEY

By: _____
City Attorney

Date: _____

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Preliminary Engineering/Construction Engineering

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

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

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

Location Corridor Study Guidelines**The City shall:**

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

Design Standards

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

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

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

1. The design shall provide for all facilities as required by law (ADA compliance, bicycle paths, etc. see NMSA 1978, Sections 67-3-62 to 67-3-64, as amended), and the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for building compliance.
2. The structure(s) or artwork shall be designed for a 20-year life as a minimum for new construction or reconstruction, or for a 10-year life as a minimum for rehabilitation.
3. The locally applicable International Building Code, Electrical Code, Plumbing Code or any other Federal or State Codes shall be utilized for the design and construction of any Building or structure rehabilitation project(s).
4. The following documents shall be used as a minimum in the design of this Project for projects **on the State Highway System or the National Highway System**. Current New Mexico APWA or City standards may be used on City facilities. Asterisked (*) items shall be used on **all** architectural projects:
 - *a. FHWA Manual on Uniform Traffic Control Devices, 2003 edition as amended;
 - b. AASHTO A Policy on Geometric Design of Highways and Streets, 2004 edition "Green Book;"
 - c. AASHTO Guide for the Development of Bicycle Facilities, 1991 edition;
 - d. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways, 2001;
 - e. Department's Urban Drainage Design Criteria;
 - f. Department's Geotechnical Manual, September 1990;
 - g. Department's Hazardous Materials Assessment Handbook, latest edition;
 - *h. Department's Location Study Procedures, August 2000;
 - *i. Department's Right of Way Handbooks, May 2005;
 - j. Department's Right of Way Mapping Development Procedures, latest edition;
 - k. AASHTO Guide to Design of Pavement Structures, 1993 edition;
 - *l. 2006 New Mexico Commercial Building Code;
 - *m. 2006 New Mexico Plumbing Code;
 - *n. 2006 New Mexico Mechanical Code;
 - *o. 2008 New Mexico Electrical Code;
 - p. U. S. Department of Interior, National Park Service Preservation Assistance Division, Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings, 1983 edition; and
 - *q. Department's Pedestrian Access Details (NMDOT-PAD), latest edition.

Survey and Right of Way Acquisition Requirements

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

Upon written request from the City, the Right of Way Bureau will supply the names of the right of way contractors currently doing business with the Department. Right of way functions performed prior to making the above submittals will jeopardize federal funding for this Project.

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

- VII) Tribal/Local Government Agency. Non-compliance with the state and/or federal requirements may result in loss of project funds.
5. Appraisals shall not begin until the Department approves the right of way maps. City or contracted (fee) appraisers shall not be used prior to making the submittals in paragraph one above.
 6. All real property appraisals shall be developed and reported in accordance with the right of way regulations, policies, and procedures of the Department, and the Uniform Standards of Professional Appraisal Practice (USPAP) and where federal funds are involved, 49 CFR 103 and 104. All appraisal and appraisal review actions are subject to Department and FHWA review (see Right of Way Acceptance Plan). Non-compliance with state, federal and/or USPAP requirements may result in loss of project funds.
 7. Before the initiation of negotiations, the City shall, through a proper appraisal, establish an amount which it believes is just compensation for the real property to be acquired. The City shall not utilize the same individual/firm to conduct both the appraisals and the appraisal reviews. Upon the completion of the acquisition function, the City shall inform the Acquisition Unit Supervisor and schedule an on-site review of the work. The Department will review the work to render an opinion as to the apparent conformance of City work with federal and state statutes and regulations (see Right of Way Acceptance Plan). In the event that a significant amount of the work is found to be unacceptable, no approval of the right of way function will be issued for the Project until the Department is satisfied that the work meets the requirements.
 8. The City shall maintain all records and documents relating to the right of way acquisition for a minimum of five years and shall record all transfer of ownership documents with the City Clerk. Department and FHWA personnel shall be provided access to project right of way files upon reasonable notice.
 9. The City shall furnish the Department with a written certification (Right of Way Certification) stating that the right of way acquisition (and relocations, if applicable) has been performed in compliance with federal and state laws and regulations.
 10. The City shall be responsible for certifying to the Department that all right of way work has been performed according to the required federal and state statutes and regulations.

Construction Phase Duties and Obligations

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

- e. Upon request, the Department's Assistant District Engineer (ADE) or representative shall furnish copies of the Minimum Acceptance Requirements for federal-aid projects to the City for guidance at the pre-construction conference.
 - f. All personnel doing sampling and testing for Acceptance/Independent Assurance on federally funded projects shall be certified by the Technical Training and Certificate Program (TTCP) pursuant to the TTCP Manual.
5. The City Engineer shall certify with each reimbursement request that the Certificates of Compliance are on file with the City Engineer's Office, for products and materials incorporated into the Project and for the quantities shown on the progress payment estimate. The Department may periodically conduct an audit of the Certificates of Compliance as per Section 106.4 of the Department's Standard Specifications. Department personnel may occasionally check the City's procedures for handling of all Certificates of Compliance.
 6. The City Engineer shall certify with each reimbursement request that the items shown on the estimate have been completed in accordance with the contract requirements.
 7. The Department may periodically audit the City's source documents for each project. The Department's established guidelines shall be used to prepare the Source Document Books. Department or FHWA (if applicable) personnel may periodically review the City's procedures for documentation.
 8. Change Orders:
 - a. Changes to conform to the field conditions may be warranted; however, these changes shall be discussed with and approved by the Department prior to implementation, in accordance with the Department's Change Order Procedures. The change order shall be submitted soon thereafter to the Project Manager. All decreases/increases shall be documented on factor sheets, which may be obtained from the Department and attached to the change order. No payment shall be made for additional quantities until the Department approves the change orders.
 - b. "Extra Work" for which there is no unit bid price shall be negotiated and the price shall be supported by a cost breakdown, the Department's average unit bid price, or the City's average unit price list on comparable projects. "Extra Work" shall not be performed unless approved by the Department and approved by FHWA, if participation is requested. If, "Extra Work" cannot be negotiated by the preceding manner, then the Contractor may be required to

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

- c. Change orders for non-participating work shall be submitted to the Department for review and approval. If the work impacts the scope of work, contract time in excess of pro-rated time, and/or additional contracted funds, it shall require Department approval.
9. The Department shall assign personnel to assist the City in complying with the procedures and stipulations contained herein.
10. The City shall identify a Project Manager to the Department as the single point of contact and shall be in charge of the Project.
11. The City's Project Manager shall keep the Department's ADE or representative routinely apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence to the Department's ADE in a timely manner.

Certification of Pre-Construction Phase

Control No. 1100070

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

1. That the City has complied with all applicable terms, conditions and certification requirements of this Agreement.
2. That the City has completed environmental coordination and obtained Department and FHWA approval of the environmental, Right of Way, Utility, Railroad, and ITS documents and completed the consultation process with the State Historic Preservation Officer as required by law. Furthermore, the City has complied with Section Three of the Agreement.

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

CITY OF LAS CRUCES

By: _____
Mayor

Date: _____

ATTEST

By: _____
City Clerk

Date: _____

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

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

**Equal Employment Opportunity (EEO) Program
Obligations Recipient Assurances**

1. Recipient hereby gives the following specific assurances with respect to its highway/roads/streets program:
 - a. The Recipient shall not discriminate on the basis of race, age, color, religion national origin, sex, disability, veteran status, or sexual orientation in the performance of this Agreement. The recipient shall comply with all applicable civil rights requirements in the award and administration of NMDOT-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. Further, the Department may impose sanctions and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801, et seq.).
 - b. The recipient hereby agrees that as a condition to receiving Federal financial assistance from the Department of Transportation it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (herein referred to as the Act), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (hereinafter referred to as the Regulations) and other pertinent directives, to the end that in accordance with the Act, Regulations, and other pertinent directives, no person in the United States shall, on the grounds of race, color, national origin, sex, age or disability be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient received Federal financial assistance from the Department of Transportation, including the Federal Highway Administration, and hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by subsection 21.7 (a)(1) of the Regulations.
2. More specifically, and without limiting the above general assurance, the Recipient hereby gives the following specific assurances with respect to its highway/roads/streets program:

- a. That the recipient agrees that each "program" and each "facility" as defined in subsections 21.23(e) and 21.23(b) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
- b. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and make in connection with all highway/roads/streets program and, in adapted form in all proposals for negotiated agreements.
- c. That the Recipient shall insert the provisions of Appendix G-1 of this assurance in every contract subject to the Act and the Regulations.
- d. That the Recipient shall insert the clauses of Appendix G-2 of this assurance, as a covenant running with the land, in any deed from the united States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
- e. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
- f. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
- g. That the Recipient shall include the appropriate clauses set forth in Appendix G-3 of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under highway/roads/streets program; and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under the highway/roads/streets program.
- h. That this assurance obligates the Recipient for the period during which Federal Financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services

of benefits; or (b) the period during which the Recipient retains ownership or possession of the property.

- i. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
- j. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation/Public Works/Municipal Development under the highway/roads/streets program and is binding on it, other recipients, sub-grantees, contractors, subcontractors, transferees, successors in interest and other participants in the highway/roads/streets program. The person or persons whose signature appear below are authorized to sign this assurance on behalf of the Recipient.

Date: _____ Project Control Number: 1100070

Recipient Name: City of Las Cruces

Signature of Authorized Official: _____

Print Name: _____ Title: _____

Appendix G should be signed and mailed to the following:

New Mexico Department of Transportation
 OEOP
 Aspen Plaza, Suite 107
 1596 Pacheco Street
 Santa Fe, New Mexico 87505
 Phone: 1-800-544-0936 or 505-827-1774
 Fax: 505-827-1779

**Equal Employment Opportunity (EEO) Program
Required Contract Compliance**

During the performance of this contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination is federally-assisted programs of the Department of Transportation (hereinafter "DOT") Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the City or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the City, or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the City shall impose such

contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

- a. withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
6. Incorporation of Provisions: The contractor shall include the provision APPENDIX G-1, paragraphs 1 through 5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issues pursuant thereto.

The contractor shall take such action with respect to any subcontract, or procurement as the City or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the City, and in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

Equal Employment Opportunity (EEO) Program**Required Clauses for the transfer of real property, structures, or improvements**

The following clauses shall be included in any and all deed effecting or recording the transfer of real property, structures, or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the Department of Transportation, as authorized by law, and upon the condition that the City will accept title to the lands and maintain the project constructed thereon, in accordance with the State of New Mexico, the Regulations for the Administration of highways/roads/streets and the policies and procedures prescribed by FHWA of the Department of Transportation and, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation (herein referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the City all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto City and its successors forever, subject, however, to the covenants, conditions, restrictions, and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the City, its successors or assigns.

The City, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, the (1) no person shall on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over or under such lands hereby conveyed, and (2) that the City shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of

Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction.*

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**Equal Employment Opportunity (EEO) Program
Required Deed, License, and Permit Clauses**

The following clauses shall be included in all deeds, licenses, permits, or similar instruments entered into by the City pursuant to the provisions of Assurance 6(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle 49, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc]*

That in the event of breach of any of the above nondiscrimination covenants, City shall have the rights to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deed.]*

That in the event of breach of any of the above nondiscrimination covenant, City shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of the City and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by City pursuant to the provisions of Assurance 6(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of race, color, or national origin shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964), and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds.]*

That in the event of breach of any of the above nondiscrimination covenants, City shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of City and its assigns.