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

Item # 8 Ordinance/Resolution# 11-030 Council District:

For Meeting of August 2, 2010

TITLE: A RESOLUTION APPROVING A FIVE-YEAR BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY DOÑA ANA COMMUNITY COLLEGE FOR THE TERM OF AUGUST 1, 2010 TO MAY 31, 2015

PURPOSE(S) OF ACTION: To approve a Bus Shuttle Service agreement between the City of Las Cruces and New Mexico State University Doña Ana Community College (NMSU DACC) or the period August 1, 2010 to May 31, 2015.

| | | | | | |
|---|--------------------|--|------------------------|---------------------------|--------------|
| Drafter and Staff Contact: Michael J. Bartholomew <i>Michael J. Bartholomew</i> | | Department: Public Services / Transit | | Phone: 541-2500 | |
| Department | Signature | Phone | Department | Signature | Phone |
| Department Director | <i>[Signature]</i> | 528-3477 | Budget | <i>[Signature]</i> | 541-2107 |
| Other | | | 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 had a longstanding agreement since 1986 to provide a bus shuttle service on the New Mexico State University (NMSU) campus. Since August 2009, the City and NMSU's Doña Ana Community College (NMSU DACC) have participated in a similar agreement to provide service to the East Mesa Campus of DACC.

It is the desire of both parties to extend this agreement through May 31, 2015. The annual estimated cost of this service is \$90,000 for the 2010- 2011 academic year. The entire cost of this service is reimbursed by NMSU DACC.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A" – Agreement with NMSU DACC to provide service during the August 1, 2010 to May 31, 2015 academic year.

SOURCE OF FUNDING:

| | | | |
|--|-----------------------------------|--|---|
| Is this action already budgeted? This is an ongoing project and was included in the FY11 budget. | Yes | <input checked="" type="checkbox"/> | See fund summary below |
| | No | <input type="checkbox"/> | If No, then check one below: |
| | <i>Budget Adjustment Attached</i> | <input type="checkbox"/> | Expense reallocated from: |
| | | <input type="checkbox"/> | Proposed funding is from a new revenue source (i.e. grant; see details below) |
| | <input type="checkbox"/> | Proposed funding is from fund balance in the Fund. | |
| Does this action create any revenue? Revenue will match 100% of all operating expenditures. | Yes | <input checked="" type="checkbox"/> | Funds will be deposited into this fund: <u>5920-59680010-543711</u> |
| | No | <input type="checkbox"/> | There is no new revenue generated by this action. |

FUND SUMMARY:

| Fund Name(s) | Account Number(s) | Expenditure Proposed | Available Budgeted Funds in Current FY | Remaining Funds | Purpose for Remaining Funds |
|--------------------|--------------------------------------|----------------------|--|-----------------|-----------------------------|
| Operating Expenses | <u>5920-59685020-Various objects</u> | \$90,000 (estimated) | * | | |

* The funds are budgeted in FY11 and are distributed across most transit fund objects.

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution to provide a service agreement with NMSU DACC to provide transit service to the East Mesa Campus through May 31, 2015.
2. Vote "No"; this will not approve the Resolution which would cancel the cooperative efforts to better serve the DACC students.
3. Vote to "Amend"; and provide alternative direction to staff to pursue other options specified by Council.
4. Vote to "Table"; this could delay the transit service to the student of DACC East Mesa.

REFERENCE INFORMATION

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

1. **Resolution No. – 10-033** A RESOLUTION APPROVING A BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY DOÑA ANA COMMUNITY COLLEGE FOR THE TERM OF AUGUST 1, 2009 TO MAY 31, 2010

RESOLUTION NO. 11-030**A RESOLUTION APPROVING A FIVE-YEAR BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY DOÑA ANA COMMUNITY COLLEGE FOR THE TERMS OF AUGUST 1, 2010 TO MAY 31, 2015.**

The City Council is informed that:

WHEREAS, the City has maintained a bus service agreement with New Mexico State University (NMSU) since 1985; and

WHEREAS, the City and New Mexico State University Doña Ana Community College (NMSU DACC) entered into an agreement in August 2009 to provide a shuttle service between NMSU DACC East Mesa Campus and Mesilla Valley Mall; and

WHEREAS, this service is provided during the regular academic semesters of the school year and would be fully funded by NMSU DACC; and

WHEREAS, both the City and NMSU DACC desire to continue this agreement through May 31, 2015.

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

(I)

THAT the City of Las Cruces authorizes the Service Agreement with NMSU DACC from August 1, 2010 to May 31, 2015, designated as Exhibit "A", attached hereto and made a part of this Resolution.

(II)

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

RESOLUTION NO 11-030, cont
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DONE AND APPROVED this _____ day of _____, 2010.

(SEAL)

APPROVED:

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:

[Handwritten Signature]

City Attorney

**CITY OF LAS CRUCES/ NEW MEXICO STATE UNIVERSITY,
DOÑA ANA COMMUNITY COLLEGE
BUS SERVICE AGREEMENT**

THIS AGREEMENT is hereby entered into between the City of Las Cruces, a municipal corporation, hereinafter referred to as "the City," and the New Mexico State University, Doña Ana Community College, hereinafter referred to as "NMSU DACC."

WHEREAS, the City operates RoadRUNNER Transit as a public benefit mass transit system under authorization as a federal Section 5307 provider; and

WHEREAS, the City has been operating East Mesa Campus transit service for NMSU DACC since August 2009 on a one-year agreement; and

WHEREAS, continuation of service to the East Mesa Campus will provide a valuable benefit to NMSU DACC students, staff, faculty and City residents; and

WHEREAS, NMSU DACC desires to renew its Bus Service Agreement with the City to continue to provide transit services;

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein expressed, the parties agree as follows:

1. TERM OF AGREEMENT

This Agreement shall be from August 1, 2010 until May 31, 2015, subject however to paragraph No. 3.

2. TRANSPORTATION SERVICES TO BE PROVIDED BY CITY

- A. **Determination of Services to be Provided** — In consideration of the payments by NMSU DACC to the City, as provided in paragraph No. 4, the City or its agents agree to provide transit service in accordance with routings and schedules to be negotiated with NMSU DACC representatives. The City and NMSU DACC representatives shall agree to service levels for the next academic semester prior to the end of the previous semester. The base proposed service is attached in Appendix "A".
- B. **Service Period** — Unless otherwise requested, NMSU DACC transit services shall operate for the entirety of the spring and fall college semesters. Services will operate Monday through Friday, when classes are in session, holidays excepted.
- C. **Fares and Access** — There will be no fare charged for riders on this route. Fares will be collected for any connections made to other RoadRUNNER routes at the time the riders board regular RoadRUNNER routes at Mesilla Valley Mall. This route may be accessed by any transit rider.

- D. **Vehicles and Drivers** — Effective the fall semester 2009, the City shall provide ADA accessible vehicles and drivers to operate one route of transit service connecting the Mesilla Valley Mall and NMSU DACC East Mesa Campus.
- E. **Customer Information**—The City and NMSU DACC will jointly provide current public/customer information relative to the services to be provided.
- F. **Reports**—Provide periodic reports during the academic year as requested and regarding ridership, use of paratransit services as well as operational conditions. A report will be included with the billing at the end of each academic semester.
- G. **Schedule Performance**—The City shall exercise due diligence in adhering to all published time schedules, but minor deviations due to variations in traffic, weather, or road conditions shall not be deemed to be default hereunder.
- H. **Schedules**—Transit service shall run as agreed to by the parties subject to the availability of equipment.

3. TERMINATION

- A. This Agreement is contingent upon both parties receiving appropriations to carry out its terms. If during the term of this Agreement, either party receives insufficient appropriations, said party may terminate this Agreement by giving ninety (90) days written notice of its intent to terminate this Agreement due to insufficient appropriations.
- B. This Agreement may also be terminated by either party upon 30 days advance written notice from one party to the other.
- C. In case of termination by either party, NMSU DACC shall pay to the City a pro rata share of its subsidy level as determined pursuant to paragraph No. 4B.

4. CONSIDERATION AND METHOD OF PAYMENT

- A. In consideration of the agreements contained herein, NMSU DACC shall pay to the City a cost reimbursement calculated pursuant to this paragraph. In determining the total reimbursement due herein, the following cost calculations shall be used:
 - (1) **Part-time Seasonal Bus Operators**—The hourly rate times the actual hours employed driving or being trained for operation of the

contracted service, will determine the reimbursement rate for the part-time seasonal bus operators used to provide this service. The current hourly wage rate, plus applicable federal and State of New Mexico required benefits, will be used for the period that the service is provided.

- (2) **Maintenance/Operating Costs**—the vehicle operating costs will be calculated using the number of actual miles per semester, multiplied by the cost per actual mile. The National Transit Database (NTD) Reporting System prepared in accordance with Federal Transit Administration (FTA) regulations will be the source of financial and non-financial operating data. The reimbursement for operating expenses will be based on cost per actual mile using NTD Operating Expenses MB Form 301 and MB Service Form 406. Vehicle operator labor costs will not be included in the cost per mile calculations. Administrative costs, including administrative and maintenance labor, will be included in the cost per actual mile.
- (3) **Increases in Operating Costs**—If the City determines prior to the start of a given semester of any contract year that the projected subsidy amount will exceed the prior year's actual subsidy by 5%, the City will inform NMSU DACC in writing no later than thirty days prior to the beginning of the given semester.

- B. **Payment**—Payment from NMSU DACC to the City for transit services operated under this Agreement shall be made at the end of each semester. The request for payment will be submitted to:

Andrew J. Burke
 Vice President for Business and Finance
 NMSU Dona Ana Community College
 MSC 3DA, P.O. Box 30001
 Las Cruces, NM 88003-8001
 (575) 527-7560

The City shall submit a request for payment will be made no later than 30 days following the end of the semester. Payment shall be due and payable within thirty (30) days following receipt of invoice by NMSU DACC. If this Agreement is terminated as herein provided, the City shall be entitled to a pro rata share of that annual payment based on the service rendered during the academic year in which this Agreement is terminated.

- C. **Other Liability**—Under no circumstances shall NMSU DACC be liable for any monies for any reason other than the Maximum Subsidy Level set forth in paragraph No. 5A.

- D. **Payment Location**—Payment against invoices shall be mailed to the Transit Department, P. O. Box 20000, Las Cruces, NM 88004.
- E. **Annual Estimate of Cost of Service** – The City shall provide an estimate of the cost of service for each academic school year prior to the beginning of the fall semester.

5. CAPITAL PROGRAM REQUIREMENTS

The City will work with NMSU DACC to identify capital requirements to operate this service, which will result in a capital equipment replacement plan. Capital requirements will include vehicles, stop signs, passenger shelters and/or benches. Capital requirements will be handled as follows:

- A. **Vehicles**—The City will provide one (1) bus and all the needed drivers for this service. The City will identify and attempt to secure federal funding for any replacement vehicles required to continue to operate these transit services. NMSU DACC commits to assisting the City with financing the local match requirements for replacement vehicles needed to insure continued operation of the service. NMSU DACC may opt to pay for a negotiated annual vehicle depreciation in lieu of assisting with new vehicle purchases. For planning purposes, vehicles will be replaced at the approved federal life cycle for the type of vehicle being used. The City will act as the purchasing agent in acquiring all vehicles, which are to be purchased with federal grant funds.

Any vehicles purchased by the City to operate service under the Agreement using FTA funds authorized to the City will remain the property of the City if this Agreement is terminated.

- B. **Bus Stop Signs**—will be installed and maintained by the City except NMSU DACC will provide a bus stop on its East Mesa campus.
- C. **Shelters/Benches**—The City and NMSU DACC will work together to identify locations appropriate for installing benches and/or shelters to accommodate intended passengers. The City will also work with NMSU DACC to identify possible funding sources to pay for capital and installation costs associated with benches and shelters. Shelters and benches on the NMSU DACC campus will be funded by NMSU DACC.

6. INDEPENDENT CONTRACTOR RELATIONSHIP

In providing and furnishing said transit service during the term hereof, the City shall act solely in the capacity of an independent contractor, and not as an agent or employee of NMSU DACC, and NMSU DACC shall have no control over the City's transit operations in connection with providing said services, except as hereinabove provided, and NMSU DACC shall have no control or supervision whatsoever over the drivers of the vehicle(s) used in said service who shall be employed by the City.

7. MAINTENANCE/EQUIPMENT REPAIR

The City agrees to maintain all vehicles used in providing the service in a safe, efficient, and lawful manner, and in so doing, shall comply with all applicable state and FTA requirements for the preventive and regular maintenance of transit equipment. Any physical damage to vehicles purchased for or by NMSU DACC to operate services established herein shall be repaired by the City in a timely and high quality manner using the same standards that are applied to the City's current 5307 operation, regardless of cause.

8. INDEMNIFICATION

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 or other New Mexico law.

9. APPLICABLE LAW

The City agrees that it will adhere to all federal, state, and local laws applicable to the provision of the services outlined herein. This includes federal grant prohibitions against providing special events charter services.

The City will not be liable for a decision by NMSU DACC to operate transit service that does not comply with Title VI and/or transportation requirements established under the Americans with Disabilities Act and will not be obligated to operate such service.

10. ACCOUNTING

The City and NMSU DACC shall provide strict accounting for all receipts and disbursements, if any, made pursuant to the Agreement. The City will furnish accounting reports to NMSU DACC upon request.

11. REPRESENTATIVES

Any notice required under this Agreement shall be mailed to the following addresses, except as changed by written notice to the other party. As well, the City hereby designates the persons listed below as the City representatives to be responsible for daily supervision of the operation of service:

CITY: Transit Administrator
P. O. Box 20000
Las Cruces, NM 88004
(575) 541-2500
Fax (575) 541-2545

NMSU DACC: Andrew J. Burke
Vice President for Business and Finance
NMSU Dona Ana Community College
MSC 3DA, P.O. Box 30001
Las Cruces, NM 88003-8001
(575) 527-7560

12. BINDING EFFECT

This Agreement is binding upon the City and NMSU DACC and their respective assignees, successors in interest, and legal representatives of any kind.

13. ENTIRE AGREEMENT

- A. This agreement embodies the entire agreement between the City and NMSU DACC and may only be amended upon a written agreement signed by the parties.
- B. This Agreement incorporates all the conditions, agreements and understandings between the parties concerning the subject matter of this agreement and all such conditions, understandings, and agreements have been merged into this written agreement. No prior condition, agreement, or other understanding verbal or otherwise, shall be valid or enforceable unless embodied in this agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on this ____ day of _____, 2010 pursuant to the approval of their respective governing bodies.

CITY OF LAS CRUCES:

**FOR DONA ANA
COMMUNITY COLLEGE:**

Terrence R. Moore, City Manager

Andrew J. Burke

ATTEST:

City Clerk

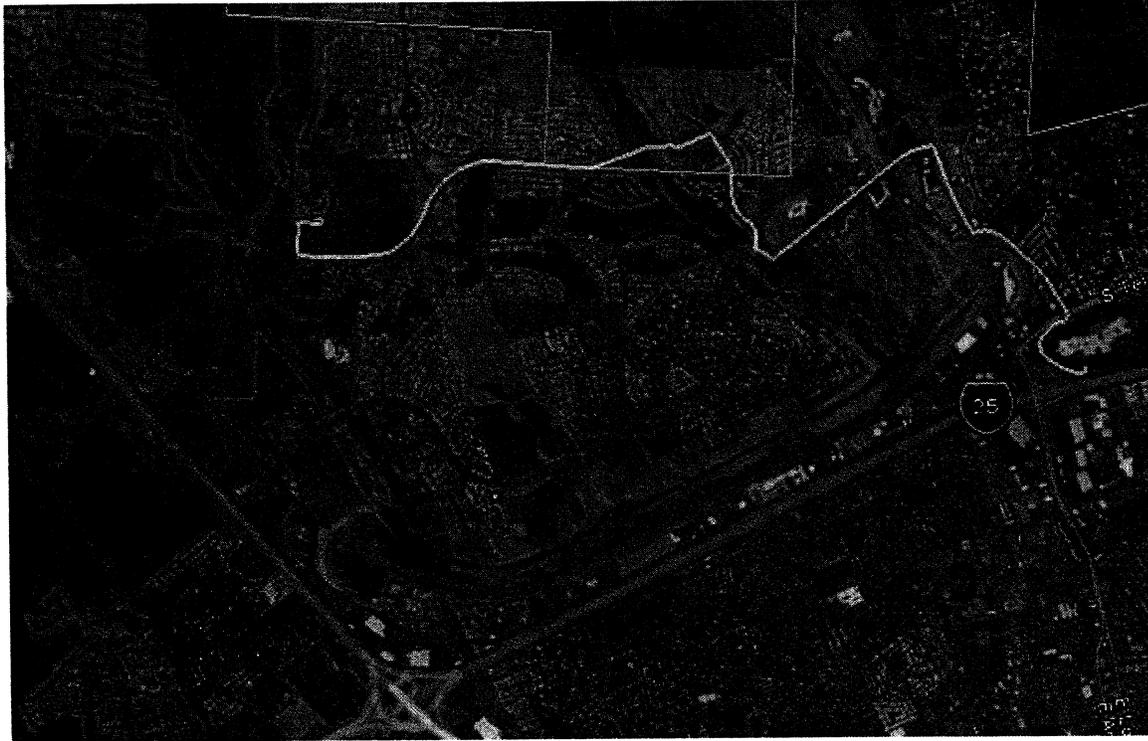
(SEAL)

Approved as to form:

City Attorney

Appendix "A"

DACC/MVM Shuttle (Yellow)
One (1) Round Trip each half hour



MESILLA VALLEY MALL

- 7:00 AM
- 7:30 AM
- 8:00 AM
- 8:30 AM
- 9:00 AM
- 9:30 AM
- 10:00 AM
- 10:30 AM
- 11:00 AM
- 11:30 AM
- 12:00 PM
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- 5:00 PM
- 5:30 PM
- 6:00 PM
- 6:30 PM
- 7:00 PM

DACC EAST MESA

- 7:12 AM
- 7:42 AM
- 8:12 AM
- 8:42 AM
- 9:12 AM
- 9:42 AM
- 10:12 AM
- 10:42 AM
- 11:12 AM
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Appendix "B"
Estimated cost

SUBSIDY CALCULATION ESTIMATE SHEET

DACC Shuttle 2009/2010 Academic Year

| <u>SERVICE PROVIDED</u> | Route 1 |
|---|----------------|
| DACC Shuttle Hours (154 Days of service) | 1,848.0 |
| Other Shift Hours -- report time, logout time, changeout time - 1.8 hr/route/day | 136.8 |
| Driver Training hours | 168.0 |
| A Sum | 2,152.8 |
| B DACC Shuttle Miles provided with CLC bus | 34003 |

Factors used in DACC subsidy calculation

| | |
|---|----------------|
| C Bus Operator Wage (\$12.25/hr+ 6.2% FICA + 5.68% WC + Medicare 1.45%) | \$13.88 |
| D Total RoadRunner Operating Cost (FY08 NTD) | \$3,670,009.00 |
| E Motorbus Total Operating Expenses (Vans) | \$1,112,494.00 |
| F <i>Less vehicle Operator wages (wages + 13.33% benefits)</i> | \$513,602.49 |
| G Adjusted Motorbus Bus Operating expenses | \$598,891.51 |
| H Motorbus Total Miles (FY08 NTD) | 242,358 |

Intermediate Calculations

#1 Motorbus Operating Expense per mile (= G/H) \$2.47

| Subsidy Calculation | Route 1 |
|---|---------------------|
| Drivers' Wages (= A x C) | \$29,887.16 |
| CLC Bus Operating Expenses calculated by miles (= B x #1) | \$84,024.90 |
| Total Cost | \$113,912.07 |

Estimated cost for 2009/2010 academic year DACC shuttle **\$113,912.07**
