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

Item # 9 Ordinance/Resolution# 11-031 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 FOR THE TERMS OF AUGUST 1, 2010 TO MAY 31, 2015.

PURPOSE(S) OF ACTION: to approve extensions to the Aggie Transit Service Agreement to cover service provided from August 1, 2010 to May 31, 2015.

Drafter and Staff Contact: Michael J. Bartholomew <i>Michael 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 an agreement since December 2, 1985 with New Mexico State University (NMSU) to provide a campus shuttle service. The most recent agreement expired May 31, 2010. The City of Las Cruces currently provides three routes to NMSU. This agreement, which extends to May 31, 2015, provides a formula by which service can be expanded or decreased by mutual agreement. Consistent with agreements dating back to 1986, NMSU is credited some federal funding for the provision of one route. NMSU reimburses the City entirely for all other routes and services.

This new agreement also recognizes a program, fully funded by NMSU, to place Global Positioning Systems (GPS) tracking devices on buses dedicated to Aggie Transit Service. This agreement generates above \$215,000 per school year. In FY11 NMSU wishes to add a temporary 1-year route that will generate another \$50,000 more in revenue to offset the cost.

SUPPORT INFORMATION:

1. Resolution
2. Exhibit "A", agreement extending the current bus service agreement to May 31, 2015.

SOURCE OF FUNDING:

Is this action already budgeted? This is an ongoing project and was included in the FY 11 budget.	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	Budget Adjustment Attached	<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 all operating expenses less federal subsidy for one route which is about \$28,200.	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
Operations Expenses	5920-59685020- various object #'s	\$220,000	*	N/A	All other City Transit Operations

* 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 amend the service agreement with NMSU thereby continuing a long standing transit partnership with NMSU.
2. Vote "No"; this will not approve the Resolution to amend the service agreement with NMSU which would jeopardize continuing service to NMSU.
3. Vote to "Amend"; and provide alternative direction to staff to pursue other options specified by council.
4. Vote to "Table"; this could delay service to the students at NMSU

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. 10-015** – A RESOLUTION APPROVING THE BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY FOR THE TERM AUGUST 1, 2008 TO MAY 31, 2010
2. Ordinance No. n/a

RESOLUTION NO. 11-031

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

The City Council is informed that:

WHEREAS, the City has maintained a bus service agreement with the Associated Students of New Mexico State University since December 2, 1985; and

WHEREAS, the term of the most recent agreement expired on May 2010; and

WHEREAS, the City and New Mexico State University wish to extend the terms of the agreement for another five years as shown in Exhibit "A".

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

(I)

THAT the City, by amendment of Paragraph No. 1 of the existing agreement, extends and amends the term of the agreement from August 1, 2010 to May 31, 2015.

(II)

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

RESOLUTION NO 11-031, 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:



City Attorney

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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 New Mexico State University, hereinafter referred to as "NMSU."

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 transit service for NMSU since 1986; and

WHEREAS, the continuation of transit services on the university campus will provide an important benefit to NMSU residents and students and visitors to the City; and

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

WHEREAS, on December 2, 1985, the City and NMSU entered into a bus service agreement for such transit services, which was amended by the terms of a bus service agreement entered into on November 3, 1989 and renewed on July 13, 1992, February 14, 1996, January 1, 2001, May 2, 2005, January 7, 2008, and August 1, 2009

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 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 representatives. The City and NMSU representatives shall agree to service levels for the next academic semester prior to the end of the previous semester.
- B. **Service Period**—Unless otherwise requested, NMSU transit services shall operate for the entirety of the spring and fall University semesters. Services will operate Monday through Friday, when classes are in session, holidays excepted.
- C. **Vehicles and Drivers** — The City shall provide ADA accessible vehicles and drivers to operate requested transit service on campus. The City will utilize spare vehicles from its fleet as back up to assure the operation of

service, conditioned upon spare vehicle availability. The City commits to providing drivers and vehicles for a minimum of three routes, the operation of additional service will be contingent upon vehicle and driver availability. If it is necessary to purchase additional vehicles in order to operate a request for additional service, these vehicles will be purchased using the procedures outlined in paragraph No. 5, Capital Program requirements.

- D. **Customer Information**—Provide current public/customer information relative to the services to be provided.
- E. **Reports**—Provide periodic reports during the academic year as requested and regarding ridership, use of paratransit services as well as operational conditions. An annual report will be included with the billing at the end of each academic year.
- F. **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.
- G. **Schedules**—Transit service shall run as agreed to by the parties subject to the availability of equipment.
- H. **Automatic Vehicle Location (AVL) Capabilities** – In advance of the fall 2010 semester, ASNMSU will install a GPS location system in three (3) City buses generally designated for the Aggie Transit service. In addition ASNMSU will modify two additional buses to accept a portable GPS device. The cost of installation, of equipment, and repair of said equipment will be the responsibility of ASNMSU. The City agrees to train bus operators in this system. ASNMSU agree to provide access to the data and information generated by this system.

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 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 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 calculating the operating subsidy. Administrative costs, including administrative labor, will be included in the cost per actual mile.
- (3) **FTA Assistance**—FTA section 5307 assistance for the Las Cruces MSA will be a certain proportion of the actual costs incurred by the City for Transit operations in any given year for one (1) route. The same proportion for the assistance provided to the City will be applied to the actual costs for the contracted University service. Credit for FTA assistance shall not exceed 50% of the operating cost of one route. NMSU will be responsible for the full cost of additional routes.
- (4) **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 in writing no later than thirty days prior to the beginning of the given semester.

B. **Payment**—Payment from NMSU 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:

Ophelia Watkins
Director of Transportation and Parking Services
PO Box 30004, MSC 3AUX
Las Cruces, NM 88003-8004

The 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. 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 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 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 has committed to provide three buses for Aggie Transit. The City will identify and attempt to secure federal funding for any replacement vehicles required to continue to operate these transit services. NMSU commits to assisting the City with financing the local match requirements for replacement vehicles needed to insure continued operation of the service. It is anticipated that two vehicles will be due for replacement in 2012 and one more in 2016. This commitment is in lieu of charging annual vehicle depreciation costs in this agreement. 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 NMSU after safe bus stop locations have been jointly identified. The exceptions would be for any signage to be placed on city streets would be the responsibility of the City.
- C. **Shelters/Benches**—The City and NMSU will work together to identify locations appropriate for installing benches and/or shelters to accommodate intending passengers. The City will work with NMSU to identify possible funding sources to pay for capital and installation costs

associated with benches and shelters. Shelters and benches on the NMSU campus will be funded by NMSU.

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, and NMSU shall have no control over the City's transit operations in connection with providing said services, except as hereinabove provided, and NMSU 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 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.

The City will not be liable for a decision by NMSU 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 shall provide strict accounting for all receipts and disbursements, if any, made pursuant to the Agreement. The City will furnish accounting reports to NMSU 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: City Manager
P. O. Box 200009
Las Cruces, New Mexico 88004

Transit Administrator or City Manager's Designee
P. O. Box 20000
Las Cruces, NM 88004
(505) 541-2500
Fax (505) 541-2545

NMSU: Director of Transportation and Parking Services at NMSU or
designee

P. O. Box 30001, MSC 3AUX, Corbett Center Rm 317
Las Cruces, New Mexico 88003-8001

ASNMSU President or ASNMSU
President's Designee
P. O. Box 30001, MSC 7110
Las Cruces, New Mexico 88003-8001

12. BINDING EFFECT

This Agreement is binding upon the City and NMSU 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 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 THE REGENTS OF
NEW MEXICO STATE UNIVERSITY:**

Terrence R. Moore, City Manager

Mike Abernethy, Director of
Procurement Services & Risk
Management

ATTEST:

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City Clerk

Travis Dulany, ASNMSU Student Body
President

(SEAL)

Approved as to form:

City Attorney