

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 16 Ordinance/Resolution# 11-153 Council District:

For Meeting of January 3, 2011
(Adoption Date)

TITLE: A RESOLUTION APPROVING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE A 20% CITY MATCH (ESTIMATED TO BE \$252,382.82) FOR THE STORM DRAIN SYSTEM IMPROVEMENTS AS PART OF THE NORTH VALLEY DRIVE RECONSTRUCTION PROJECT.

PURPOSE(S) OF ACTION: *To enter into a Cooperative Agreement with the New Mexico Department of Transportation for the storm drain system improvements on North Valley.*

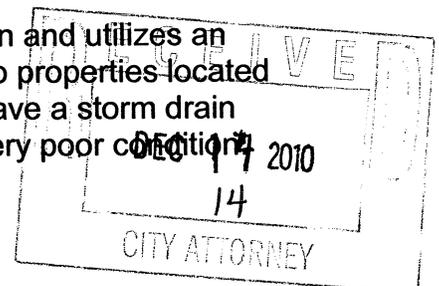
Drafter and Staff Contact: Amber Vaughn <i>aw</i>		Department: Public Works		Phone: (575) 528-3228	
Department	Signature	Phone	Department	Signature	Phone
Department Director	<i>[Signature]</i>	528-3333	Budget	<i>[Signature]</i>	541-2107
		541-2281	Assistant City Manager	<i>[Signature]</i>	541-2271
Legal	<i>[Signature]</i>	541-2128	City Manager	<i>[Signature]</i>	541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The North Valley rehabilitation project includes the full reconstruction of the roadway from US Highway 70 (Picacho Ave.) to the northern city limits a distance of 1.14 miles. The project is estimated to cost \$7,060,613.00 of which \$1,261,914.12 is for the Storm Drain System improvements. Work will include the construction of two lanes in each direction with a continuous left turn lane, curb & gutter, sidewalks, storm drain system, street lighting and new traffic signals at the Valley Drive/McClure Road and the Valley Drive/Hoagland Road intersections.

The project on Valley Drive (NM 185) is to be constructed and managed in it's entirety by the New Mexico Department of Transportation. The City will contribute a 20% match (estimated to be \$252,382.82) for its share of the storm drain system which is outlined herein.

Valley Drive presently consists of two lanes in each direction and utilizes an elevated roadway section that conveys roadway drainage to properties located on each side of the road. The existing roadway does not have a storm drain system, lacks sidewalks in areas, and the pavement is in very poor condition.



(Continue on additional sheets as required)

The total cost of the underground storm drain system is estimated to cost \$1,261,914.12. The agreement if approved will allow The New Mexico Department of Transportation to drain roadway run-off from Valley Drive west on Tashiro Road into an existing city owned pond. In addition, the city will participate with a portion of the cost of the storm drain system on the Valley Drive project in order to upsize the required storm drain trunk line to accommodate future drainage projects on Hoagland Road and McClure Road.

By constructing this project, the traveling public will benefit by improving this section of Valley Drive a major arterial that accommodates over 16,000 vehicles per day. The project will reduce congestion and improve safety near Mayfield High School with high pedestrian activity and help alleviate flooding by including an underground storm drain system. The City will benefit from the project by having a storm drain system that will accommodate future drainage projects in the area. In addition, the area will benefit from the new roadway which may facilitate development of commercial and residential development and spur economic activity.

In order to expedite the start of the project the City has agreed to acquire three right-of-way parcels, for the New Mexico Department of Transportation. The purchase of these parcels was taken into consideration as part of the final percentage match for the storm drain system. As a result this right-of-way will be purchased through the flood control fund. Public Works currently has \$800,000 budgeted in the Flood Control Fund for this project.

The City of Las Cruces therefore requests approval to provide a 20% match (estimated to be \$252,382.82) for the city's portion of the storm drainage system to be constructed on the project. The available budget is \$800,000.

SUPPORT INFORMATION:

1. Resolution
2. Vicinity Map Attachment "A"
3. Cooperative Agreement Project Number 4536(001) Control number ES02107 Exhibit "A"

SOURCE OF FUNDING:

Is this action already budgeted?	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 <u>4400 Flood Control Fund</u> .	
Does this action create any			

(Continue on additional sheets as required)

revenue?	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: () in the amount of \$0.00 for FY 10/11.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Flood Control	44806010-854111-70433	\$252,382.82	\$800,000	\$547,617.18	Right-of-way acquisition

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution approving a Cooperative Agreement between the City of Las Cruces and the New Mexico Department of Transportation to provide a 20% City match (estimated to be \$252,382.82) for the Storm Drain System Improvements as part of the North Valley Drive Reconstruction Project.
2. Vote "No"; this will not approve the Resolution approving a Cooperative Agreement between the City of Las Cruces and the New Mexico Department of Transportation to provide a 20% City match (estimated to be \$252,382.82) for the Storm Drain System Improvements as part of the North Valley Drive Reconstruction Project.
3. Vote to "Amend"; this would modify the Resolution and provide staff alternate direction on how to proceed with Cooperative Agreement. This could impact the timing of the New Mexico Department of Transportation project.
4. Vote to "Table"; this would impact the timing of the New Mexico Department of Transportation project.

REFERENCE INFORMATION

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 11-153

A RESOLUTION APPROVING A COOPERATIVE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE A 20% CITY MATCH (ESTIMATED TO BE \$252,382.82) FOR THE STORM DRAIN SYSTEM IMPROVEMENTS AS PART OF THE NORTH VALLEY DRIVE RECONSTRUCTION PROJECT.

The City Council is informed that:

WHEREAS, the New Mexico Department of Transportation plans to improve North Valley Drive (NM 185) between MP 0.00 and MP 1.30 identified as Project Number 4536(001), Control Number ES02107; and

WHEREAS, the New Mexico Department of Transportation is to construct and manage in its entirety Project Number 4536(001), Control Number ES02107; and

WHEREAS, the City of Las Cruces will contribute a 20% match (estimated to be \$252,382.82) for its share of the Storm Drain System Improvements on North Valley Drive that is estimated to cost \$1,261,914.12.

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

(I)

THAT the City of Las Cruces will enter into a Cooperative Agreement for Project Number 4536(001), Control Number ES02107 with the New Mexico Department of Transportation for the Storm Drain System Improvements on North Valley Drive.

(II)

THAT the of the City of Las Cruces will commit 20% (estimated to be

\$252,382.82) in matching funds for the Storm Drain System Improvements on North Valley Drive.

(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 January, 2011.

(SEAL)

APPROVED:

Mayor

ATTEST:

City Clerk

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Connor: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Thomas: _____

Moved by: _____

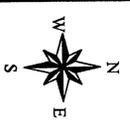
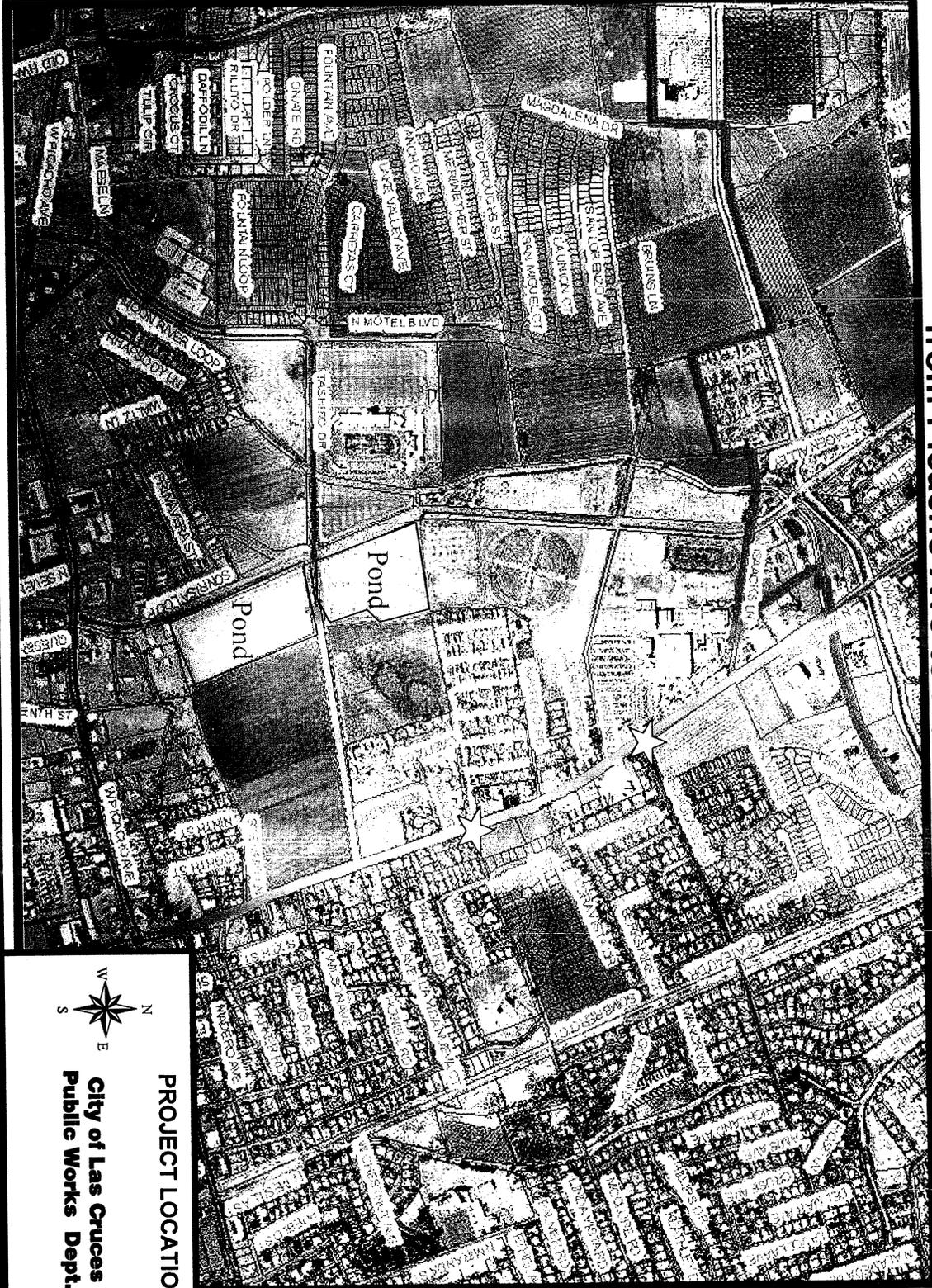
Seconded by: _____

APPROVED AS TO FORM:



City Attorney

NMDOT North Valley Drive Improvements Project
from Picacho Ave to Northern City Limits



PROJECT LOCATION
City of Las Cruces
Public Works Dept.

Contract Number	_____
Vendor Number	000054342
Project Number	4536(001)
Control Number	ESO2107

COOPERATIVE AGREEMENT

This Agreement, pursuant to NMSA 1978, Section 67-3-28, 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 plans to improve NM 185 North between MP 0.00 and MP 1.30, further identified as Project Number 4536(001), Control Number ESO2107, herein referred to as ESO2107 or the "Department's Project"; and

WHEREAS, the Department and the City are each authorized to and involved in managing storm water drainage within each entity's respective jurisdictions; and

WHEREAS, the Department's Project includes Storm Drain System improvements that mutually benefit the Department and the City; and

WHEREAS, the City agrees to provide funding to the Department for Storm Drain System improvements identified herein.

Therefore, in consideration of the covenants contained herein, the parties agree as follows:

SECTION ONE: PURPOSE

The purpose of this Agreement is to specify and delineate obligations of the parties pertaining to the funding for the Storm Drain System improvements, completed as a part of ESO2107 and as outlined in Section Two.

SECTION TWO: STORM DRAIN SYSTEM IMPROVEMENT FUNDING BY PARTIES

1. The total estimated funding required for the Storm Drain System improvement portion of ESO2107 is One Million, Two Hundred Sixty-One Thousand, Nine Hundred Fourteen Dollars and Twelve Cents (\$ 1,261,914.12) to be funded in proportional share by the parties as follows:

A. 2010/2011 EBS, TPA, TPE, TPO Funds**Department's 80% share****\$ 1,009,531.30**

The scope of the Storm Drain System improvements provides for installation of the storm drain pipe and all of the items associated with the installation as per the latest NMDOT Standard Specifications and Contract Documents.

B. City's matching 20% share**\$ 252,382.82**

For the purpose stated above.

C. Total Storm Drain System Improvement Funding**\$1,261,914.12**

2. The City agrees to pay its proportionate share of the final actual costs for the Storm Drain System improvements, inclusive of change orders, adjustments and the appropriate GRT.

SECTION THREE: THE DEPARTMENT SHALL:

1. Permit the City's designated representative access to the ESO2107 project site during construction, so long as such person strictly abides by all rules and regulations applicable to the work zone.
2. Prepare a detailed invoice for the City's proportionate share of the actual costs of the Storm Drain System improvements and shall submit that invoice to the City monthly.

SECTION FOUR: THE CITY SHALL:

1. Provide a resolution in support of the Storm Drain System improvements and this Agreement.
2. Pay the Department the cost of the work pursuant to the terms of this Agreement, so long as the improvements are done in a good and workmanlike manner and in substantial compliance with the Department's Project specifications.

3. Pay the Department within thirty (30) calendar days of the date of billing. If payment is not made on or before the due date, interest shall accrue on the unpaid balance at the rate of 1.5% per month until the account becomes current.

SECTION FIVE: STORM DRAIN SYSTEM RESPONSIBILITY

The parties agree that nothing herein alters existing ownership responsibilities or obligations for maintenance and operation of the Storm Drain System or ponding facilities.

SECTION SIX: 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 SEVEN: NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement establishes any waiver of immunity for alleged tortuous conduct of any employee of the Department or of 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 EIGHT: DEPARTMENT'S 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 expressly is 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 NINE: LEGAL COMPLIANCE

The parties shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies in the performance of this Agreement, including, but not limited to laws governing civil rights, equal opportunity compliance, environmental

issues, workplace safety, employer-employee relations and all other laws governing operation of the workplace, including laws and regulations hereafter enacted. The Department shall ensure that the requirements of this compliance are made a part of each subcontract on the Department's Project at all tiers.

SECTION TEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:

There shall be strict accountability for all receipts and disbursements relating hereto.

SECTION ELEVEN: SCOPE OF AGREEMENT

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

SECTION TWELVE: TERMINATION

1. This Agreement shall terminate on **January 3, 2015**.
2. Either party may, at its option, terminate this Agreement if the other party 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 THIRTEEN: 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 FOURTEEN: AMENDMENT

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

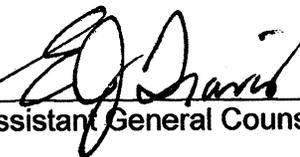
In witness whereof, the parties have set their hands and seal the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: _____
Deputy Secretary or Designee

Date: _____

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

By:  _____
Assistant General Counsel

Date: 12/4/2010

CITY OF LAS CRUCES

By: _____
Authorized City Official

Date: _____

Title

ATTEST

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM BY THE CITY ATTORNEY

By: _____
City Attorney

Date: _____

Exhibit A