City of Las Cruces®
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Council Action and Executive Summary

Item # 6 **Ordinance/Resolution#** 11-198 **Council District:** 2

For Meeting of March 21, 2011
(Adoption Date)

TITLE: **A RESOLUTION APPROVING A LIGHTING AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE OF AN INTERSTATE LIGHTING SYSTEM AT THE INTERSTATE 25/UNIVERSITY AVENUE INTERCHANGE.**

PURPOSE(S) OF ACTION: Establish Lighting Agreement between City of Las Cruces and New Mexico Department of Transportation.

Drafter and Staff Contact: Dan Soriano		Department: Public Works		Phone: 541-2505	
Department	**Signature**	**Phone**	**Department**	**Signature**	**Phone**
Department Director		3333	Budget		541-2107
Other			Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The New Mexico Department of Transportation (NMDOT) is currently designing and constructing an interstate lighting system along Interstate 25 at the University interchange. This will entail the installation of twenty-five (25) 40′ Type V poles with 400-watt high-pressure sodium luminaries and three (3) 150′ high mast lighting structures, each with six (6) 1000-watt high-pressure sodium luminaries. This agreement is for the maintenance of those lights by City forces to include replacement material and power costs. The estimated annual maintenance costs will be in the range of $3000 (approximately 60% power costs; 40% materials costs). Expenditures for estimated future maintenance costs will be allocated out of the current operating budget.

The lighting is being installed primarily to illuminate the ramps on and off of Interstate 25 at the University interchange. The NMDOT requires that the City enter into the attached maintenance agreement to facilitate the future upkeep of the lighting system upon final acceptance of the project. This resolution authorizes the City to enter into such agreement with the NMDOT.

SUPPORT INFORMATION:
1. Resolution.
2. Lighting Agreement, Attachment "A".

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☒	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____in the amount of $_____.
	No	☒	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
General Fund	**10226040 – 730110**	**$1,200**	**$14,091**	**$12,891**	**Operating Expenses**
General Fund	**10226040-726200**	**$1,800**	**$301,503**	**$299,703**	**Operating Expenses**

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this action approves the resolution and authorizes the City of Las Cruces to take maintenance responsibilities of the interstate lighting system once constructed and accepted by both State and City entities.
2. Vote "No"; this action denies the Resolution and will not authorize the City of Las Cruces to take over the maintenance responsibilities of the interstate lighting system.
3. Vote to "Amend"; this action could approve the agreement with adjustments to conditions or changes as requested by City Council. One alternative may be to accept material replacement costs and not associated power costs.
4. Table the resolution and/or instruct staff to seek alternative direction.

REFERENCE INFORMATION

N/A

RESOLUTION NO. 11-198

A RESOLUTION APPROVING A LIGHTING AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR MAINTENANCE OF AN INTERSTATE LIGHTING SYSTEM AT THE INTERSTATE 25/UNIVERSITY AVENUE INTERCHANGE.

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

WHEREAS, the New Mexico Department of Transportation is currently designing and constructing an interstate lighting system at the I 25 and University Avenue interchange; and

WHEREAS, this will entail the installation of twenty-five (25) 40' Type V poles with 400-watt high-pressure sodium luminaries, and three (3) 150′ high mast lighting fixtures each with six (6) 1000-watt high-pressure sodium luminaries; and

WHEREAS, the estimated annual maintenance costs will be in the range of $3000, which would be approximately 60% power costs and 40% materials costs; and

WHEREAS, the lighting is being installed primarily to illuminate the ramps on and off of Interstate 25 at the University Avenue interchange.

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

(I)

THAT the City Manager of the City of Las Cruces is hereby authorized to enter into an agreement with the New Mexico State Department of Transportation to maintain an interstate lighting system in order to facilitate future upkeep.

(II)

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

DONE AND APPROVED this _____ day of _____, 2011.

APPROVED:

(SEAL)

_____
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:

_____
City Attorney

CONTRACT NO: D1038

VENDOR NO:_____

LIGHTING AGREEMENT

THIS AGREEMENT, made and entered into pursuant to the provisions of NMSA 1978, Section 67-3-28, as amended, this ____ day of _____, 2011, by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, acting by and through the SECRETARY, hereinafter called the DEPARTMENT, and City of Las Cruces, New Mexico, acting by and through its duly elected officials, hereinafter called the PUBLIC ENTITY.

RECITALS:

WHEREAS, the DEPARTMENT contemplates the letting of a contract for the construction of a highway project within the boundaries of the PUBLIC ENTITY, said project being identified as D1038 I-25 and University Interchange Improvements within the boundaries of Las Cruces, New Mexico.

WHEREAS, the PUBLIC ENTITY and the DEPARTMENT agree with the need for installation of Street Lighting on interchange ramps, the exact design to be determined by the DEPARTMENT.

WHEREAS, the installation of the street lighting will promote traffic safety.

WHEREAS, it is the desire of the parties to set forth their understandings and agreements pursuant to which the improvements shall be made and subsequently operated and maintained as required.

NOW THEREFORE,

SECTION I: THE DEPARTMENT SHALL:

1. Provide the necessary plans and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law in accordance with such plans and documents.

2. Provide and install underground conduit cable, pull boxes, 28-400 watt high pressure sodium lamps on 40' poles with bases and all hardware. Provide and install 3-150' high light poles and fixtures with 6-1000 watt high pressure sodium lamps in each fixture with bases and all hardware.

SECTION II: THE PUBLIC ENTITY SHALL:

1. After subject lighting system has been constructed, provide, at its own expense, all electrical energy, routine maintenance such as bulb and/or luminaire replacement, and that in case of accidental damage to poles or fixtures, replace them with the same kind or brand for continued satisfactory operation of said roadway lighting system.

2. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the roadway lighting system.

SECTION III: THIRD PARTY BENEFICIARIES:

It is not intended by any of the provisions of any part of this AGREEMENT to create in the public or any member thereof a third party beneficiary or to authorize anyone not a party to the AGREEMENT to maintain a suit(s) for wrongful death(s), bodily and/or personal injury(ies) to person(s), damage(s) to property(ies), and/or any other claim(s) whatsoever pursuant to the provisions of this AGREEMENT.

SECTION IV: NEW MEXICO TORT-CLAIMS ACT:

As between the DEPARTMENT and PUBLIC ENTITY, 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 New Mexico Tort Claims Act (Section 41-4-1, et seq. N.M.S.A. 1978) and any amendments thereto. This paragraph is intended only to define the liabilities between the parties hereto and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act. By entering into this AGREEMENT, the DEPARTMENT and the PUBLIC ENTITY, and their "public employees" as defined in the New Mexico Tort Claims Act, do not waive any sovereign immunity, nor do they waive any limitation(s) of liability pursuant to law. No provision in this AGREEMENT modifies or waives any provision of the New Mexico Tort Claims Act.

SECTION V: SCOPE 0F AGREEMENT:

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

SECTION VI: TERMS OF THIS AGREEMENT:

The terms of this AGREEMENT are lawful; performance of all duties and obligations herein shall conform with and do not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

SECTION VII: EQUAL OPPORTUNITY COMPLIANCE:

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

SECTION VIII: APPROPRIATIONS AND AUTHORIZATIONS:

The terms of this AGREEMENT are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the AGREEMENT. If sufficient appropriations and authorizations are not made by the Legislature or the Congress of the United States if federal funds are involved, this AGREEMENT shall terminate upon written notice being given by the DEPARTMENT to the PUBLIC ENTITY. The DEPARTMENT is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, 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 IX: 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 X: PUBLIC ENTITY SOLE JURISDICTION:

By mere reason of the DEPARTMENT's participation in this Project, the DEPARTMENT is not incorporating this Project into the State Highway System, nor is the DEPARTMENT assuming maintenance responsibility or liability for the Project.

SECTION XI: PROJECT RESPONSIBILITY:

Design, construction and installation for this Project are the DEPARTMENT's sole responsibility and nothing is intended to give the DEPARTMENT any responsibility for future maintenance of the Project or related road improvement within the PUBLIC ENTITY's road system.

SECTION XII: CONTINGENT ON PROJECT BEING LET:

In the event that the Project is not let for any reason, this AGREEMENT shall become null and void and shall create no obligation on any of the parties.

SECTION XIII: AMENDMENT:

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

IN WITNESS WHEREOF, the parties hereto have executed this AGREEMENT the day and year hereinafter first written.

PUBLIC ENTITY

By:_____
Date

ATTEST:_____
Date

approved as to form
Ag S (Pete) Connelly
city attorney

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By:_____
Secretary Date

RECOMMENDED BY:

_____
State Traffic Engineer Date

_____
District Engineer Date