

City of Las Cruces[®]

PEOPLE HELPING PEOPLE

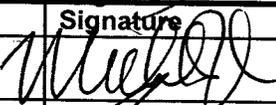
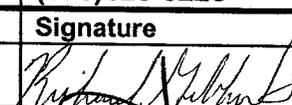
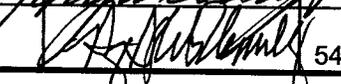
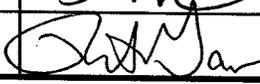
Council Action and Executive Summary

Item # 15 Ordinance/Resolution# 11-216 Council District: 6

For Meeting of April 18, 2011
(Adoption Date)

TITLE: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ENTER INTO A COOPERATIVE PROJECT AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE FUNDING OF A MULTI-USE PEDESTRIAN TRAIL ALONG THE LAS CRUCES OUTFALL CHANNEL FROM NORTH TRIVIZ DRIVE TO THE LA LLORONA TRAIL IN THE AMOUNT OF \$758,418.00. A 25 % CITY MATCH OF \$252,806.00 IS REQUIRED FOR A TOTAL PROJECT AMOUNT OF \$1,011,224.00.

PURPOSE(S) OF ACTION: To provide funding for the construction of a multi-use pedestrian trail on the Las Cruces Outfall Channel.

Drafter and Staff Contact: Amber Vaughn 		Department: Public Works		Phone: (575)528-3228	
Department	Signature	Phone	Department	Signature	Phone
Public Works		528-3333	Budget		541-2107
Grants Administration Office		541-2281	Assistant City Manager		541-2271
Legal		541-2128	City Manager		541-2076

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Federal Highway Administration through the New Mexico Department of Transportation is providing funds to the City of Las Cruces for the construction of a multi-use pedestrian trail along the Las Cruces Outfall Channel from North Triviz Drive to the La Llorona Trail. The Outfall Channel Trail is a 4.25-mile east-west bicycle and pedestrian trail that would bridge the north end of the Triviz multi-use pathway with the north end of the La Llorona multi-purpose pathway at the Rio Grande.

Since portions of the Outfall Channel are under the jurisdiction of the Elephant Butte Irrigation District (EBID), a special use permit between the City and EBID is required. In the past, liability issues prevented the City from using EBID irrigation and drainage facilities for trails. However, a recently approved Memorandum of Understanding between the two entities has cleared the way for the Outfall Channel and future trails along canals and drains to become a reality.

The acceptance of the cooperative agreement will require the City of Las Cruces to provide a 25% match of \$252,806.00. Part of this may be in-kind in the form of staff time and equipment use. Funding amounts are expected to be divided equally between Funds: Public Park

(Continue on additional sheets as required)

Development, Flood Control, and the General Fund. The agreement requires that the project commence no later than August 15, 2011. The budget will be adjusted when the construction contract is awarded in FY 2011/2012 to reflect the matching funds.

The Outfall Channel Trail falls under three goals on the City of Las Cruces Strategic Plan, item 2.3.6 and 2.3.7 Expand recreation opportunities for youth and seniors as well as 3.1.3 Facilitate connectivity and reduce congestion.

The Outfall Channel Trail will provide a number of benefits to the community including:

- o Opportunity for non-motorized transportation for residents living along the Outfall Channel
- o Potential reduction in motorized traffic volumes
- o Benefits to both pedestrians and bicyclists
- o Contribution to regional significance of Rio Grande Trail effort

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A" Cooperative Project Agreement.

SOURCE OF FUNDING:

Is this action already budgeted? N/A for this FY	Yes	<input 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?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: (4212) in the amount of <u>\$758,418.00</u> for FY12.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Acceptance of the funding will require a 25% match from the City. Cash amounts are to be divided equally between Funds: 4012, 4400 and 1000. The budget will be adjusted in FY 2011/2012 to reflect the matching funds. Available funds are anticipated next fiscal year to meet the match requirement.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A for this FY.					

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the City of Las Cruces to enter into a Cooperative Project Agreement with the New Mexico Department of Transportation for the funding of a multi-use pedestrian trail along the Las Cruces Outfall Channel from North Triviz Drive to the La Llorona Trail in the amount of \$758,418.00. A 25% City match of \$252,806.00 is required for a total project amount of \$1,011,224.00.
2. Vote "No"; this will not approve the Resolution authorizing the City of Las Cruces to enter into a Cooperative Project Agreement with the New Mexico Department of Transportation for the funding of a multi-use pedestrian trail along the Las Cruces Outfall Channel from North Triviz Drive to the La Llorona Trail in the amount of \$758,418.00. A 25% City match of \$252,806.00 is required for a total project amount of \$1,011,224.00.
3. Vote to "Amend"; this could delay the project and cause a loss of funding.
4. Vote to "Table"; this could delay the project and cause a loss of funding.

REFERENCE INFORMATION

1. Resolution 10-060

RESOLUTION NO. 11-216

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO ENTER INTO A COOPERATIVE PROJECT AGREEMENT WITH THE NEW MEXICO DEPARTMENT OF TRANSPORTATION FOR THE FUNDING OF A MULTI-USE PEDESTRIAN TRAIL ALONG THE LAS CRUCES OUTFALL CHANNEL FROM NORTH TRIVIZ DRIVE TO THE LA LLORONA TRAIL IN THE AMOUNT OF \$758,418.00. A 25 % CITY MATCH OF \$252,806.00 IS REQUIRED FOR A TOTAL PROJECT AMOUNT OF \$1,011,224.00.

The City Council is informed that:

WHEREAS, the Federal Highway Administration is providing funds to the City of Las Cruces for the construction of a multi-use pedestrian trail along the Las Cruces Outfall Channel from North Triviz to the La Llorona Trail; and

WHEREAS, the City of Las Cruces is being offered an award of \$758,418.00 from the New Mexico Department of Transportation for this project; and

WHEREAS, the City of Las Cruces is required to provide 25% City match of \$252,806.00; and

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

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

(I)

THAT the Cooperative Project Agreement between the City of Las Cruces and the New Mexico Department of Transportation to fund the construction of a multi-use pedestrian trail along the Las Cruces Outfall Channel from North Triviz to the La Llorona Trail, is hereby accepted and the City of Las Cruces will commit \$252,806.00 in matching funds.

(II)

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

DONE AND APPROVED this _____ day of _____, 2011.

(SEAL)

APPROVED:

ATTEST:

Mayor

City Clerk

VOTE:

Moved by: _____

Mayor Miyagishima: _____

Seconded by: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

Contract Number	
Vendor Number	<u>000054342</u>
Control Number	<u>LC00040</u>

COOPERATIVE PROJECT AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2011, by and between the New Mexico Department of Transportation (Department) and the City of Las Cruces (City), collectively referred to as the "Parties."

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

SECTION ONE: PURPOSE

The purpose of this Agreement is to provide Federal Highway Administration (FHWA) funds to the City for a transportation project described in the City's Plans Specifications and Estimate Package (PS&E), the Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). This Project is referred to interchangeably as "Project" or "Project Control No. LC00040." The Project is a joint and coordinated effort for which the Department and the City each have authority or jurisdiction.

SECTION TWO: FUNDING

1. The total funding for Project Control No. LC00040, is One Million Eleven Thousand Two Hundred Twenty Four Dollars (\$1,011,224) which will be shared by the Parties as follows:

A.	<u>2010/2011 Surface Transportation Enhancements (TPE) Funds</u>	
	<u>Department's 75% share</u>	\$758,418
	Construction of a multi-use pedestrian facility along the Las Cruces out fall channel from North Triviz Drive to the La Llorona Trail.	
B.	<u>City's matching 25% share</u>	\$252,806
	For the purpose stated above.	
C.	<u>The Total Project Funding</u>	<u>\$1,011,224</u>
2. The City shall pay all Project costs that exceed the total funding amount specified in this section.
3. FHWA's obligation of federal funds shall be supported by a certified cost estimate based on the City's Engineer's Estimate of Probable Cost. The engineer's estimate shall be submitted to the Department's Regional Division Manager or Designee prior to the PS&E Review pursuant to 23 CFR Part 630B.
4. After the project is advertised, bids shall be submitted to the Department's Regional Division Manager or Designee, who will review and determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part

- 630.106. The City's approved responsive low bid for the project, including approved alternates, will be compared to the amount obligated. The Department will allow a 15% increase over the base bid and any approved alternates to cover Engineering and Contingencies and Gross Receipts Tax. If the difference between the FHWA's obligation amount and the responsive low bid plus the 15% is within \$250,000, the amount of funds obligated will not change. If the difference between the obligation amount and the responsive low bid plus the 15% exceeds \$250,000, the difference will be deducted reducing the amount of funds obligated.
5. The City may *not* add additional work to Project Control No. LC00040 after the contract has been let. State and federal law do not allow additional work to be added to a project as a change order unless such work could not have been reasonably anticipated at the time of letting. If the City wishes to add work they may choose to either: (1) reject all bids (when the contract has not been awarded) and re-advertise with the new specifications; or, (2) advertise the extra work so that the work may be competitively bid.
 6. "This Agreement is subject to the following award terms:
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>; and,
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>."

SECTION THREE: METHOD OF PAYMENT--REIMBURSEMENT

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. Invoices shall be submitted monthly to the Department District Office. Payment requests shall be identified by the project control number and certified that the requests accurately reflect work completed, amount due and the remaining Agreement balance. All expenses must be actual, rather than estimated, and listed on the payment request as charged. Only those expenses that are properly documented and deemed eligible will be reimbursed. Incomplete submittals will be returned to the City for corrections.

The Department's District Office will not reimburse the City for 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 pursuant to 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 FOUR: CITY SHALL

1. Be the lead agency for the Project.
2. Use the Project 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. Identify a Project Manager who shall be the single point of contact to the Department.

5. Adopt a written resolution of support for the Project, including, as appropriate, an assumption of ownership, liability, maintenance, related amenities, and the availability of required matching funds.
6. Obtain approval from the Department's Regional Division Manager or Designee of PS&E Package which includes the following:
 - a. Construction Plans;
 - b. Engineer's Estimate/Engineer's Opinion of Probable Cost;
 - c. Specifications; and,
 - d. Contract Book.
7. Obtain written authorization from the Department prior to advertising the Project for bids or performing work with the City's personnel, equipment, and /or resources.
8. Advertise, let, and supervise the construction of Project Control No. LC00040 using applicable federal, state or local requirements.
9. If the Project is to be put out for bid, prepare a final, detailed estimate of the work, indicating the bid items, the quantity in each item, the unit bid price, and cost of the items based on the bid price.
10. If the Project will be built with City resources, prepare a detailed report of equipment and labor, including a project schedule, for submission to the Department's District Office.
11. Obtain Department agreement in awarding the bid.
12. Register and enter all required data into B2Gnow and LCPtracker programs and contractually require the prime contractor and subcontractors to do the same.
13. Submit reimbursement requests monthly in the Department's federal aid format to include details of the quantities allowed on various items of work.
14. Agree that the Department has the option to terminate this Agreement if the City's 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 five years and shall contain, as applicable, the following documents:
 - 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 and certification documentation;
 - e. The State Historic Preservation Officer's approval;
 - f. Right of way certification documentation;
 - g. Utility certification documentation;
 - h. Intelligent Transportation Systems (ITS) certification documentation; and,
 - i. Railroad certification documentation.
15. Agree that if current federal fiscal year funding is not obligated by **September 30th**, this Agreement shall terminate. However, if prior federal fiscal year funding has been authorized, this Agreement will remain in effect. 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.

- a. Construction management and inspection services may be eligible for reimbursement if the underlying procurement is consistent with federal aid funding and state procurement laws and regulations.
 - b. The City's award of contracts for construction management or inspection services must be pre-approved by the Department's Regional Division Manager or Designee.
 - c. If the City hires construction management or inspection services, City shall provide copies of any applicable task order, contract and supporting procurement documents to the Department's Regional Division Manager or Designee prior to the Project construction start date.
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, Construction Procedures Handbook for Federal Aid Local Government Lead Projects, and the New Mexico Transportation Department's Office Procedures Manual.
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, §§ 61-23-21 and 61-15-1.
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 Acquisition 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 (NEPA), FHWA Technical Advisory T 6640.8, 23 CFR Part 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 NEPA related legislation;
 - g. Maintain on file all supporting documentation including social, economic and environmental evaluations, 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.
26. If the Project involves lighting and/or highway lighting, the City shall comply with **Appendix H-1**.
27. If the Project involves signal(s) and/or highway signal(s), the City shall comply with **Appendix H-2**.
28. Shall register with www.ccr.gov and DUNS and provide such information to the Department as well as the total compensation and names of the City's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.

SECTION FIVE: DEPARTMENT SHALL

1. Assign a representative to provide technical assistance to develop, monitor and oversee the project.
2. Provide the City, as requested, a list of qualified environmental professionals.
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 the State Historic Preservation Officer.
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 SIX: 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 SEVEN: PROJECT RESPONSIBILITY

The City is solely responsible for ensuring that the Project is carried out to completion. The improvements and services required under this Agreement shall remain the full responsibility of the City, unless stated otherwise in **Appendices H-1 and H-2**.

SECTION EIGHT: CITY SOLE JURISDICTION

In all Projects funded under this Agreement, 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. If the project also involves signals or lighting, **Appendices H-1 and H-2** applies.

SECTION NINE: 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; Authorization to proceed and project monitoring at 23 CFR Part 630.106; Agreement provisions at 23 CFR Part 630.112; Project approval and oversight at 23 U.S.C. § 106 [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; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18; Titles VI and VII of the Civil Rights Act of 1964 and related statutes; Disadvantaged Business Enterprise Program, 49 CFR Part 26; External Equal Opportunity/Contractor Compliance Program, including On-the-Job training requirements, 23 CFR Part 230; the Americans with Disabilities Act, 42 §§ 12101-12213 and 28 CFR Parts 35 and 36; the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252; 2 CFR Part 170; and 2 CFR Part 25.

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 and regulations governing operation of the workplace. 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 TEN: 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 tri-annually. In the event the Department assigns a project specific DBE goal, the City is required to meet that goal through its contractors. The City shall ensure that DBE provisions and goals are included in its invitations to bid and resulting contracts. DBE payment and utilization information shall be tracked through the B2Gnow software.
2. Record Keeping Responsibilities – The City shall appoint a DBE liaison officer and assure that its officer completes and submits required 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 will be treated as a violation of this Agreement. Furthermore, if the City fails to comply with the DBE provisions, the Department may impose sanctions as provided in 49 CFR Part 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 ELEVEN: 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 goal through its contractors. If a project specific 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 LCPtracker 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 TWELVE: EQUAL EMPLOYMENT OPPORTUNITY (EEO) AND TITLE VI PROGRAM OBLIGATIONS

1. City Assurances – Each contract the City enters into with a construction contractor, design consultant, other consultant or recipient on a project assisted by the United States Department of Transportation (DOT), 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 DOT-assisted projects. Failure by the City to carry out these requirements is a material breach of this Agreement, which may result in its termination 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, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. §§ 2000d-2000d-4 (Act), and all requirements imposed by 49 CFR Part 21 Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964 (Regulations). 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 receives federal financial assistance from the DOT, including the FHWA, and the City hereby gives assurance that it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by 49 CFR Part 21.7(a)(1).
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 49 CFR Parts 21.23(e) and (b), 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 made in connection with

the highway/roads/streets program and, in adapted form in all proposals for negotiated agreements:

The City, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and 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 issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

- c. That the City shall insert the provisions of **Appendix G-1** of this Agreement in every contract subject to the Act and the Regulations.
- d. That the City shall insert the clauses of **Appendix G-2** of this Agreement, 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 Agreement, 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 the 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 or 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 the City and its 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 (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances)** to the Department's Office of Equal Opportunity Programs 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 the attached **Appendix G (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances)** to the Department's Office of Equal Opportunity Programs as identified within the **Appendix** 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 THIRTEEN: 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 FOURTEEN: 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, §§ 41-4-1, et seq.

SECTION FIFTEEN: OFFICE OF INSPECTOR GENERAL REVIEWS

The City shall provide to all bidders the reporting and oversight requirements that they are bound to from the time of bid submission. The following provisions must be included in all prime contracts, subcontracts, and other contracts for services for a 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 the Inspector General Act of 1978, 5 U.S.C. App. §§ 3 or 8G, 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 U.S.C. § 302 (the capability to carry out the duties required by law); 23 U.S.C. § 112 (contracting for engineering and design services); 23 U.S.C. § 106 (project approval); 23 U.S.C. § 112 – Sec. 112, (letting of contracts); 23 U.S.C. § 113 - Sec. 113 (prevailing rate of wage); 23 U.S.C. § 114 - Sec. 114 (construction); 23 CFR Parts 635 and 636 (design build); 23 CFR Part 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 SIXTEEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS

There shall be strict accountability for all receipts and disbursements. The City shall maintain all records and documents relative to the Project for five years after completion. Project files should be kept in accordance with the Department's "Office Procedures Manual (December 2009 Edition)". The City shall furnish the Department, State Auditor, or appropriate Federal Auditors, upon demand, any and all records relevant to this Agreement for auditing purposes. If an audit determines that a specific expense 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 expense identified shall be reimbursed to the Department within thirty days of written notification.

SECTION SEVENTEEN: APPROPRIATION

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. If sufficient appropriations and authorizations are not made, 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 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, 2015**. Neither party shall have any obligation after said date except as stated in Section Seven.
2. The Department may terminate this Agreement if the funds identified in Section Two 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. An inactive project is 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 pursuant to 23 CFR Part 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.

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: Cynthia A. Christ
Assistant General Counsel

Date: 1-21-11

CITY OF LAS CRUCES

By: _____
Mayor

Date: _____

ATTEST

By: _____
City Clerk

Date: _____

APPROVED AS TO FORM BY THE CITY ATTORNEY

By: _____
City Attorney

Date: _____

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 23 CFR Part 172 and the State Procurement Code, NMSA 1978, §§ Chapter 13-1-1 et. seq. If the City is a Home Rule City, 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 for the design of a federal aid construction project. Stand-alone projects funded with these monies, such as Municipal Arterial Program, Severance Tax, or General Fund are normally certification projects that require minimal oversight by the Department. If state funds are used for preliminary engineering for a federal aid construction project, the associated Request for Proposals 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 five years.
5. Requests for Proposals (RFP) for federally funded professional engineering services shall be reviewed and approved by the Department's Regional Division Manager or Designee before it is advertised. After approval, the City can advertise the RFP and can enter into a contract with the consultant pursuant to the Department's Consultant Services Procedures Manual or their own procedures that comply with 23 CFR Part 172. After the contract is in place the FHWA will authorize the federal funds. 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 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 pursuant to 23 CFR Part 1.9.
7. The City's Project Manager shall keep the Department's Regional Division Manager and Assistant District Engineer or their respective designees apprised of the Project's progress and important issues as well as forward to them all pertinent correspondence in a timely manner.
8. The City shall invite the FHWA Area Engineer, Department's Regional Division Manager, Assistant District Engineer, and Construction Liaison Engineer 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 detailed information to serve as a basis for the preparation of the environmental documentation 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 ensure the reports detailed in Number 2 above are prepared.
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 reports detailed in Number 2 above. The Department shall coordinate all related activities through the FHWA.

Design Standards

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

1. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, New Mexico Department of Transportation-Pedestrian Access Details and NMSA 1978 §§ 67-3-62 67-3-64.
2. New construction or reconstruction of pavement shall have, at a minimum, a 20-year-life. Rehabilitation of pavement shall have, at a minimum, a 10-year-life.
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 and the National Highway System and on supplemental specifications.
4. The following documents shall be used as a minimum, in the design of this Project and for projects **on the State Highway System or the National Highway System**. Current New Mexico American Public Works Association (APWA) or the City standards may be used on City facilities. Asterisk (*) items shall be used on **all** roadway projects:
 - *a. FHWA Manual on Uniform Traffic Control Devices, 2009 edition;
 - 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. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, the Americans with Disabilities Accessibility Guidelines, and NMSA 1978 §§ 67-3-62 67-3-64.
2. New construction or reconstruction of structure(s) or artwork shall have, at a minimum, a 20-year-life. Rehabilitation of structure(s) or artwork shall have, at a minimum, a 10-year-life.
3. The Local International Building Code, electrical code, plumbing code or federal or state codes shall be used, as applicable, for design, construction or rehabilitation project(s).
4. The following documents shall be used, as a minimum, in the design of this Project and for projects **on the State Highway System or the National Highway System**. Current New Mexico APWA or the City standards may be used on City facilities. Asterisk (*) items shall be used on **all** architectural projects:
 - *a. FHWA Manual on Uniform Traffic Control Devices, 2009 edition;
 - b. American Association of State Highway and Transportation Officials (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, latest 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 City's 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. The 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 Parts 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 the City's 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, the New Mexico Transportation Departments Office Procedures Manual, 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 pursuant to the Department's or the City's established procedures as approved by the Department, depending on the governing specifications. The American Standard Testing Method equivalents of the American Association of State Highway and Transportation Officials 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 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 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 pursuant to 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 Assistant District Engineer or Designee routinely apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence to the Department's Assistant District Engineer in a timely manner.

Certification of Pre-Construction Phase

Control No. LC00040

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 Four 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) and Title VI Program
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 Department-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 United States Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. §§ 2000d-2000d-4 (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 FHWA, 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 made in connection with all highway/roads/streets program and, in adapted form in all proposals for negotiated agreements.

The recipient, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and 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 issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color or national origin in consideration for an award.

- 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 of the program as are found by the Secretary of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that the recipient, 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 appears below is authorized to sign this assurance on behalf of the recipient.

Date: _____ Project Control Number: LC00040

Recipient Name: City of Las Cruces

Signature of Authorized Official: _____

Print Name: _____ Title: _____

Phone: _____ E-mail: _____

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) and Title VI 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 Regulations relative to nondiscrimination in 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 issued 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 to enter into such litigation to protect the interests of 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) and Title VI Program
Required Clauses for the transfer of real property, structures, or improvements**

The following clauses shall be included in any and all deeds 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 the 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, that (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. (Reverter clause and related language to be used only when it is determined that such clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.)

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

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the City pursuant to the provisions of paragraph 2(g) of **Appendix G** of this Agreement.

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 the following language in licenses, leases, permits, etc.]:

That in the event of breach of any of the above nondiscrimination covenants, the 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. (Reverter clause and related language to be used only when it is determined that such clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.)

[Include the following language in deeds]:

That in the event of breach of any of the above nondiscrimination covenants, the 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. (Reverter clause and related language to be used only when it is determined that such clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.)

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the City pursuant to the provisions of paragraph 2(g) of **Appendix G** of this Agreement:

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 grounds 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, ³³¹(2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds 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 the following language in licenses, leases, permits, etc.]:

That in the event of breach of any of the above nondiscrimination covenants, the 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. (Reverter clause and related language to be used only when it is determined that such clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.)

[Include the following language in deeds]:

That in the event of breach of any of the above nondiscrimination covenants, the 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 the City and its assigns. (Reverter clause and related language to be used only when it is determined that such clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.)

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Lighting and/or Highway Lighting

If the Project involves lighting and/or highway lighting, the City shall:

1. Provide at its own expense, all electrical energy, routine maintenance such as bulb and/or luminaire replacement, and in case of accidental damage to poles or fixtures, replace them with the same brand or equivalent for continued satisfactory operation of said subject lighting system.
2. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the subject lighting system.
3. Service and maintain the lighting system with its own funds.

If the project involves highway lighting, the lighting improvements and services required to be provided under this Agreement shall remain the full responsibility of the City. 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.

Signal(s) and/or Highway Signal(s)

If the Project involves signal(s) and/or highway signal(s), the City shall:

1. Make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the controller (and cabinet) or the loop detection system, promptly notify the Traffic Services Section of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "controller") including maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the controller in the event the controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway signal system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject signal system.
7. Make all timing adjustments to the signal control equipment and review the signal system(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the City as an additional insured in the construction contractor's general liability policy.
10. Signal improvements and services required under this Agreement shall remain the full responsibility of the City.
11. Maintain the signal system and all facilities constructed with its own funds.

If the project involves highway signals, the signal system, improvements and services required to be provided under this Agreement shall remain the full responsibility of the City. 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.