

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 10

Ordinance/Resolution# 11-236

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of June 6, 2011
(Adoption Date)

TITLE: A RESOLUTION APPROVING A DRAINAGE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND D&R, INC., IN EXCHANGE FOR PROPERTY OWNED BY D&R, INC., LOCATED AT THE INTERSECTION OF VALLEY DRIVE AND TASHIRO DRIVE AS PART OF THE NORTH VALLEY DRIVE RECONSTRUCTION PROJECT.

PURPOSE(S) OF ACTION:

To approve a land exchange and drainage agreement.

COUNCIL DISTRICT: 4		
<u>Drafter/Staff Contact:</u> Michael Q. Hernandez <i>[Signature]</i>	<u>Department/Section:</u> Public Works/Land Management Section	<u>Phone:</u> 528-3124
<u>City Manager Signature:</u>	<i>[Signature]</i>	

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) and the New Mexico Department of Transportation (NMDOT) will join in a coordinated effort to reconstruct and rebuild the northern portion of Valley Drive from Picacho Avenue to the City Limits. Resolution 11-153 (Attachment "A"), was approved by City Council on January 3, 2011, which included a cooperative agreement between the City and NMDOT to provide a 20% City match for the storm drain system improvements as part of the North Valley Drive Reconstruction Project. The City has agreed to acquire three right-of-way parcels for NMDOT. The purchase of these parcels was taken into consideration as part of the final percentage match for the storm drain system. As a result, this right-of-way will be purchased through the flood control fund.

The City needs to acquire a parcel of land as shown on Exhibit "A", from D&R, Inc., (D&R) for a total of 4,701 square feet. This parcel, located at the southwest corner of the intersection of Valley Drive and Tashiro Drive, will provide the necessary right-of-way to construct a portion of North Valley Drive as part of this project.

There is an existing City detention ponding area located on City property at the southeast corner of the Mesilla Drain and the D&R property. The existing ponding area is designed to receive storm water runoff from Picacho Avenue and Valley Drive. In a

meeting on February 23, 2011, City Public Works staff, including the Public Works director, met with the owner of D&R, B. Joe Aday, to discuss a proposal to drain storm water runoff from D&R's tract of land to the existing City detention pond. D&R desired to enter into a drainage agreement with the City, as shown in Exhibit "B", to allow storm water runoff from a portion of its forty-two (42) acre parcel, not to exceed seven (7) developed acres, to be discharged into the existing City ponding area located at the southeast corner of the Mesilla Drain and the D&R property. In exchange, D&R will deed to the City a 4,701 square foot area for the reconstruction of Valley Drive, and will grant to the City a permanent construction maintenance easement and a temporary construction easement as shown in Exhibit "C".

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Plat of Survey and Description.
3. Exhibit "B", Drainage Agreement.
4. Exhibit "C", Construction Maintenance and Temporary Construction Easement with Plat of Surveys and Descriptions.
5. Attachment "A", Resolution No. 11-153.
6. Attachment "B", Vicinity/Aerial map.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" 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 type="checkbox"/>	Funds will be deposited into this fund: () in the amount of ____ for FY ____.
	No	<input checked="" type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution and authorize the drainage agreement between the City of Las Cruces and D&R, Inc.
2. Vote "No"; this will not approve the resolution and reject the drainage agreement. This action could also cause project delays and/or delays in the development of turning lanes.
3. Vote to "Amend"; this could modify the terms of the resolution and instruct staff to seek alternative direction. This action could also cause project delays and/or delays in the development of turning lanes.
4. Vote to "Table"; this could postpone the resolution per the Council's discretion and provide further direction to staff. This action could also cause project delays and/or delays in the development of turning lanes.

REFERENCE INFORMATION:

N/A

RESOLUTION NO. 11-236**A RESOLUTION APPROVING A DRAINAGE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND D&R, INC., IN EXCHANGE FOR PROPERTY OWNED BY D&R, INC., LOCATED AT THE INTERSECTION OF VALLEY DRIVE AND TASHIRO DRIVE AS PART OF THE NORTH VALLEY DRIVE RECONSTRUCTION PROJECT.**

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) and the New Mexico Department of Transportation (NMDOT) will join in a coordinated effort to reconstruct and rebuild the northern portion of Valley Drive from Picacho Avenue to the city limits; and

WHEREAS, the City needs to acquire a parcel of land from D&R, Inc., (D&R) for a total of 4,701 square feet as shown in Exhibit "A", to provide the necessary right-of-way to construct a portion of the North Valley Drive as part of this project. This parcel of land is located at the southwest corner of the intersection of Valley Drive and Tashiro Drive; and

WHEREAS, there is an existing City detention ponding area located on City property at the southeast corner of the Mesilla Drain and the D&R property. The existing ponding area is designed to receive storm water runoff from Picacho Avenue and Valley Drive; and

WHEREAS, the City Public Works Staff, including the Public Works Director, met with the owner of D&R, B. Joe Aday, to discuss a proposal to drain storm water runoff from the D&R tract of land to the existing City detention pond; and

WHEREAS, D&R desires to enter into a drainage agreement with the City, as shown in Exhibit "B", to allow storm water runoff from a portion of its forty-two (42) acre parcel, not to exceed seven (7) developed acres, to be discharged into the existing City ponding area located at the southeast corner of the Mesilla Drain and the D&R property.

In exchange, D&R will deed the 4,701 square foot area to the City, for the reconstruction of Valley Drive, and will grant to the City a permanent construction maintenance easement and a temporary construction easement as shown in Exhibit "C"; and

WHEREAS, upon execution of the drainage agreement, D&R will convey the square footage to the City by Warranty Deed and the City shall be responsible for the cost of recording the Warranty Deed in the Doña Ana County Records.

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

(I)

THAT the drainage agreement attached as Exhibit "B", between the City of Las Cruces and D&R, Inc., is hereby approved.

(II)

THAT the Mayor is hereby authorized to execute the agreement and any other documents necessary to finalize the purchase on behalf of the City.

(III)

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

DONE AND APPROVED this _____ day of _____ 2011.

(SEAL)

APPROVED:

Mayor

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

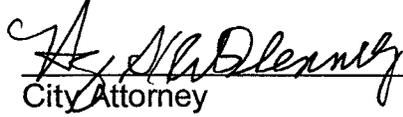
Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:



City Attorney

**Right-of-Way Take
for North Valley Drive Project**

D and R, INC.

A certain parcel of land comprising a portion of United States Reclamation Service Tract 9B-115, within Section 12, Township 23 South, Range 1 East, N.M.P.M., City of Las Cruces, Dona Ana County, New Mexico, said parcel being more particularly described by New Mexico State Plane grid bearings (Central Zone, NAD 83) and horizontal ground distances as follows:

BEGINNING at the northeast corner of the parcel herein described, said corner being the point of intersection of the present (2010) westerly Right-of-Way line of N.M. State Road 185 (aka North Valley Drive), with the present (2010) southerly Right-of-Way line of Tashiro Drive, from which the N.M.D.O.T. Control Point 2107-16 (a standard NMDOT 5/8" rebar w/ alum. cap stamped "16 CN 2107 PS 11599") bears N 40°00'56" W, a distance of 95.15 feet;

Thence, S 18°27'04" E a distance of 286.84 feet along said present westerly Right-of-Way line to an angle point;

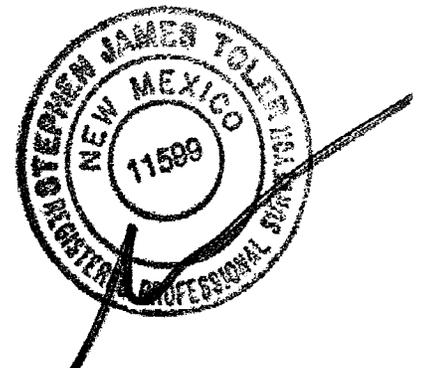
Thence, N 33°55'43" W a distance of 56.21 feet along the new westerly Right-of-Way line of N.M. State Road 185 to an angle point;

Thence, N 18°27'04" W a distance of 196.82 feet along said new westerly Right-of-Way line to an angle point;

Thence, N 59°33'14" W a distance of 61.58 feet along said new westerly Right-of-Way line to the point of intersection of said new westerly Right-of-Way line with the present (2010) southerly Right-of-way line of Tashiro drive;

Thence, N 82°19'07" E a distance of 56.48 feet along said southerly Right-of-Way line to the point and place of beginning.

Said parcel contains 0.1079 acre (4,701 square feet) more or less.



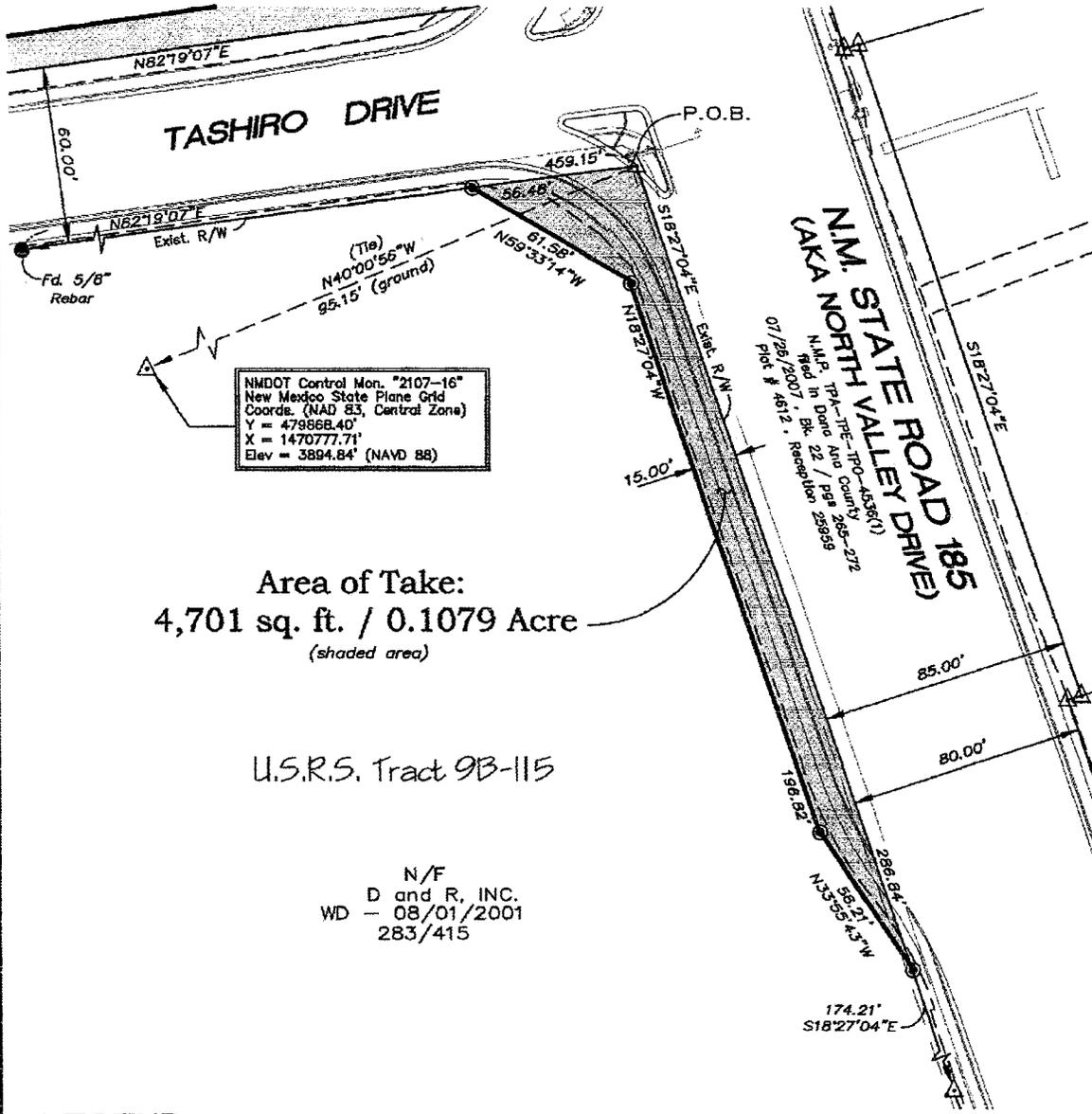
Right-of-Way Take

145
North Valley Drive Project
Within

U.S.R.S. Tract 9B-115
Section 12, T23S, R1E, N.M.P.M.

City of Las Cruces
Dona Ana County, New Mexico

June, 2010



LEGEND:

- ⊙ = Point to be Set Upon Acquisition
- = Found monument as noted
- △ = Found NMDOT standard 2" Alum. cap

NOTES:

- 1.) BEARINGS SHOWN HEREON ARE REFERRED TO GRID NORTH, NEW MEXICO STATE PLANE COORDINATE SYSTEM - CENTRAL ZONE, NAD 83.
- 2.) DISTANCES SHOWN ARE GROUND (PROJECT CF = 1.000252376).
- 3.) FIELD SURVEYS CONDUCTED MAY-JUNE 2010.

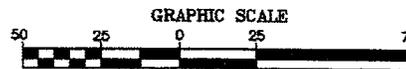
SURVEYOR'S CERTIFICATE

I, STEPHEN J. TOLER, NEW MEXICO PROFESSIONAL SURVEYOR NUMBER 11599 HEREBY CERTIFY THAT THIS EXHIBIT WAS PREPARED FROM FIELD SURVEYS CONDUCTED BY ME AND/OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THE SURVEY AND EXHIBIT MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT THIS EXHIBIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

STEPHEN J. TOLER
NMPS 11599

6/21/2010

DATE



SCI JOB # 2010-028

Surveying Control, Inc.
Specializing in Control Surveys
121 Madison St. N.E.
Albuquerque, N.M. 87108
505.266-9935

DRAINAGE AGREEMENT

This Drainage Agreement is made and entered into on this 25 day of March, 2011, by and between the City of Las Cruces ("City"), a New Mexico municipal corporation, and D&R, Inc. ("D&R"), a New Mexico corporation.

RECITALS

1. D&R is the owner of a tract of land located at the southwest corner of the intersection of Valley Drive and Tashiro Drive (See Exhibit "A").
2. There is an existing City detention ponding area located on City property at the southeast corner of the Mesilla Drain and the D&R property. The existing ponding area is designed to receive storm water run-off from Picacho Avenue and Valley Drive (See Exhibit "B").
3. In a meeting on February 23, 2011, City Public Works Staff, including the Public Works Director, met with B. Joe Aday with D&R to discuss a proposal to drain storm water run-off from D&R's tract of land to the existing City detention pond.
4. D&R desires to enter into an agreement with the City to allow storm water run-off from a portion of its 42 acre parcel not to exceed 7 developed acres to be discharged into the existing City ponding area located at the southeast corner of the Mesilla Drain and the D&R property.
5. In exchange, D&R will deed to the City a 4,701 square foot area for the reconstruction of Valley Drive project as shown on Exhibit "C", and will grant to the City a Construction Maintenance Easement and a Temporary Construction Easement as shown on Exhibit "D".

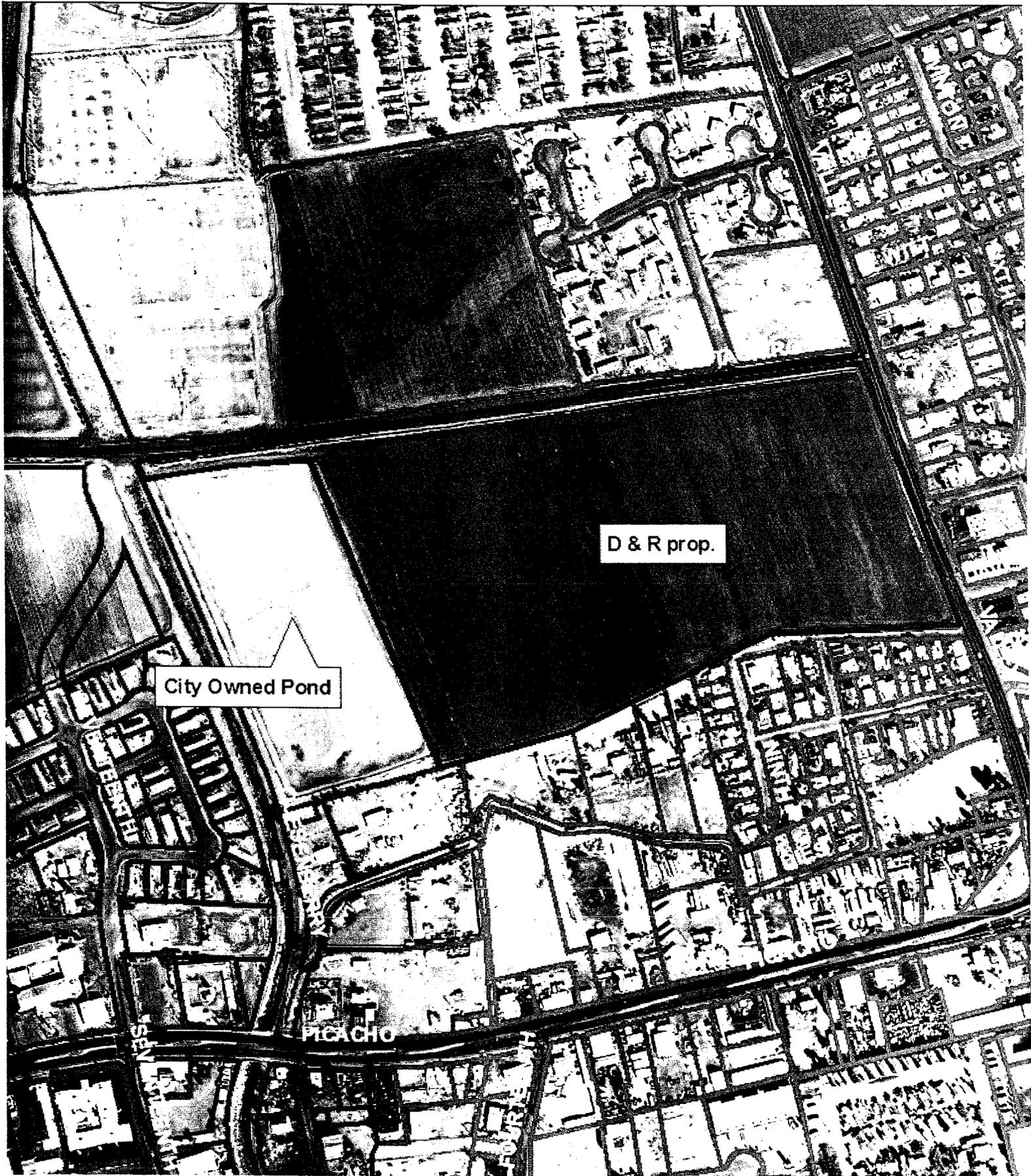
AGREEMENTS

For valuable consideration it is mutually agreed by the parties that:

1. The City will allow D&R to discharge storm water run-off from a portion of D&R's 42 acre tract not to exceed 7 developed acres into the existing City ponding area located at the southeast corner of the Mesilla Drain and the D&R property.
2. D&R, at its expense, is responsible for designing and constructing all necessary drainage infrastructure to convey the authorized storm water run-off from a portion of its 42-acre tract not to exceed 7 developed acres into the existing City ponding area located at the southeast corner of the Mesilla Drain and the D&R property. The design and construction of this drainage infrastructure shall meet all applicable City Design Standards in place at the time of development and other applicable federal, state, and local standards, codes and regulations. Maintenance responsibilities for this drainage infrastructure will be determined at the time that the portion of D&R's 42-acre tract not to exceed 7 acres is developed and shall be based on whether the drainage infrastructure is on private property or within the public right-of-way.

3. D&R, at its expense, is responsible for designing, constructing, and maintaining an industry standard system that shall filter the storm water run off from a portion of its 42-acre tract not to exceed 7 developed acres prior to entering the City's storm drain system. The City's storm drain system is located along Tashiro Drive approximately 100 feet west of the intersection of Tashiro Drive and Valley Drive and D&R can also connect to the ponding area located at the southeast corner of the Mesilla Drain and the D&R property. D&R will have the option to tie in to the 24" stub-out from MH TSO. The stub-out will be extended to D&R's northern property boundary. The design, construction, and maintenance of the industry standard system shall be reviewed by the City and shall meet all applicable City Design Standards in place at the time of development and other applicable federal, state, and local standards, codes and regulations.
4. Enlargement of the City detention pond by D&R to accommodate for any storm water run-off from D&R's property that exceeds the original 7 developed acres outlined within this agreement may be considered by the City. Negotiations must occur prior to development of the D&R property and must not negatively affect the City, City owned infrastructure, or City owned property.
5. This Agreement in no way relieves D&R of the responsibility to comply with all National Pollutant Discharge Elimination Systems (NPDES) requirements of the Clean Water Act and as further adopted by City Ordinance.
6. This Agreement shall be binding on the parties and their successors and assigns and shall run with the land until released by mutual agreement between the City and D&R. Neither party may assign this agreement nor any of the duties created herein without the express written consent of the other party.
7. This document contains the entire agreement between the parties and supersedes any and all other agreements and understandings, oral or written, whether previous to the execution hereof, or contemporaneous herewith. Changes to this Agreement are not binding unless signed in writing by both parties.
8. If any part of this Agreement is held to be invalid or unenforceable, such holding will not affect the validity or enforceability of any other part of this Agreement so long as the remainder of the Agreement is reasonably capable of completion.
9. This Agreement shall be placed of record with the Dona Ana County New Mexico Clerk's office at the expense of the City. The City will provide D & R with a fully executed, recorded copy of the Agreement.
10. Prior to litigation, the parties have the contractual duty to attempt to resolve any dispute(s) herein at the least possible expense. Failing that the parties have the duty to mediate any dispute(s) by a mediator chosen by the parties.

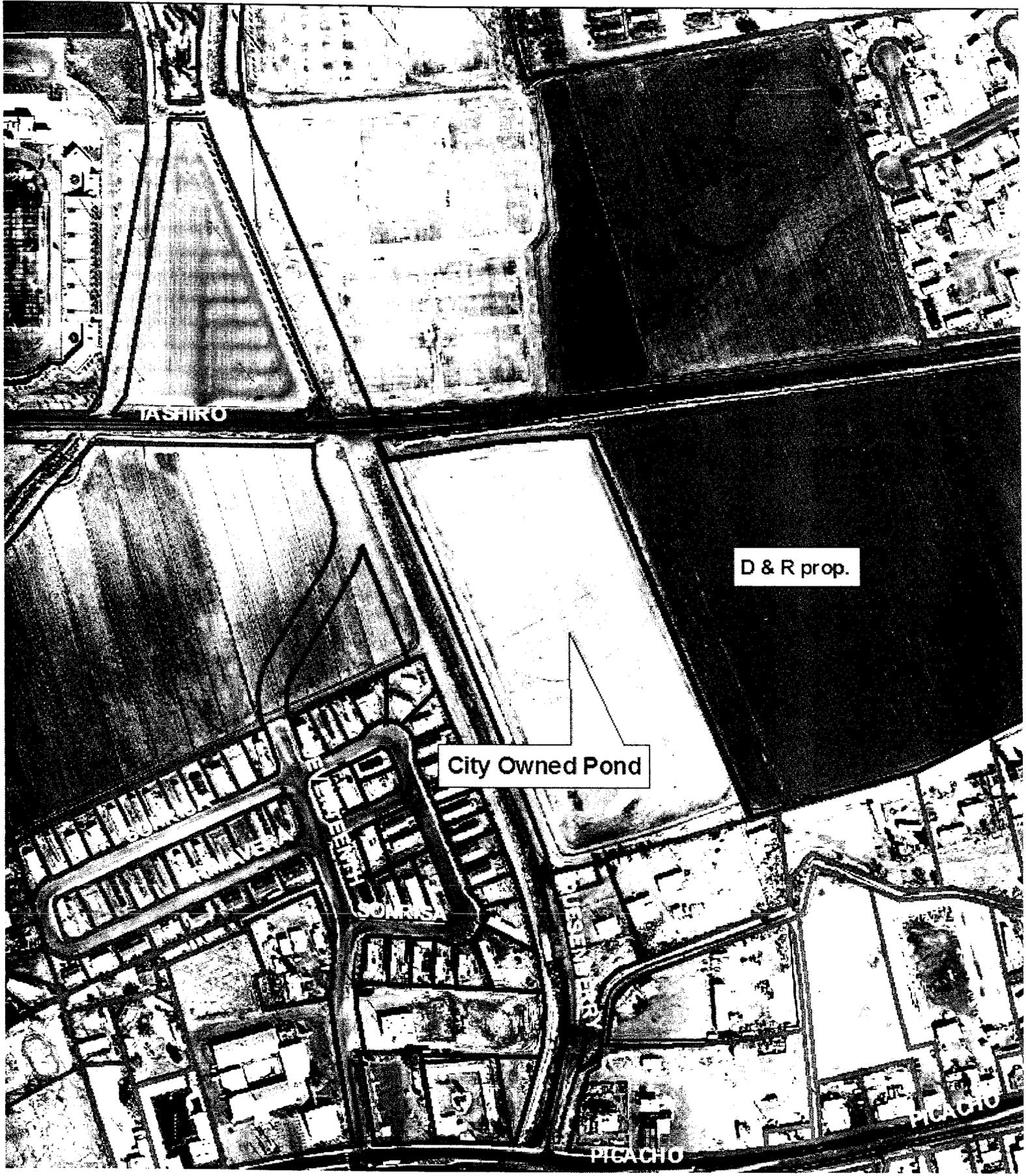
149
Exhibit "A"



D & R prop.

City Owned Pond

150
Exhibit "B"



TASHIRO

D & R prop.

City Owned Pond

PICACHO

EXHIBIT "C"
Right-of-Way Take
for North Valley Drive Project

D and R, INC.

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BEGINNING at the northeast corner of the parcel herein described, said corner being the point of intersection of the present (2010) westerly Right-of-Way line of N.M. State Road 185 (aka North Valley Drive), with the present (2010) southerly Right-of-Way line of Tashiho Drive, from which the N.M.D.O.T. Control Point 2107-16 (a standard NMDOT 5/8" rebar w/ alum. cap stamped "16 CN 2107 PS 11599") bears N 40°00'56" W, a distance of 95.15 feet;

Thence, S 18°27'04" E a distance of 286.84 feet along said present westerly Right-of-Way line to an angle point;

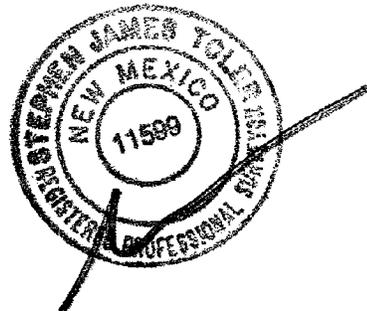
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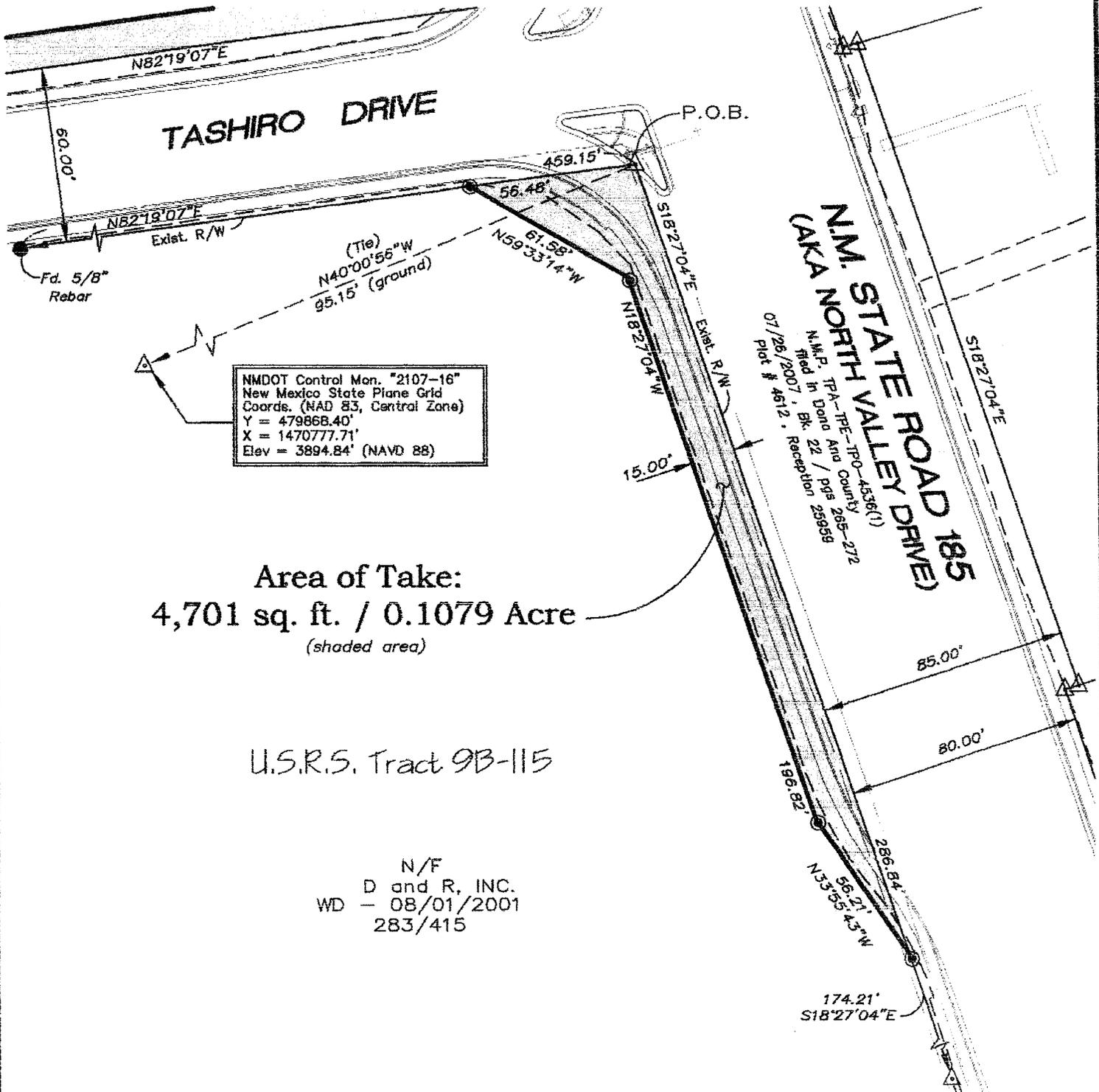
Thence, N 82°19'07" E a distance of 56.48 feet along said southerly Right-of-Way line to the point and place of beginning.

Said parcel contains 0.1079 acre (4,701 square feet) more or less.



Right-of-Way Take

For
North Valley Drive Project
 Within
U.S.R.S. Tract 9B-115
Section 12, T23S, R1E, N.M.P.M.
City of Las Cruces
Dona Ana County, New Mexico
 June, 2010



NMDOT Control Mon. "2107-16"
 New Mexico State Plane Grid
 Coords. (NAD 83, Central Zone)
 Y = 479868.40'
 X = 1470777.71'
 Elev = 3894.84' (NAVD 88)

Area of Take:
4,701 sq. ft. / 0.1079 Acre
 (shaded area)

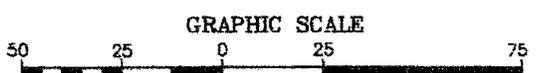
U.S.R.S. Tract 9B-115

N/F
 D and R, INC.
 WD - 08/01/2001
 283/415

N.M. STATE VALLEY ROAD 185
(AKA NORTH VALLEY DRIVE)
 07/26/2007, Reception
 N.M.P. TPA-TPC-TPD-4536(1)
 filed in Dona Ana County
 pgs 265-272
 N.M.P. TPA-TPC-TPD-4536(1)
 filed in Dona Ana County
 pgs 265-272
 Reception 25959

LEGEND:

- ⊙ = Point to be Set Upon Acquisition
- = Found monument as noted
- △ = Found NMDOT standard 2" Alum. cap



**Construction Maintenance Easement and Temporary Construction Easements
for North Valley Drive Project**

(revised July 9, 2010)

D and R, INC.

Construction Maintenance Easement:

A strip of land traversing a portion of United States Reclamation Service Tract 9B-115 within Section 11, Township 23 South, Range 1 East, N.M.P.M., City of Las Cruces, Dona Ana County, New Mexico, said strip being 50.00 feet wide and extending 25.00 feet left and right of the following described centerline, with the outside boundary lines lengthening and shortening to eliminate gaps and overlaps where the centerline intersects other property boundaries and/or right-of-way lines, said centerline being more particularly described using New Mexico State Plane grid bearings (Central Zone - NAD 83) and horizontal ground distances as follows:

BEGINNING at a point on the northerly boundary line of the property of the Grantor, said northerly boundary line also being the present (2010) southerly right-of-way line of Tashiro Drive as the same is shown and designated on the Plat of Survey thereof prepared by Gilbert Chavez, NMPS 6832, Development Services Division of the City of Las Cruces, New Mexico as Project No. 98S102-I, dated March 13, 2000, from which the northwest corner of said property (1/2" rebar found in place) bears S82°19'07"W a distance of 298.76 feet, also from which the N.M.D.O.T. Control Point 2107-16 (a standard NMDOT 5/8" rebar w/ alum. cap stamped "16 CN 2107 PS 11599") bears N 80°05'22" E, a distance of 2067.03 feet;

Thence, S 22°20'08" W a distance of 64.35 feet along said centerline to the point of terminus of said centerline, said point of terminus being a point on the southerly boundary line of the property of the Grantor, from which said N.M.D.O.T. Control Point 2107-16 bears N 78°36'21"E a distance of 2102.07 feet.

Said strip contains 0.0739 acre (3,218 square feet) more or less.

Temporary Construction Easements:

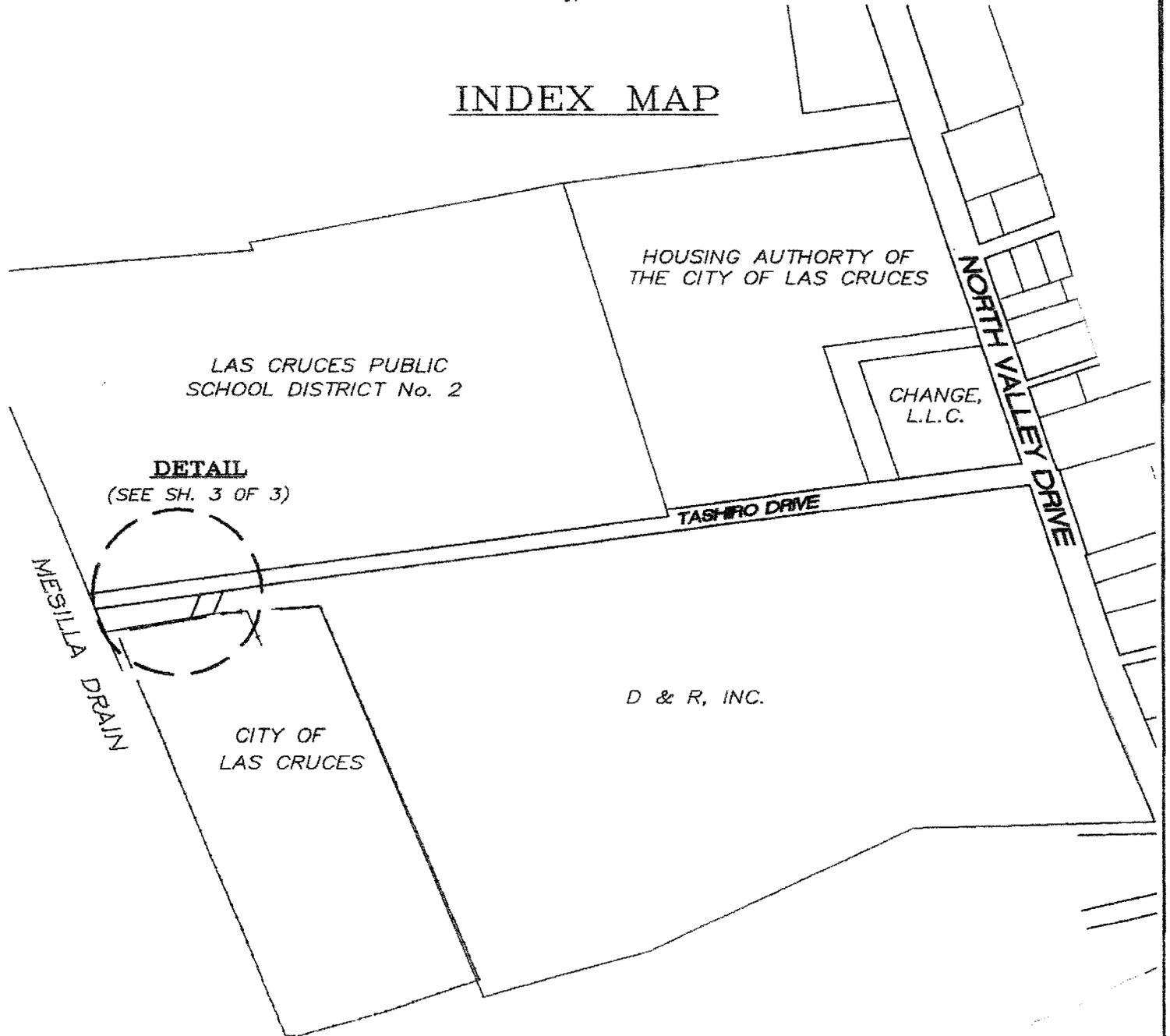
Two strips of land being 50.00 feet wide and lying adjacent to the easterly and westerly outside boundary lines of the above described Construction Maintenance Easement as shown on Page 3 of 3 herein.



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**Construction Maintenance Easement and
Temporary Construction Easement**

For
North Valley Drive Project
Within
U.S.R.S. Tract 9B-115
Section 11, T23S, R1E, N.M.P.M.
City of Las Cruces
Dona Ana County, New Mexico
July, 2010

INDEX MAP



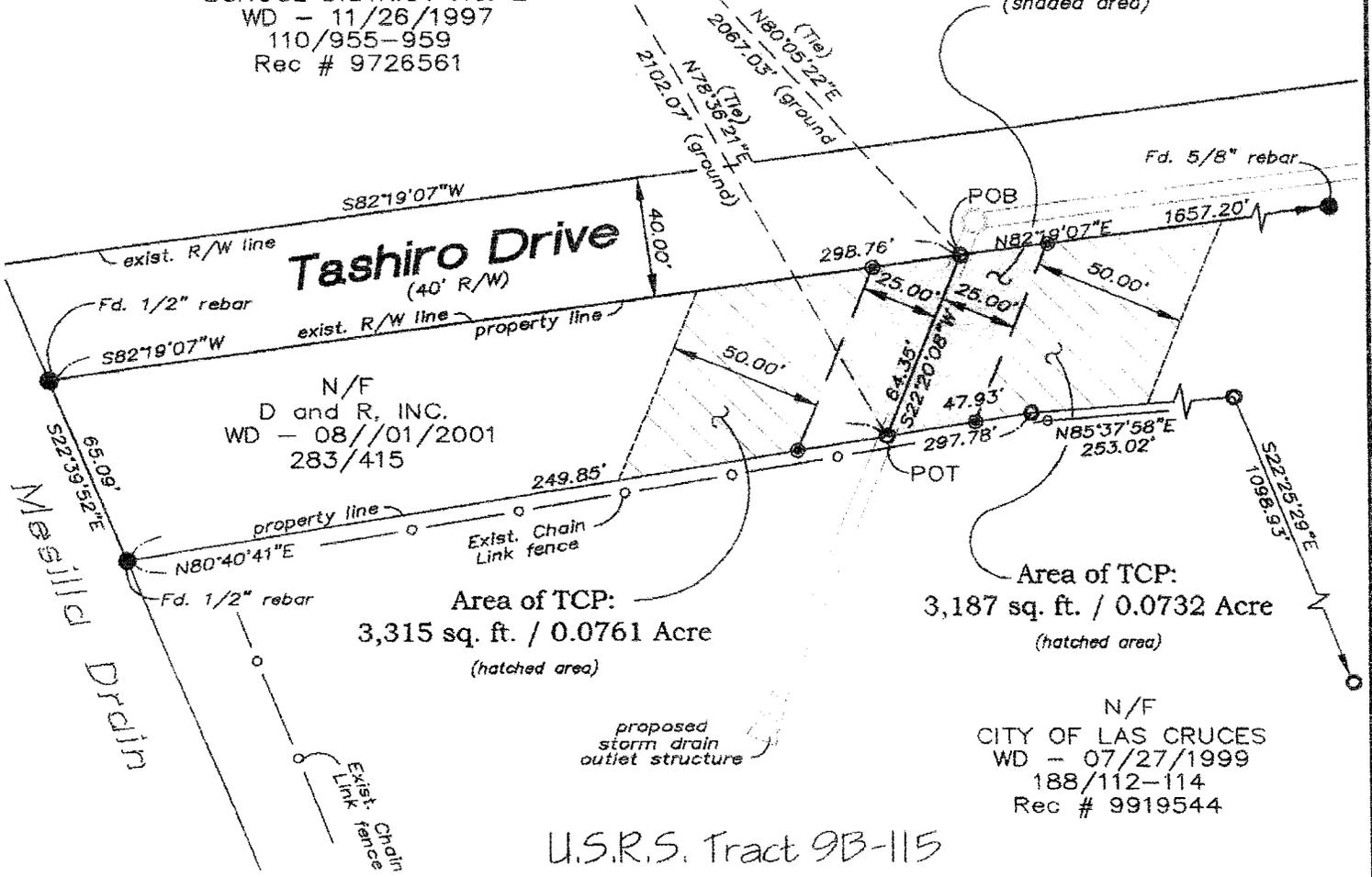
Construction Maintenance Easement and Temporary Construction Easement

For
North Valley Drive Project
Within
U.S.R.S. Tract 9B-115
Section 11, T23S, R1E, N.M.P.M.
City of Las Cruces
Dona Ana County, New Mexico
July, 2010

NMDOT Control Mon. "2107-16"
New Mexico State Plane Grid
Coords. (NAD 83, Central Zone)
Y = 479868.40'
X = 1470777.71'
Elev = 3894.84' (NAVD 88)

N/F
LAS CRUCES PUBLIC
SCHOOL DISTRICT No. 2
WD - 11/26/1997
110/955-959
Rec # 9726561

Area of CME:
3,218 sq. ft. / 0.0739 Acre
(shaded area)



N/F
D and R, INC.
WD - 08//01/2001
283/415

Area of TCP:
3,315 sq. ft. / 0.0761 Acre
(hatched area)

Area of TCP:
3,187 sq. ft. / 0.0732 Acre
(hatched area)

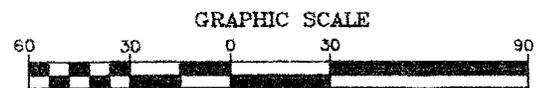
N/F
CITY OF LAS CRUCES
WD - 07/27/1999
188/112-114
Rec # 9919544

U.S.R.S. Tract 9B-115

LEGEND:

- = Point to be set upon aquisition
- = Calculated Point (not set)
- = Found monument as noted

NOTES:



(IN FEET)
1 inch = 60 ft.

Construction Maintenance Easement and Temporary Construction Easements for North Valley Drive Project

(revised July 9, 2010)

D and R, INC.

Construction Maintenance Easement:

A strip of land traversing a portion of United States Reclamation Service Tract 9B-115 within Section 11, Township 23 South, Range 1 East, N.M.P.M., City of Las Cruces, Dona Ana County, New Mexico, said strip being 50.00 feet wide and extending 25.00 feet left and right of the following described centerline, with the outside boundary lines lengthening and shortening to eliminate gaps and overlaps where the centerline intersects other property boundaries and/or right-of-way lines, said centerline being more particularly described using New Mexico State Plane grid bearings (Central Zone - NAD 83) and horizontal ground distances as follows:

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Thence, S 22°20'08" W a distance of 64.35 feet along said centerline to the point of terminus of said centerline, said point of terminus being a point on the southerly boundary line of the property of the Grantor, from which said N.M.D.O.T. Control Point 2107-16 bears N 78°36'21"E a distance of 2102.07 feet.

Said strip contains 0.0739 acre (3,218 square feet) more or less.

Temporary Construction Easements:

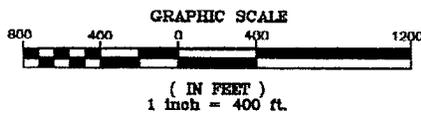
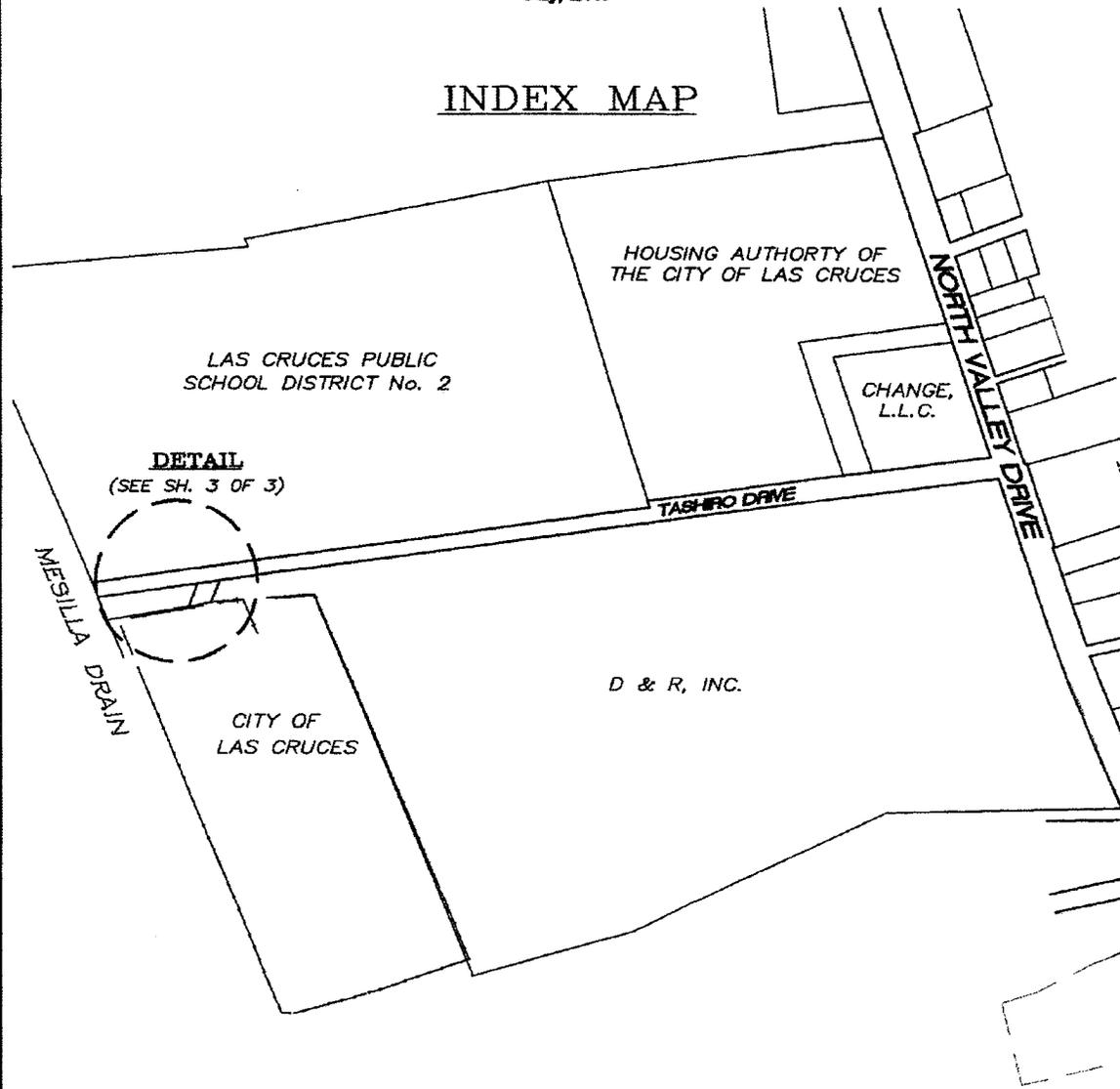
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**Construction Maintenance Easement and
Temporary Construction Easement**

For
North Valley Drive Project
Within
U.S.R.S. Tract 9B-115
Section 11, T23S, R1E, N.M.P.M.
City of Las Cruces
Dona Ana County, New Mexico
July, 2010

INDEX MAP



SCI JOB # 2010-028

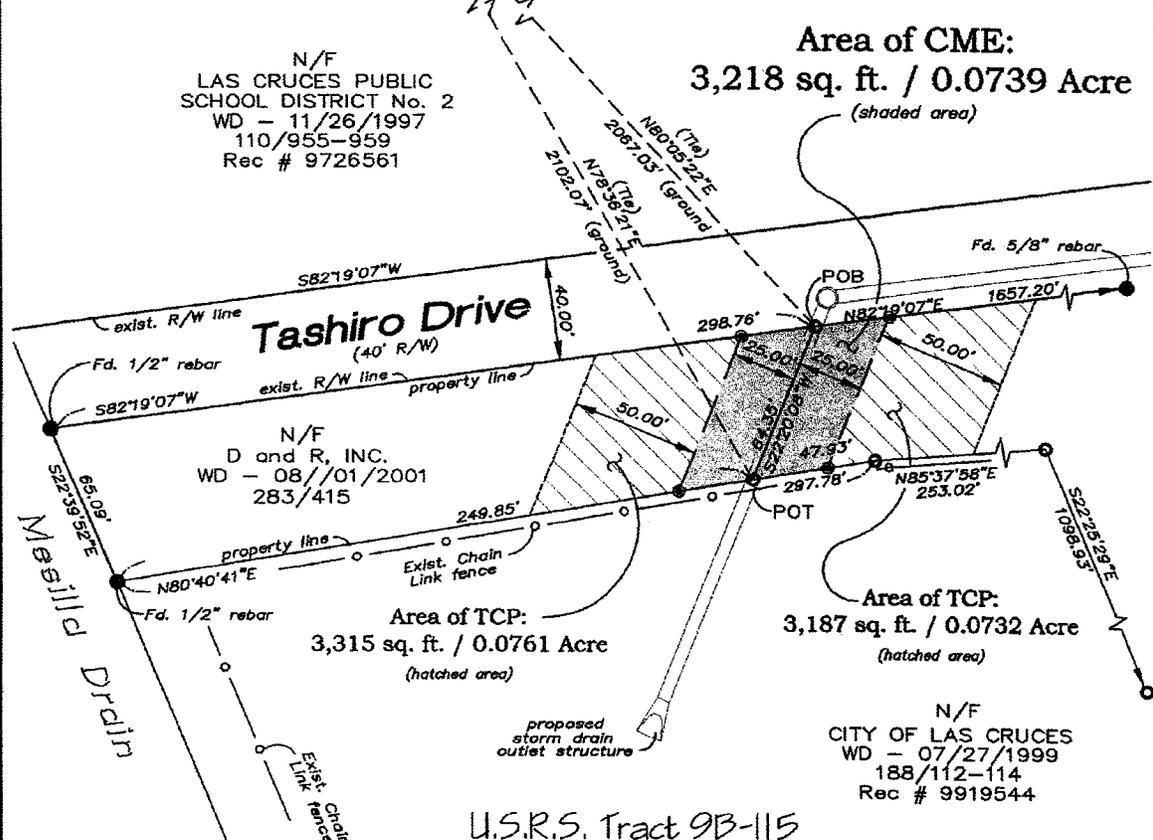


Surveying Control, Inc
Specializing in Central Surveys
534 Madison St., N.E.
Albuquerque, N.M. 87108
(505) 266-0935

Construction Maintenance Easement and Temporary Construction Easement

For
North Valley Drive Project
Within
U.S.R.S. Tract 9B-115
Section 11, T23S, R1E, N.M.P.M.
City of Las Cruces
Dona Ana County, New Mexico
July, 2010

NMDOT Control Mon. "2107-16"
New Mexico State Plane Grid
Coords. (NAD 83, Central Zone)
Y = 479868.40'
X = 1470777.71'
Elev = 3894.84' (NAVD 88)

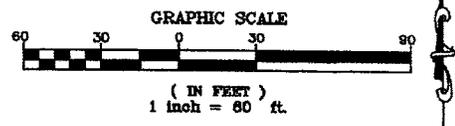


LEGEND:

- ⊙ = Point to be set upon aquisition
- = Calculated Point (not set)
- = Found monument as noted

NOTES:

- 1.) BEARINGS SHOWN HEREON ARE REFERRED TO GRID NORTH, NEW MEXICO STATE PLANE COORDINATE SYSTEM - CENTRAL ZONE, NAD 83.
- 2.) DISTANCES SHOWN ARE GROUND (PROJECT CF = 1.000252376).
- 3.) FIELD SURVEYS CONDUCTED MAY-JUNE 2010.



SURVEYOR'S CERTIFICATE

I, STEPHEN J. TOLER, NEW MEXICO PROFESSIONAL SURVEYOR NUMBER 11599 HEREBY CERTIFY THAT THIS EXHIBIT WAS PREPARED FROM FIELD SURVEYS CONDUCTED BY ME AND/OR UNDER MY DIRECT SUPERVISION; THAT I AM RESPONSIBLE FOR THIS SURVEY; THAT THE SURVEY AND EXHIBIT MEET THE MINIMUM STANDARDS FOR SURVEYING IN NEW MEXICO; AND THAT THIS EXHIBIT IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

STEPHEN J. TOLER
NMPS 11599

7/9/2010
DATE

SCI JOB # 2010-028

Surveying Control, Inc.
Specializing in Central Surveys
131 Madison St., N.E.
Albuquerque, N.M. 87106
505-266-0935

PAGE 3 OF 3

RESOLUTION NO. 11-153

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

The City Council is informed that:

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

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

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

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

(I)

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

(II)

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

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

(III)

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

DONE AND APPROVED this 3rd day of January, 2011.

(SEAL)

APPROVED:


Mayor

ATTEST:


City Clerk

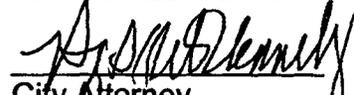
VOTE:

Mayor Miyagishima:	<u>Aye</u>
Councillor Silva:	<u>Aye</u>
Councillor Connor:	<u>Aye</u>
Councillor Pedroza:	<u>Aye</u>
Councillor Small:	<u>Aye</u>
Councillor Sorg:	<u>Aye</u>
Councillor Thomas:	<u>Aye</u>

Moved by: Connor

Seconded by: Sorg

APPROVED AS TO FORM:


City Attorney



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

RECEIVED

FEB 24 2011

CITY OF LAS CRUCES
PUBLIC WORKS DIRECTOR

February 17, 2011

Mike Johnson, Public Works Director
City of Las Cruces
P.O. Box 20000
Las Cruces, NM 88004-9002

Re: Executed Cooperative Agreement - Project # 4536(001), Control # ESO2107

Dear Mr. Johnson:

Enclosed you will find a fully executed Cooperative Agreement between the New Mexico Department of Transportation and City of Las Cruces for the above mentioned project. Please keep this fully executed Cooperative Agreement for your project files.

Should you have any questions please contact me at (575) 544-6536 or by email at debraa.hudson@state.nm.us.

Sincerely

Debbie Hudson
Local Government Road Fund Coordinator

Enclosures

Susana Martinez
Governor

Alvin C. Dominguez, P.E.
Cabinet Secretary Designate

Commission

Chairman

Commissioner
District I

District One Office
2912 E. Pine Street
Deming, NM 88030-7075
575-544-6530

Frank E. Guzman, P.E.
District Engineer
District I

Contract Number	<u>D13401</u>
Vendor Number	<u>0000054342</u>
Project Number	<u>4536(001)</u>
Control Number	<u>ESO2107</u>

COOPERATIVE AGREEMENT

This Agreement, pursuant to NMSA 1978, Section 67-3-28, is made and entered into this 14th day of February, 2010, by and between the New Mexico Department of Transportation, herein referred to as "Department," and the City of Las Cruces, herein referred to as "City."

RECITALS

WHEREAS, the Department plans to improve NM 185 North between MP 0.00 and MP 1.30, further identified as Project Number 4536(001), Control Number ESO2107, herein referred to as ESO2107 or the "Department's Project"; and

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

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

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

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

SECTION ONE: PURPOSE

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

SECTION TWO: STORM DRAIN SYSTEM IMPROVEMENT FUNDING BY PARTIES

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

- A. **2010/2011 EBS, TPA, TPE, TPO Funds**
Department's 80% share \$ 1,009,531.30
 The scope of the Storm Drain System improvements provides for installation of the storm drain pipe and all of the items associated with the installation as per the latest NMDOT Standard Specifications and Contract Documents.
- B. **City's matching 20% share** \$ 252,382.82
 For the purpose stated above.
- C. **Total Storm Drain System Improvement Funding** **\$1,261,914.12**

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

SECTION THREE: THE DEPARTMENT SHALL:

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

SECTION FOUR: THE CITY SHALL:

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

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

SECTION FIVE: STORM DRAIN SYSTEM RESPONSIBILITY

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

SECTION SIX: THIRD PARTY BENEFICIARY CLAUSE

No provision of this Agreement creates in the public, or any member thereof, a third party beneficiary nor authorizes anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to person, damage to property, and/or any other claim(s) whatsoever pursuant to the provisions of this Agreement.

SECTION SEVEN: NEW MEXICO TORT CLAIMS ACT

No provision of this Agreement establishes any waiver of immunity for alleged tortuous conduct of any employee of the Department or of the City arising from the performance of this Agreement, apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

SECTION EIGHT: DEPARTMENT'S AUTHORIZATION OF EXPENDITURES

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the State Legislature, or the Congress of the United States, if federal funds are involved, for performance of this Agreement. If sufficient appropriations and authorizations are not made by the State Legislature, or the Congress of the United States, this Agreement shall terminate upon written notice given by the Department to the City. The Department expressly is not committed to expenditure of any funds until such time as they are programmed, budgeted, obligated by FHWA, encumbered, and approved for expenditure by the Department. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

SECTION NINE: LEGAL COMPLIANCE

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

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

SECTION TEN: ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:

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

SECTION ELEVEN: SCOPE OF AGREEMENT

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

SECTION TWELVE: TERMINATION

1. This Agreement shall terminate on **January 3, 2015**.
2. Either party may, at its option, terminate this Agreement if the other party fails to comply with any provision of this Agreement. By such termination, neither party may nullify obligations already incurred for performance or failure to perform prior to termination of the Agreement.

SECTION THIRTEEN: SEVERABILITY

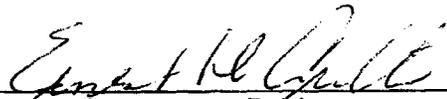
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

SECTION FOURTEEN: AMENDMENT

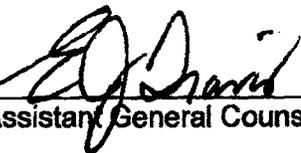
This Agreement shall not be altered, modified, supplemented, or amended except by an instrument in writing and executed by the parties hereto.

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By:  Date: 2/14/11
Deputy Secretary or Designee
may

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

By:  Date: 12/4/2010
Assistant General Counsel

CITY OF LAS CRUCES

By:  Date: 1-6-2011
Authorized City Official
Mayor
Title

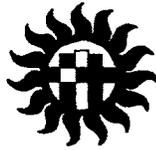
ATTEST

By:  Date: 1-6-11
City Clerk

APPROVED AS TO FORM BY THE CITY ATTORNEY

By:  Date: 01/05/11
City Attorney

Exhibit A



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

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

For Meeting of January 3, 2011
(Adoption Date)

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

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

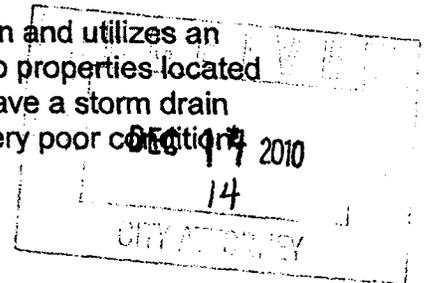
Drafter and Staff Contact: Amber Vaughn <i>aw</i>		Department: Public Works		Phone: (575) 528-3228	
Department	Signature	Phone	Department	Signature	Phone
Department Director	<i>[Signature]</i>	528-3333	Budget	<i>[Signature]</i>	541-2107
		541-2281	Assistant City Manager	<i>[Signature]</i>	541-2271
Legal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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

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

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



(Continue on additional sheets as required)

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

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

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

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

SUPPORT INFORMATION:

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

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input checked="" type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
<input type="checkbox"/>		Proposed funding is from fund balance in the 4400 Flood Control Fund.	
Does this action create any			

(Continue on additional sheets as required)

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

FUND EXPENDITURE SUMMARY:

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

OPTIONS / ALTERNATIVES:

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

REFERENCE INFORMATION

N/A

