

197
City of Las Cruces[®]
 PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 12

Ordinance/Resolution# 11-238

For Meeting of _____
 (Ordinance First Reading Date)

For Meeting of June 6, 2011
 (Adoption Date)

TITLE: A RESOLUTION APPROVING THE PURCHASE OF THREE (3) PARCELS OF LAND OWNED BY WILFRED E. AND IVA BERNICE BINNS LOCATED AT THE INTERSECTION OF VALLEY DRIVE AND HOAGLAND ROAD IN THE AMOUNT OF THIRTY THOUSAND, ONE HUNDRED AND SIXTY DOLLARS (\$30,160.00), AS PART OF THE NORTH VALLEY DRIVE RECONSTRUCTION PROJECT.

PURPOSE(S) OF ACTION:

To approve purchase of right-of-way for the North Valley Drive Reconstruction Project.

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. This resolution included a cooperative agreement between the City and NMDOT to provide a 20% City match for the storm drain system improvements as part of North Valley Drive Reconstruction Project. The City has agreed to acquire three (3) 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 three (3) parcels of land as shown on Exhibit "A", from Wilfred E. and Iva Bernice Binns totaling 6,697 square feet in the amount of \$30,160.00. The parcels will provide the necessary right-of-way to construct a portion of North Valley Drive.

An appraisal was ordered and received in July 2010, and updated on February 2011. Both indicated an appraised value of \$4.50 per square foot or \$30,160.00. Section

2-1313 of the City Ordinance for Appraisals, states that if the purchase or sale price or exchange value is \$25,000.00 or more but less than \$150,000.00, only one appraisal is required by a qualified appraiser.

Upon execution of the agreements ("Exhibit B"), Wilfred E. and Iva Bernice Binns will convey the square footage to the City by warranty deeds. The City shall be responsible for the cost of recording the warranty deeds at Doña Ana County Records.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", A-1 through A-3, Plat of Surveys and Descriptions.
3. Exhibit "B", B-1 through B-3, Real Estate Purchase Agreements.
4. Attachment "A", Resolution No. 11-153.
5. Attachment "B", Vicinity/Aerial map.

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 ____ Fund.
Does this action create a 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)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Flood Control Fund	44806010-854111-70433	\$30,160.00	\$356,386.56	\$326,226.56	Right-of-Way Acquisition & City match requirements for NMDOT Project Number 4536 (001) Storm Drain System Improvements

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this action will approve the resolution and authorize the purchase of land between the City of Las Cruces and Wilfred E. and Iva Bernice Binns.
2. Vote "No", this action will not approve the resolution and will reject the land purchases. This action could also cause project delays and/or delays in the development of turning lanes.
3. Vote to "Amend", this action 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 action could postpone the resolution per Council's discretion and 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. 11-238

A RESOLUTION APPROVING THE PURCHASE OF THREE (3) PARCELS OF LAND OWNED BY WILFRED E. AND IVA BERNICE BINNS LOCATED AT THE INTERSECTION OF VALLEY DRIVE AND HOAGLAND ROAD IN THE AMOUNT OF THIRTY THOUSAND, ONE HUNDRED AND SIXTY DOLLARS (\$30,160.00), 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 three (3) parcels of land from Wilfred E. and Iva Bernice Binns totaling 6,697 square feet in the amount of \$30,160.00 as shown in Exhibits "A-1" through "A-3"; and

WHEREAS, the parcels will provide the necessary right-of-way to construct a portion of the North Valley Drive Reconstruction Project; and

WHEREAS, upon execution of the agreement, Wilfred E. and Iva Bernice Binns will convey the square footage to the City by warranty deeds. The City shall be responsible for the cost of recording the warranty deeds at Doña Ana County Records.

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

(I)

THAT the agreements attached hereto as Exhibits "B-1" through "B-3" between the City of Las Cruces and Wilfred E. and Iva Bernice Binns are hereby approved.

(II)

THAT the Mayor is hereby authorized to execute the agreement and any other documents necessary to finalize the purchases 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**

Wilfred E. Binns and Iva Bernice Binns Revocable Trust

A certain parcel of land comprising a portion of United States Reclamation Service Tract 9B-28, 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 northernmost corner of the parcel herein described, said corner being a point on the present (2010) easterly Right-of-Way line of N.M. State Road 185 (aka North Valley Drive), from which the N.M.D.O.T. Control Point 2107-18 (a standard NMDOT 5/8" rebar w/ alum. cap stamped "18 CN 2107 PS 11599") bears S 33°53'22" E, a distance of 466.32 feet;

Thence, southeasterly along the new easterly Right-of-Way line of N.M. State Road 185 on a curve (radius = 159.50 feet, chord = S45°04'16"E, a chord distance of 64.40 feet) through an arc of 23°17'34" to the right a distance of 64.84 feet to a point of tangency;

Thence, S 33°25'29" E a distance of 109.28 feet along said new easterly Right-of-Way line to an angle point;

Thence, S 53°28'38" E a distance of 62.41 feet along said new easterly Right-of-Way line to an angle point, said angle point being a point on the new northerly Right-of-Way line of Hoagland Road;

Thence, N 66°27'02" E a distance of 52.68 feet along said new northerly Right-of-Way line to an angle point;

Thence, S 23°32'58" E a distance of 3.50 feet along said new northerly Right-of-Way line to the point of intersection of said new northerly Right-of-Way line with the present (2010) northerly Right-of-Way line of Hoagland Road;

Thence, S 66°27'02" W a distance of 70.17 feet along said present northerly Right-of-Way line to a point of curvature, said point being a 5/8" rebar w/ NMDOT alum. cap found in place;

Thence, northwesterly on a curve (radius = 20.00 feet, chord = N 73°29'13" W, a chord distance of 25.74 feet) through an arc of 80°07'29" to the right a distance of 27.97 feet to a point of tangency, said point of tangency being a point on the present (2010) easterly Right-of-Way line of said N.M. State Road 185, and being a 5/8" rebar w/ NMDOT alum. cap found in place;

Thence, N 33°25'29" W a distance of 211.72 feet along said present easterly Right-of-Way line to the point and place of beginning.

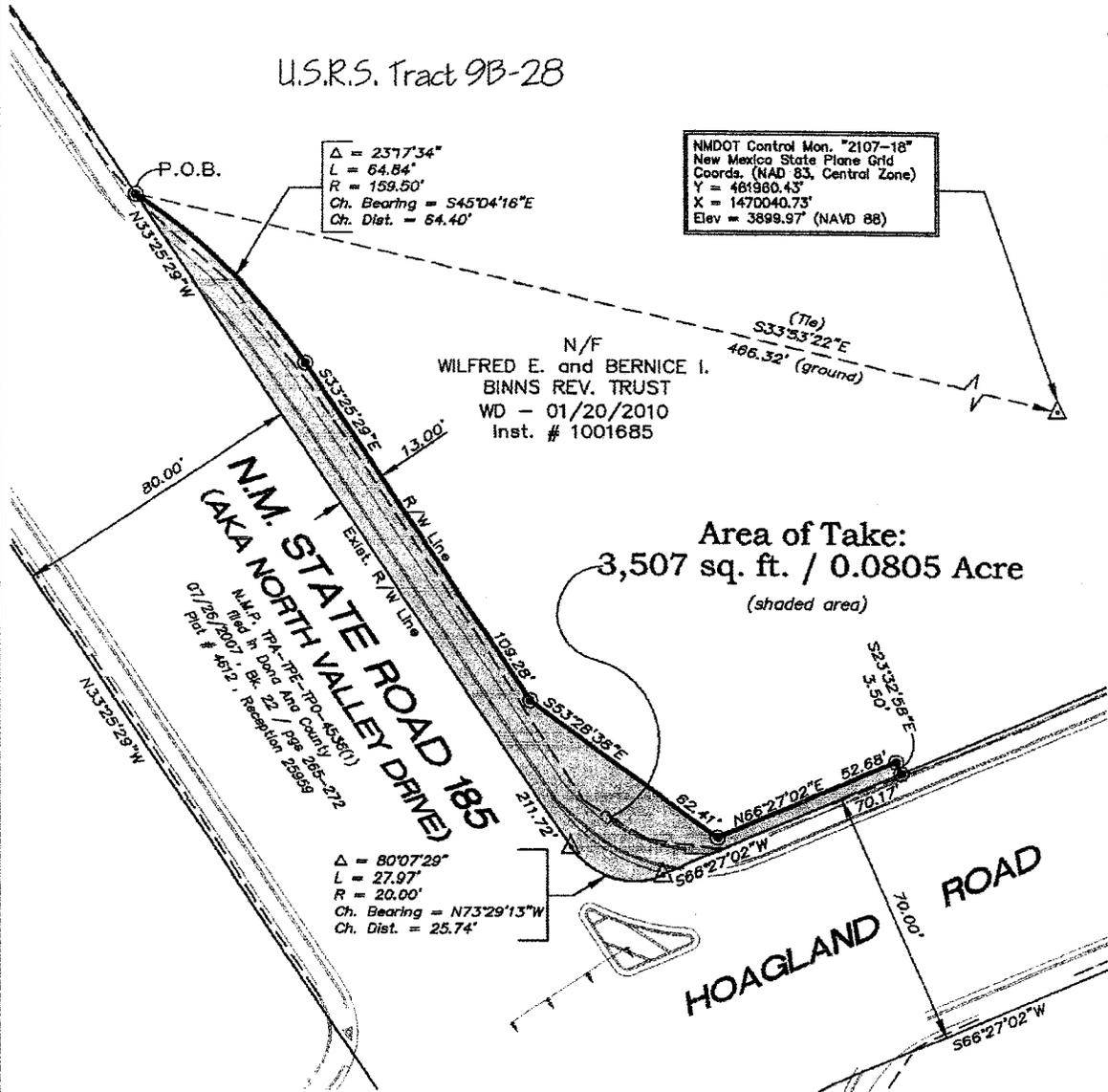
Said parcel contains 0.0805 acre (3,507 square feet) more or less.



Right-of-Way Take

For
North Valley Drive Project
 Within
U.S.R.S. Tract 9B-28
Section 12, T23S, R1E, N.M.P.M.
City of Las Cruces
Dona Ana County, New Mexico
 June, 2010

U.S.R.S. Tract 9B-28

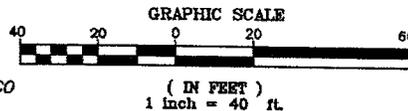


LEGEND:

- ⊙ = Point to be Set Upon Acquisition
- △ = 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
 3747 Washington St., N.E.
 Albuquerque, N.M. 87108
 505/266-0935

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

Wilfred E. Binns and Iva Bernice Binns Revocable Trust

Parcel 1

A certain parcel of land comprising a portion of United States Reclamation Service Tract 9B-28, 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 southwest corner of the parcel herein described, said corner also being the southwest corner of the property of the Grantor, and being a point on the present (2010) easterly Right-of-Way line of N.M. State Road 185 (aka North Valley Drive), from which the N.M.D.O.T. Control Point 2107-18 (a "standard NMDOT 5/8" rebar w/ alum. cap stamped "18 CN 2107 PS 11599") bears S 37°45'01" E, a distance of 50.13 feet;

Thence, N 33°25'29" W a distance of 92.94 feet along said present easterly Right-of-Way line to a point of curvature, a 5/8" rebar w/ NMDOT alum. cap found in place;

Thence, northeasterly on a curve (radius = 20.00 feet, chord = N 16°30'47" E, a chord distance of 30.61 feet) through an arc of 99°52'31" to the right a distance of 34.86 feet to a point of tangency, said point of tangency being a point on the present (2010) southerly Right-of-Way line of Hoagland Road;

Thence, N 66°27'02" E a distance of 31.88 feet along said present southerly Right-of-Way line to an angle point;

Thence, S 14°26'10" W a distance of 53.72 feet along the new easterly Right-of-Way line of N.M. State Road 185, to an angle point;

Thence, S 33°25'29" E a distance of 73.74 feet along said new easterly Right-of-Way line to the point of intersection of said new easterly Right-of-Way line with the southerly boundary line of the property of the Grantor;

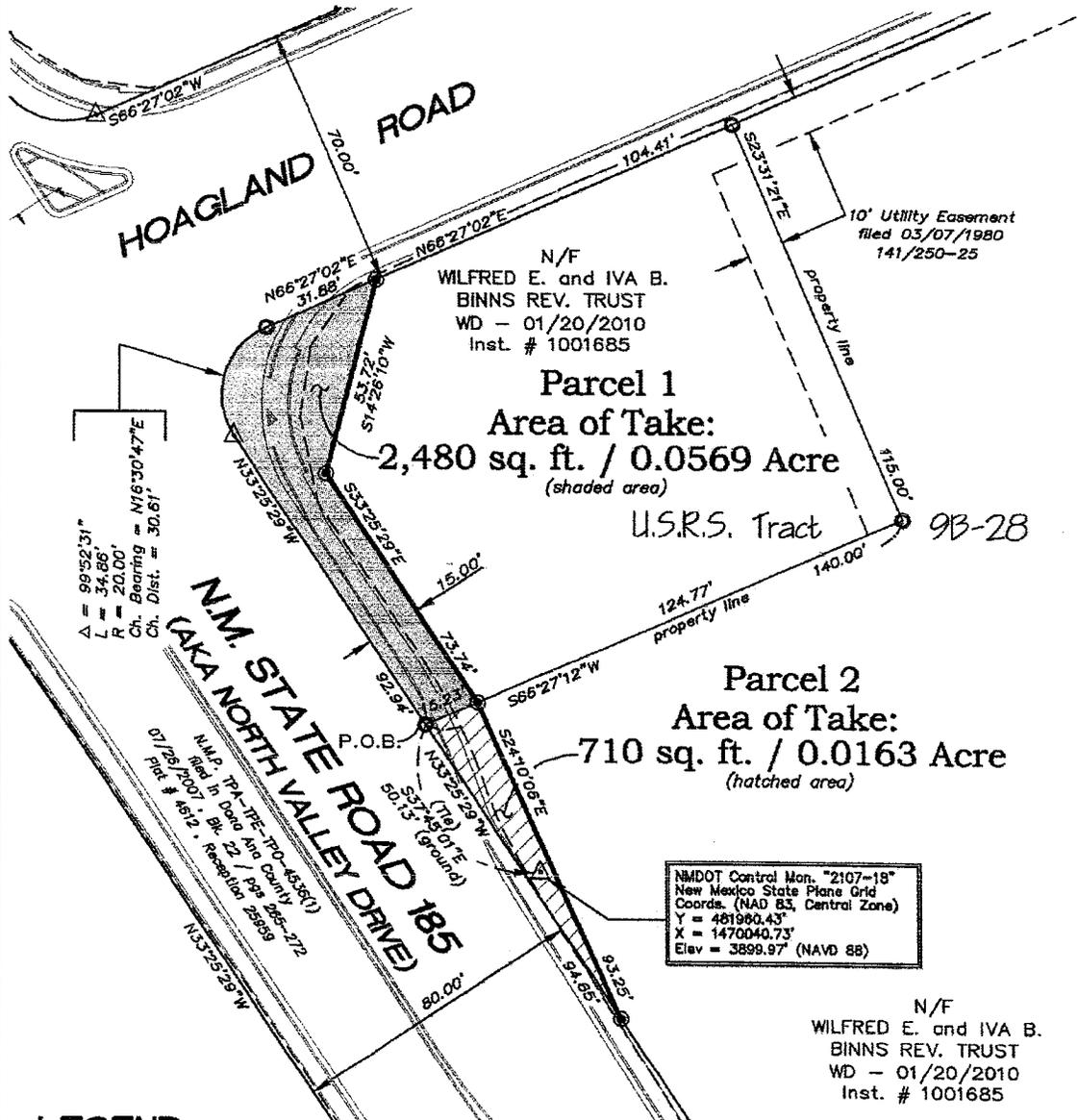
Thence, S 66°27'12" W a distance of 15.23 feet along said southerly boundary line to the point and place of beginning.

Said parcel contains 0.0569 acre (2,480 square feet) more or less.



Right-of-Way Take

20^{For}
 North Valley Drive Project
 Within
 U.S.R.S. Tract 9B-28
 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 NMDOT standard 2" Alum. cap
- = Calculated Point (not set)

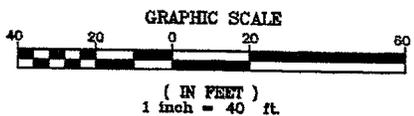
NOTES:

- 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
 DATE 6/21/2010



SCI JOB # 2010-028

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

Parcel 2

A certain parcel of land comprising a portion of United States Reclamation Service Tract 9B-28, 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 northwest corner of the parcel herein described, said corner also being the southwest corner of Parcel 1 as described above, and being a point on the present (2010) easterly Right-of-Way line of N.M. State Road 185 (aka North Valley Drive), from which the N.M.D.O.T. Control Point 2107-18 (a standard NMDOT 5/8" rebar w/ alum. cap stamped "18 CN 2107 PS 11599") bears S 37°45'01" E, a distance of 50.13 feet;

Thence, N 66°27'12" E a distance of 15.23 feet to a point on the new easterly Right-of-Way line herein described;

Thence, S 24°10'06" E a distance of 93.25 feet along said new easterly Right-of-Way line to the point of intersection of said new easterly Right-of-Way line with the present easterly Right-of-Way line of N.M. State Road 185;

Thence, N 33°25'29" W a distance of 94.65 feet along said present easterly Right-of-Way line to the point and place of beginning.

Said parcel contains 0.0163 acre (710 square feet) more or less.



Right-of-Way Take

2nd Ed

North Valley Drive Project

Within

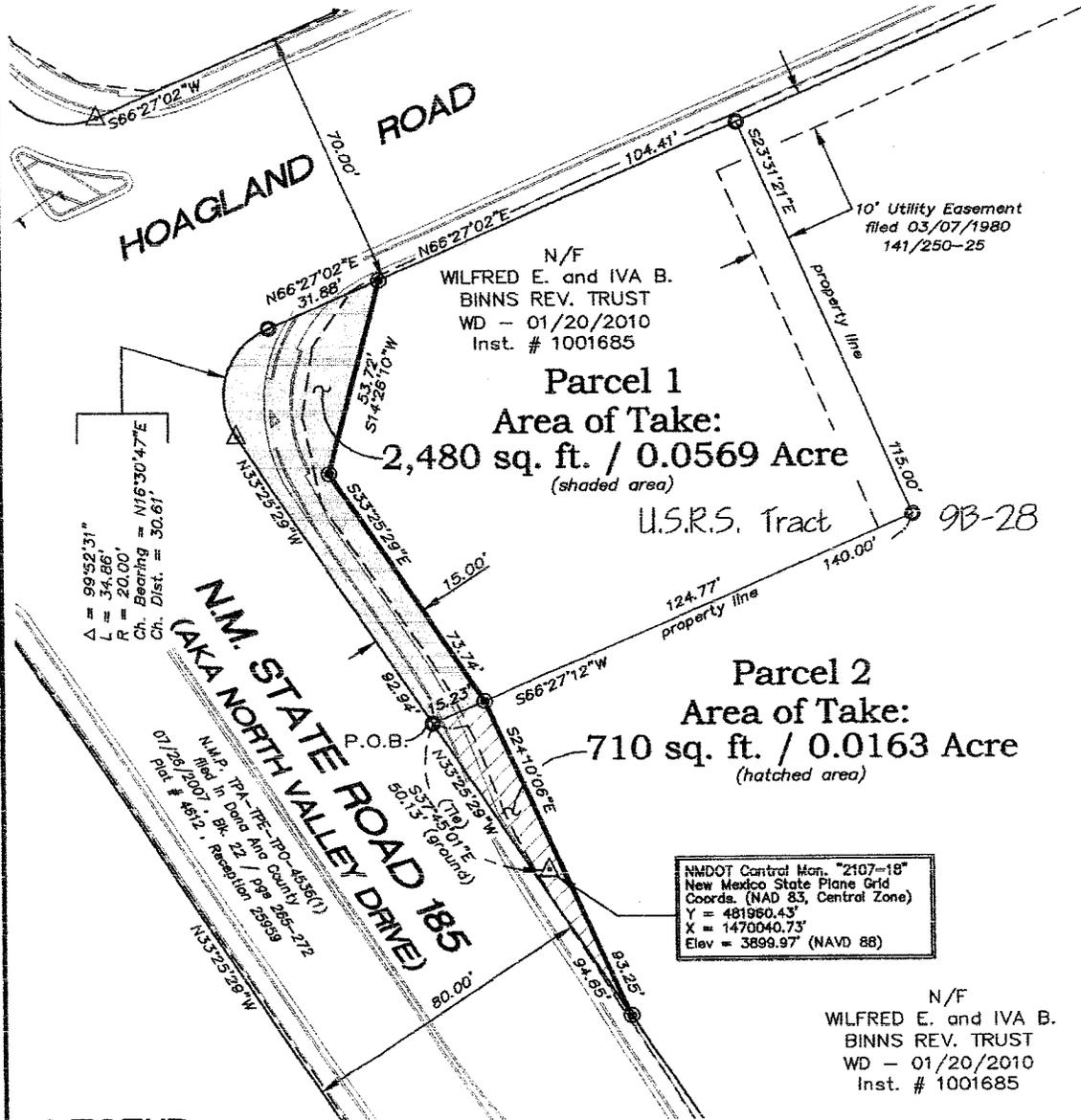
U.S.R.S. Tract 9B-28

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 NMDOT standard 2" Alum. cap
- = Calculated Point (not set)

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.

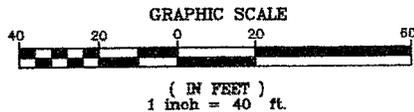
SURVEYOR'S CERTIFICATE

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



AGREEMENT FOR PURCHASE OF REAL ESTATE

THIS AGREEMENT is entered into on this ___ day of _____, 2011, between WILFRED E. AND IVA BERNICE BINNS REVOCABLE TRUST ("Binns"), 535 Roadrunner Lane, Las Cruces, NM 88006, and the **City of Las Cruces**, a New Mexico municipal corporation (hereinafter called "City").

Binns, in consideration of the mutual covenants herein contained, agrees to sell and convey, and the City agrees to purchase 3,507 square feet of land ("Property") as described, together with all improvements thereon, if any, and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the County of Dona Ana, State of New Mexico more particularly described on Exhibit "A, which is attached for reference purposes for this Agreement. Upon City Council approval, Binns agrees to deed 3,507 square feet of land to the City (hereinafter called the Property).

TERMS AND CONDITIONS

1. **Purchase Price.**

a) The purchase price for the Property, as determined by a certified appraisal, shall be Fifteen Thousand Eight Hundred Dollars and No Cents (\$15,800.00), payable in cash or equivalent upon conveyance of the Property.

2. **Property Conveyance.**

a) Binns shall execute and deliver a Warranty Deed conveying the Property to the City after City Council approval of the resolution authorizing the purchase pursuant to Municipal Code Section 2-1312 et. seq.

b) The City shall not process a replat of the subject property for the dedication of the right of way area because the New Mexico Department of Transportation does not want the property incorporated as part of the New Mexico State Road 185 (a/k/a North Valley Drive).

c) This Agreement is a negotiated settlement of disputed claims between the parties concerning this Property, and is entered into in lieu of condemnation and litigation by the City against Binns.

3. **Risk of Loss.**

All risk of loss or damage to the Property will pass from Binns to the City at the time of filing of the Warranty Deed.

Real Estate Purchase Agreement / Binns Property / Page 2

4. **Costs and Fees.**

The City shall be responsible for the cost of recording the Warranty Deed in the Doña Ana County Records.

5. **Possession of Property.**

Possession of the Property will be released to the City upon filing of the Warranty Deed.

6. **Governing Laws.**

This Agreement shall be subject to the laws of the State of New Mexico.

7. **Counterparts.**

This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement, which shall be binding on all of the parties.

8. **Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail to the City of Las Cruces, ATTN: Michael Q. Hernandez, Real Estate Services Specialist Senior, P.O. Box 20000, Las Cruces, NM 88004; and to WILFRED E. AND IVA BERNICE BINNS REVOCABLE TRUST, whose address is 535 Roadrunner Lane, Las Cruces, NM 88006, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

Done and approved on the date first written above,

CITY OF LAS CRUCES

WILFRED E. AND IVA BERNICE BINNS
REVOCABLE TRUST

Ken Miyagishima, Mayor

Wilfred E. Binns
Wilfred E. Binns

ATTEST:

Iva Bernice Binns
Iva Bernice Binns

City Clerk

APPROVED AS TO FORM:

Ass't City Attorney

AGREEMENT FOR PURCHASE OF REAL ESTATE

THIS AGREEMENT is entered into on this ____ day of _____, 2011, between WILFRED E. AND IVA BERNICE BINNS, ("Binns") 1501 S. Don Roser, Las Cruces, NM 88011, and the **City of Las Cruces**, a New Mexico municipal corporation (hereinafter called "City").

Binns in consideration of the mutual covenants herein contained, agrees to sell and convey, and the City agrees to purchase 2,480 square feet of land ("Property") as described, together with all improvements thereon, if any, and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the County of Dona Ana, State of New Mexico more particularly described on Exhibits "A, which is attached for reference purposes for this Agreement. Upon City Council approval Binns, agrees to deed 2,480 square feet of land to the City (hereinafter called the Property).

TERMS AND CONDITIONS**1. Purchase Price.**

a) The purchase price for the Property, as determined by a certified appraisal, shall be Eleven Thousand One Hundred and Sixty Dollars and No Cents (\$11,160.00), payable in cash or equivalent upon conveyance of the Property.

2. Property Conveyance.

a) Binns shall execute and deliver a Warranty Deed conveying the Property to the City after City Council approval of the resolution authorizing the purchase pursuant to Municipal Code Section 2-1312 et. seq.

b) The City shall not prepare a replat of the subject property for the dedication of the right of way area because the New Mexico Department of Transportation does not want the property incorporated as part of the New Mexico State Road 185 (a/k/a North Valley Drive).

c) This Agreement is a negotiated settlement of disputed claims between the parties concerning this property, and is entered into in lieu of condemnation and litigation by the City against Binns.

3. Risk of Loss.

All risk of loss or damage to the Property will pass from Binns to the City at the time of filing of the Warranty Deed.

Real Estate Purchase Agreement / Binns Property / Page 2

4. **Costs and Fees.**

The City shall pay for the processing fee required by Community Development to process the dedication plat relative to the Valley Drive Dedication not to exceed the amount of \$200.00.

The City shall be responsible for the cost of recording the Warranty Deed in the Doña Ana County Records.

5. **Possession of Property.**

Possession of the Property will be released to the City upon filing of the Warranty Deed.

6. **Governing Laws.**

This Agreement shall be subject to the laws of the State of New Mexico.

7. **Counterparts.**

This Agreement may be executed in one or more identical counterparts, and all counterparts so executed shall constitute one agreement, which shall be binding on all of the parties.

8. **Notice.**

All notices given pursuant to or in connection with this Agreement shall be made in writing and posted by certified mail to the City of Las Cruces, ATTN: Michael Q. Hernandez, Real Estate Services Specialist Senior, P.O. Box 20000, Las Cruces, NM 88004; and to WILFRED E. AND IVA BERNICE BINNS, whose address is 1501 S. Don Roser, Las Cruces, NM 88011, or to such other address as requested by either party. Notice shall be deemed to be received on the fifth day following posting.

Done and approved on the date first written above,

CITY OF LAS CRUCES

Ken Miyagishima, Mayor

WILFRED E. AND IVA BERNICE BINNS

Wilfred E. Binns

Iva Bernice Binns

ATTEST:

City Clerk

APPROVED AS TO FORM:

Ass't City Attorney

AGREEMENT FOR PURCHASE OF REAL ESTATE

THIS AGREEMENT is entered into on this ___ day of _____, 2011, between WILFRED E. AND IVA BERNICE BINNS ("Binns") 1501 S. Don Roser Drive, Las Cruces, NM 88011, and the **City of Las Cruces**, a New Mexico municipal corporation (hereinafter called "City").

Binns in consideration of the mutual covenants herein contained, agrees to sell and convey, and the City agrees to purchase 710 square feet of land ("Property") as described, together with all improvements thereon, if any, and all rights, hereditaments, easements and appurtenances thereunto belonging, located in the County of Dona Ana, State of New Mexico more particularly described on Exhibits "A, which is attached for reference purposes for this Agreement. Upon City Council approval Binns, agrees to deed 710 square feet of land to the City (hereinafter called the Property).

TERMS AND CONDITIONS

1. **Purchase Price.**

a) The purchase price for the Property, as determined by a certified appraisal, shall be Three Thousand Two Hundred Dollars and No Cents (\$3,200.00), payable in cash or equivalent upon conveyance of the Property.

2. **Property Conveyance.**

a) Binns shall execute and deliver a Warranty Deed conveying the Property to the City after City Council approval of the resolution authorizing the purchase pursuant to Municipal Code Section 2-1312 et. seq.

b) The City shall not process a replat of the subject property for the dedication of the right of way area because the New Mexico Department of Transportation does not want the property incorporated as part of the New Mexico State Road 185 (a/k/a North Valley Drive).

c) This Agreement is a negotiated settlement of disputed claims between the parties concerning this Property, and is entered into in lieu of condemnation and litigation by the City against Binns.

3. **Risk of Loss.**

All risk of loss or damage to the Property will pass from Binns to the City at the time of filing of the Warranty Deed.

Real Estate Purchase Agreement / Binns Property / Page 2

4. **Costs and Fees.**

The City shall be responsible for the cost of recording the Warranty Deed in the Doña Ana County Records.

5. **Possession of Property.**

Possession of the Property will be released to the City upon filing of the Warranty Deed.

6. **Governing Laws.**

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Done and approved on the date first written above,

CITY OF LAS CRUCES

WILFRED E. AND IVA BERNICE BINNS

Ken Miyagishima, Mayor

Wilfred E. Binns
Wilfred E. Binns

ATTEST:

Iva Bernice Binns
Iva Bernice Binns

City Clerk

APPROVED AS TO FORM:

Ass't City Attorney

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.

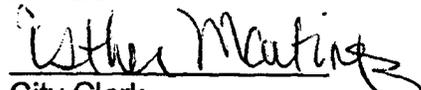
DONE AND APPROVED this 3rd day of January, 2011.

(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

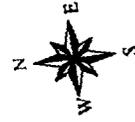
APPROVED AS TO FORM:


City Attorney

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



PROJECT LOCATION



City of Las Cruces
Public Works Dept.



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

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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

District One Office "The No. 1 District"	2912 E. Pine Street	Deming, N M	88030
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Contract Number	<u>DIS401</u>
Vendor Number	<u>000054342</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

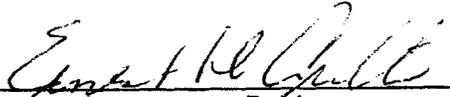
In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

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.

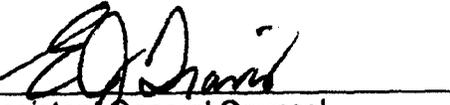
In witness whereof, the parties have set their hands and seal the day and year set forth below.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By: 
Deputy Secretary or Designee
my

Date: 2/14/11

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

By: 
Assistant General Counsel

Date: 12/6/2010

CITY OF LAS CRUCES

By: 
Authorized City Official
MAYOR
Title

Date: 1-6-2011

ATTEST

By: 
City Clerk

Date: 1-6-11

APPROVED AS TO FORM BY THE CITY ATTORNEY

By: 
City Attorney

Date: 01/05/11

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.

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CITY ATTORNEY

(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

