

# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 11 Ordinance/Resolution# 13-098

For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)

For Meeting of January 7, 2013  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION APPROVING A CONTRACT FOR GOODS AND SERVICES BETWEEN THE CITY OF LAS CRUCES AND DONA ANA COUNTY TO PROVIDE FOR THE MAINTENANCE OF TRAFFIC SIGNALS AND ROADWAY LIGHTING AT THE INTERSECTION OF SONOMA RANCH BOULEVARD AND DRIPPING SPRINGS ROAD.

**PURPOSE(S) OF ACTION:**

Approve contract.

<b>COUNCIL DISTRICT:</b> N/A		
<b><u>Drafter/Staff Contact:</u></b> Willie Roman	<b><u>Department/Section:</u></b> Transportation / Streets and Traffic Operations	<b><u>Phone:</u></b> 541-2595
<b><u>City Manager Signature:</u></b>		

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:**

Dona Ana County recently installed a traffic signal and roadway lighting system at the intersection of Sonoma Ranch Boulevard and Dripping Springs Road within the boundaries of Dona Ana County and outside the limits of the City of Las Cruces. Dona Ana County does not have the staff or expertise to maintain the traffic signal and have therefore requested the City's assistance in maintaining the signal and lighting infrastructure at the intersection.

Pursuant to the Contract for Goods and Services, attached hereto as Exhibit "A", Dona Ana County will reimburse the City for maintenance associated with the operation of the traffic signal and street lighting at the aforementioned intersection. This contract is for the maintenance of the traffic signal and roadway lighting system by City forces to include replacement and reimbursement for material costs, and for reimbursement of power costs associated with the roadway lighting. The total reimbursement shall not exceed \$1,375.00 monthly. Dona Ana County will also purchase and provide the City with signal cabinets, controllers, and video detection equipment to be placed in-stock with the Streets and Traffic Operations Section to be used as replacement parts when needed. Labor and other materials used in association with maintenance will be provided by the City of Las Cruces and reimbursed by Dona Ana County. The estimated annual maintenance costs will be in the range of \$6,900.00 (approximately 40%

power costs; 60% material costs). Expenditures for estimated future maintenance costs will be allocated out of fiscal year 2013 General Fund operating budget.

The traffic signal and roadway lighting system have been installed primarily to assist in relieving traffic congestion and to promote traffic safety. Dona Ana County requests that the City enter into the attached contract to facilitate the future upkeep of the traffic signal and roadway lighting system. The Dona Ana County Board of County Commissioners approved the contract on the consent agenda by a 5-0 vote on September 11, 2012.

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Dona Ana County Contract for Goods and Services.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	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.
<b>Does this action create any revenue?</b>	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**

Estimated annual maintenance cost for the signal and lighting system will be in the range of \$6,900.00 (approximately 40% power costs and 60% material costs). Street lighting power and material costs are anticipated to be approximately \$4,800.00 annually and will be taken from the street lighting General Fund operating budget. Signal system maintenance costs are anticipated to be approximately \$2,100.00 annually and will be taken from the signal systems General Fund operating budget.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
General Fund	10323040-726200	\$1,800.00	\$ 747,340.86	\$745,540.86	Street lighting operational expenditures
General Fund	10323040-730110	\$3,000.00	\$ 125,626.48	\$122,626.48	Street lighting operational expenditures
General Fund	10323050-721110	\$2,100.00	\$ 19,065.00	\$ 16,965.00	Signal systems operational expenditures

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this action approves the Resolution and authorizes the City of Las Cruces to assume maintenance responsibilities for the signal and roadway lighting system at the intersection of Sonoma Ranch Boulevard and Dripping Springs Road, as specified in the Contract for Goods and Services, once accepted by both the Dona Ana County and City entities.
2. Vote "No"; this action denies the Resolution and will not authorize the City of Las Cruces to assume maintenance responsibilities of the signal and lighting system, which will place maintenance responsibilities back upon the County. Local traffic conditions may be adversely affected by the longer response time by County crews to any issues related to the signal and lighting system.
3. Vote to "Amend"; this action could approve the contract with adjustments to conditions or changes as requested by City Council.
4. Vote to "Table"; this would allow City Council to postpone consideration of the Resolution to approve the contract and direct staff accordingly.

**REFERENCE INFORMATION:**

The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

RESOLUTION NO. 13-098

**A RESOLUTION APPROVING A CONTRACT FOR GOODS AND SERVICES BETWEEN THE CITY OF LAS CRUCES AND DONA ANA COUNTY TO PROVIDE FOR THE MAINTENANCE OF TRAFFIC SIGNALS AND ROADWAY LIGHTING AT THE INTERSECTION OF SONOMA RANCH BOULEVARD AND DRIPPING SPRINGS ROAD.**

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

**WHEREAS**, Dona Ana County has installed a traffic signals and roadway lighting system at the intersection of Sonoma Ranch Boulevard and Dripping Springs Road; and

**WHEREAS**, Dona Ana County requests that the City enter into a contract to facilitate the future upkeep of the traffic signals and roadway lighting; and

**WHEREAS**, Dona Ana County will reimburse the City for maintenance performed, to include all labor, equipment, and material costs incurred with the operation of the traffic signal and roadway lighting and for power associated with the roadway lighting not to exceed \$1,375.00 per month and purchase and provide the City with in-stock signal cabinet, controllers and video detection equipment; and

**WHEREAS**, the estimated annual maintenance costs will be in the range of \$6,900.00, which is approximately 40% power costs and 60% materials costs; and

**WHEREAS**, the signal and lighting systems have been installed primarily to assist in relieving traffic congestion and promoting traffic safety.

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

(I)

**THAT** the City Manager of the City of Las Cruces is hereby authorized to enter into the Contract for Goods and Services attached hereto as Exhibit "A" with Dona Ana

County to maintain a traffic signal and roadway lighting system in order to facilitate for future upkeep.

(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 \_\_\_\_\_, 20\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

(SEAL)

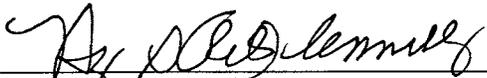
VOTE:

- Mayor Miyagishima: \_\_\_\_\_
- Councillor Silva: \_\_\_\_\_
- Councillor Smith: \_\_\_\_\_
- Councillor Pedroza: \_\_\_\_\_
- Councillor Small: \_\_\_\_\_
- Councillor Sorg: \_\_\_\_\_
- Councillor Thomas: \_\_\_\_\_

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

  
\_\_\_\_\_  
City Attorney

13 - 064 - . . . -

CONTRACT #  
Effective Date: \_\_\_\_\_

**DOÑA ANA COUNTY CONTRACT FOR GOODS AND SERVICES**

This Contract is entered into between Doña Ana County, hereinafter referred to as the "County," and "Contractor" described below, collectively the "Parties", to provide services on behalf of Doña Ana County.

**Contractor Legal Name:** City of Las Cruces

**Services Summary Description:** Operation and maintenance of traffic signals/street lights

**Initial Period of Performance shall be through:** 6/30/2013

**Pre-GRT, Total Annual Charges to this contract may not exceed:** \$16,500

This Contract complies with New Mexico and County procurement requirements as follows:

- RFP # \_\_\_\_\_,  Under \$50,000/yr **or**  BOCC approval date \_\_\_\_\_
- Bid # \_\_\_\_\_,  Under \$50,000/yr **or**  BOCC approval date \_\_\_\_\_
- "Qualified" Professional Service, Under \$50,000 annually. Qualifications attached.
- Three Written Quotes under \$20,000 annually.  Quotes under \$3,000 annually.
- Other: Revenue; non-financial MOA; or contracting w/municipality

**No services shall be rendered nor shall any goods be provided until this contract has been executed by all parties, regardless of the indicated effective date.**

**NOTICES:** All correspondence regarding this contract shall be sent to:

Doña Ana County Government	Contractor: City of Las Cruces
Department: Engineering	ATTN: Jeff Honeycut
ATTN: Robert Armijo	Title: Street/traffic operations Director
Street: 845 N. Motel Blvd.	Street: 1501 e. Hadley Ave. Bldg H
City, State, Zip: Las Cruces, NM 88007	City, State, Zip: Las Cruces, NM 88004
Phone: (575) 644-2103	Phone: (575) 541-2505
Fax: 525-6179	Fax: (575) 541-2594
Cell: 644-2103	Cell:
Email: robertar@donaanacounty.org	Email: gpacheco@las-cruces.org

**ARTICLE 1 - SERVICES AND/OR GOODS TO BE PROVIDED:** For RFP or Professional Services contracts, the Contractor shall provide services to the County on matters relating to the contractor's specialized areas of expertise as defined in this Contract and its referenced or incorporated Attachments. Negotiated fees are fixed for the first year. Price adjustments thereafter are subject to review and written determination on an individual contract basis.

For Sealed Bid / Indefinite Quantity contracts, the Contractor shall have the item(s) or service(s) available, as defined in this contract, on an "as ordered" basis. No funds are obligated under

Sealed Bid / Indefinite Quantity contracts. Funds for Sealed Bid / Indefinite Quantity contracts are obligated by purchase orders on an "as needed" basis. Prices are fixed for the first year of a Sealed Bid / Indefinite Quantity contract. Thereafter, in the event of a product cost increase an escalation request will be reviewed by the County on an individual basis. Escalation requests are only to compensate for an actual cost increase and will not be considered for an increase in profit margin.

All Contractors shall secure and remain current on all insurances, licenses, permits, certificates, fees, etc., required for the performance of this contract.

**ARTICLE 2 - CONTRACT DOCUMENTS:** The Contract shall be comprised of this contract document, its Attachments and all documents referenced herein. As applicable, the Contract shall also include all Proposal or Bid documents, including the Contractor's responses, Reference Specifications, Special Conditions, Technical Specifications, Standard Details, any addenda thereto, and all negotiation records, all of which are incorporated herein and made a part of the Contract.

In instances where there exists a conflict between any of the Contract documents described above, this Contract plus attachments hereto, negotiation records, the County's solicitation documents, and the Contractor's response to the solicitation, in that order, shall control the interpretation of the parties' respective rights and obligations.

**ARTICLE 3 - PERIOD OF PERFORMANCE:** The period of performance of this Contract shall commence N/A or date of last signature, whichever is later, and continue through the Initial Period of Performance date detailed above. If stipulated in a formal Proposal or Bid solicitation by the County, this Contract may be renewed for up to \_\_\_\_\_ additional years, not to exceed a total of \_\_\_\_\_ years.

**ARTICLE 4 - PLACE OF PERFORMANCE:** The Contractor shall provide the required services or goods for Doña Ana County when and where appropriate or as required by the County.

**ARTICLE 5 - COST AND PAYMENT:** The Contractor shall be paid for services rendered satisfactorily per the negotiated fee(s) and payment schedules incorporated hereto in applicable attachments, including Attachments A and B. All payments will be in arrears. Payment shall be made per request upon receipt of a detailed invoice that shall include description of work completed or goods delivered pursuant to the deliverable(s) agreements and measures of attainment of this contract for the period covered by the invoice. The invoice submitted shall note the purchase order number and this Contract number and may be delivered to the Department contact specified in "Notices" above. The County shall pay to the Contractor the New Mexico Gross Receipts Tax on labor and services only as levied on the amounts invoiced and payable under this contract. The Contractor will pay the New Mexico Gross Receipts Tax levied on the amounts payable under this contract and remitted to them by Doña Ana County to the appropriate state agency.

**ARTICLE 6 - AMENDMENTS:** This Contract shall not be altered, changed, or amended except by written instrument signed by both parties.

**ARTICLE 7 - ASSIGNMENT:** The Contractor shall not assign nor delegate specific duties as part of this Contract nor transfer any interest nor assign any claims for money due or to become due under this Contract without the written consent of the County.

**ARTICLE 8 - BINDING EFFECT OF CONTRACT:** Both Parties agree that the terms of this Contract and any extension or renewal thereof shall extend to and be binding upon the

administrators, assigns, successors, and transferees of the contracting parties.

**ARTICLE 9 - COMPLIANCE WITH GOVERNING LAW:** This Contract shall be construed in agreement with New Mexico law. The Contractor shall keep fully informed of and shall also comply with all applicable federal, state, and local laws, ordinances, and regulations and all orders and decrees of bodies or tribunals having any jurisdiction or authority, which in any manner affect those engaged or employed, or the work, or which in any way affect the conduct of the work. By way of illustration, but not of limitation, the Contractor shall comply with laws relating to employment eligibility including: the Immigration Reform and Control Act of 1986 (Public Law 99-603) and the Immigration Act of 1990 (Public Law 101-649) regarding employment verification and retention of verification forms for any individual(s) hired on or after November 6, 1986, that will perform any labor or services under this Contract. The Contractor shall comply with all federal statutes relating to non-discrimination including, but not limited to: Title VII of the Civil Rights Act of 1964 (Public Law 88-352), which prohibits discrimination on the basis of race, color, or national origin; Title IX of the Education Amendments of 1972, as amended [20 U.S.C.A. Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112)], which prohibits discrimination on the basis of handicap; the Age Discrimination in Employment Act of 1967 (Public Law 90-202), as amended; the Americans with Disabilities Act of 1990 (Public Law 101-336); and all amendments to each, and all requirements imposed by the regulations issued pursuant to these acts, especially 45 CFR Part 80 (relating to race, color, and national origin), 45 CFR Part 84 (relating to handicap), 45 CFR Part 86 (relating to sex), and 45 CFR Part 91 (relating to age).

**ARTICLE 10 - CONFIDENTIAL INFORMATION:** Any confidential information, not subject to disclosure under the Inspection of Public Records Act, given to or developed by the Contractor, its officers, directors, employees, agents, or sub-consultants in the performance of this Contract will be kept confidential and will not be made available to any individual, organization, or other entity by the Contractor without prior written approval of the County.

**ARTICLE 11 - CONFLICT OF INTEREST:** The Contractor warrants that it presently has no interest and shall not acquire any interest during the term of this Contract which would have the potential to conflict with the performance of the services required under this Contract. In the event such a conflict arises, it shall immediately be brought to the attention of the County and appropriate action acceptable to the County shall be taken. The Contractor's failure to inform the County of the existence of a potential conflict of interest constitutes default and shall be grounds for immediate termination of Contract by the County.

**ARTICLE 12 - CONFLICTS OF LAW:** If any provision of this contract conflicts with governing federal or state law or County ordinances, then that law or ordinance shall supersede the conflicting provision of this contract.

**ARTICLE 13 - HIPAA COMPLIANCE:** As applicable, the parties agree to comply with the provision of the Health Insurance Portability and Accountability Act of 1996, and related regulations, as amended ("HIPAA") in the event the Contractor receives patient records or information (Protected Health Information as defined by HIPAA).

**ARTICLE 14 - INDEMNIFICATION AND HOLD HARMLESS AGREEMENT:**  
**Non-Governmental Entity** The Contractor shall hold harmless, indemnify and defend the County and its "public employees" as defined in the New Mexico Tort Claims Act, Sections 41-4-1 to 41-4-29, NMSA 1978, as amended, against and from any and all claims, losses, demands, judgments, damages, liabilities, lawsuits, expenses, attorneys fees, costs or actions of any kind resulting from or related to the Contractor's intentional acts, errors or omissions in the Contractor's performance under this contract. The Contractor's agreement to hold harmless, indemnify and defend shall not be affected or terminated by the cancellation, expiration of the

term or any renewal or any other modification of the Contract for any reason and shall survive the cancellation, expiration of the term or any renewal or any other modification of this contract, acts, errors or omissions to act occurring during the term of this contract.

**Governmental Entity:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Contract. Any liability incurred in connection with this Contract is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA, 1978 § 41-4-1 et. seq. and its amendments, where applicable.

**ARTICLE 15 - INDEPENDENT CONTRACTOR:** Nothing in this Contract is intended or should be construed in any way to create or establish a partnership relationship between the Parties or to establish the Contractor as an agent, representative, or employee of the County for any purpose or any manner whatsoever. Contractor and its employees shall not accrue leave, retirement, insurance, or any other benefits afforded to employees of the County. Contractor is an independent contractor of the County. The Contractor, its officers, directors, employees, servants, agents, or representatives are not and shall not be deemed employees of the County and shall not bind the County in any respect.

**ARTICLE 16 - INSURANCE:** For the duration of the contract and until all work specified in the contract is completed, the Contractor shall maintain in effect current Certificates of all insurance as required below and comply with all limits, terms and conditions stipulated therein. The County shall be named as an additional insured as stipulated. Contractor's who are required to provide Certificate(s) of Insurance, must provide a new current Certificate(s) no less than annually. As applicable, work under this contract shall not commence until evidence of all required insurance is provided to the respective County Department for inclusion with this Contract. All insurance shall be written to conform to the requirements stipulated. Evidence of such insurance shall consist of a completed certificate of insurance, signed by the insurance agent for the Contractor and returned to the County attesting that all required insurance is in effect. If for any reason any material change occurs in the coverage during the course of the contract such change will not become effective until 30 days after the County has received written notice of such change.

**Required Insurance:** As specified in the RFP, BID documents or Attachment A.

**ARTICLE 17 - KEY PERSONNEL:** The Contractor shall identify all key personnel assigned to the performance of this Contract in Section II, Attachment H of this Contract. Key personnel may not be changed without prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department.

**ARTICLE 18 - MEDIATION:** In the event that a dispute arises with respect to any of the provisions contained in this Contract or any other matter affecting this contractual relationship between the County and the Contractor, the Parties agree that prior to filing any court action to enforce the Contract or rights under the Contract, they will use the services of a mediator. The mediator shall either be certified as a mediator or shall have experience as a mediator. The parties shall mutually agree upon the choice of mediator. In the event the Parties have not agreed to a mediator within three days of written notice to the other regarding the dispute, then a list of seven potential mediators will be obtained from the Court or other professional association, and the Parties shall use a striking process until a mediator is agreed upon. Each party shall be responsible for their respective mediation costs.

**ARTICLE 19 - MERGER OF PRIOR CONTRACTS:** This Contract incorporates all the conditions, contracts, agreements, and understandings of the Parties concerning the subject matter of this Contract. All such conditions, understandings, and agreements have been merged into this written Contract. No prior condition, contract, agreement, or understanding, verbal or

otherwise, shall be valid or enforceable unless embodied in this Contract, either explicitly or by reference.

**ARTICLE 20 - NON-APPROPRIATION:** The County's obligation to make payment under the terms of this Contract is contingent upon its appropriation of sufficient funds to make those payments and the NM Department of Finance's (DFA) final approval of the County's budget. If the County does not appropriate sufficient funds or DFA does not approve the County's final budget, this Contract will terminate upon written notice of that effect to the Contractor. The County Board's determination that sufficient funds have not been appropriated, through Board of County Commissioners or DFA action, is firm, binding, and not subject to review.

**ARTICLE 21 - NOTICE TO PROCEED OR COMMENCEMENT OF WORK:** It is expressly understood that this Contract is not binding upon the County until approved and signed by the County and, further, that the Contractor shall not proceed with its obligations until the Contract has been signed by all Parties.

**ARTICLE 22 - PARAGRAPH HEADINGS:** Paragraph headings are for convenience and reference and are not intended to limit the scope of any provision of this Contract.

**ARTICLE 23 - PERSONAL LIABILITY:** No elected or appointed official, employee, servant, agent, or law enforcement officer of the County shall be held personally liable under this Contract or any extension or renewal thereof because of its enforcement or attempted enforcement, provided they are acting within the course and scope of their employment or governmental duty and responsibility.

**ARTICLE 24 - PROCUREMENT CODE:** The Procurement Code, § 13-1-25 through § 13-1-199, NMSA 1978 as amended, imposes civil and criminal penalties for its violation. In addition, New Mexico Criminal Statutes impose felony penalties for illegal bribes, gratuities and kickbacks. Pursuant to the above, it is unlawful for any Contractor to engage in bribery, offering gratuities with the intent to solicit business, or offering or accepting kickbacks of any kind. All other similar act(s) of bribes, gratuities, and/or kickbacks are likewise prohibited.

**ARTICLE 25 - PROPRIETARY INFORMATION:** All documents, writings, electronic formats, drawings, designs, specifications, notes, project manuals, or related documents and other work developed in the performance of this Contract by the Contractor shall become the sole property of the County whether the activity for which they are developed is implemented or not. The Contractor shall provide the County with a complete set of all such proprietary information as requested by the County, but no later than the effective termination date of the contract. Contractor is strictly prohibited from reproducing, duplicating or printing any such proprietary information in any format for personal or monetary recognition, use or gain without the advance written permission of the County.

**ARTICLE 26 - RECORD KEEPING AND AUDITS:** The Contractor shall compile, maintain, and make available for inspection all records relating to the services to be provided under this Contract. These records shall be subject to inspection by the County or designated auditor. The County shall have the right to audit billings both before and after payment; payment under this Contract shall not foreclose the right of the County to be reimbursed any excessive or illegal payment amounts made to the Contractor during the term of this Contract. Pursuant to State of New Mexico General Records Retention requirements, Contractor will retain all original, source and supporting documents and records related to this contract for a minimum of six (6) years after the ending date of this contract.

**ARTICLE 27 - RELEASE:** The Contractor, upon final payment of amounts due under this

Contract for work completed and accepted by the County, releases the County, its officers and employees from all liabilities, claims, and obligations whatsoever arising from or under this Contract. The Contractor agrees not to bind the County to any obligation not assumed in this Contract by the County, unless the Contractor has express written authority from the County Manager to do so, and then only within the limits of the expressed written authority.

**ARTICLE 28 - SEVERABILITY:** If any clause or provision of the Contract is held to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then it is the intention of the parties hereto that the remainder of the Contract shall remain in full force and effect. However, in the event that either Party can no longer reasonably perform pursuant to the remaining Contract terms, or if the purpose of the Contract can no longer be carried out by either Party, the Contract may be voided and no damages shall accrue to either party.

**ARTICLE 29 - SOVEREIGN IMMUNITY:**

**Non-Governmental Entity:** By entering into this Contract, the County and its "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, Sections 41-4-1 through 41-4-29, as amended, do not waive sovereign immunity, do not waive any defense, and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

**Governmental Entity:** By entering into this Contract, the County and the Governmental Entity Contractor do not waive sovereign immunity, do not waive any defense and do not waive any limitations of liability pursuant to law. No provision in this Contract modifies or waives any provision of the New Mexico Tort Claims Act, *supra*.

**ARTICLE 30 - SUBCONTRACTING:** This Contract is based on the personal skills and reliability of the Contractor as known by the County at the time of execution of this Contract. The Contractor shall not subcontract out or hire any new employee to perform any portion of the services to be performed under this Contract without the prior written approval of the County Manager and inclusion of that written approval in the official Contract File in the County Purchasing Department. The written approval shall minimally include disclosure of the name of the individual(s) to be hired or contracted, a statement of the individual(s) qualifications and a justification of the request to hire or subcontract.

**ARTICLE 31 - TERMINATION:** The County may terminate this contract for convenience, in whole or in part, by providing written notice to the Contractor thirty (30) days prior to termination. In the event of contract termination, the Contractor shall be paid for work completed to the date of termination. In no event shall the dollar amount to be paid upon termination exceed a total of the maximum contracted amount and any additional amount provided for by amendment(s).

- a. Where a Party to this Contract has committed a major breach that is capable of remedy, the Party who is not in breach may serve a written notice, with a fixed period in which to remedy the breach. The period given shall be determined at the sole discretion of the Party serving the notice but subject to a minimum period of two weeks.
- b. The County and Contractor shall have the right, such right being exercised at their absolute discretion, to terminate this Contract, in writing, if a major breach has been committed that can not be remedied. Further, the Parties may terminate this contract, in writing, if a breach has not been remedied to the reasonable satisfaction of the Party serving the notice of breach within the period specified in any such notice.

**ARTICLE 32 - THIRD PARTY BENEFICIARY:** It is agreed between the Parties executing this Contract that it is not intended by any of the provisions of this Contract to create on behalf of the public or any member thereof the status of third party beneficiary nor to authorize anyone not

a party to the agreement to maintain a suit based upon this Contract.

**ARTICLE 33 - WAIVER:** Any waiver by the County of any breach of any covenant, term, condition, or agreement in this Contract to be kept and performed by Contractor shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent County from declaring a default for any succeeding breach either of the same covenant, term, condition, or agreement or another. All remedies afforded in this Contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided herein or by law.

**ARTICLE 34 - DUPLICATE ORIGINALS:** This document shall be executed in no less than two (2) counterparts, each of which shall be deemed an original.

**SIGNATURES:**

**IN WITNESS WHEREOF,** the parties have caused this instrument to be executed by their duly authorized representatives.

**DOÑA ANA COUNTY:**

City of Las Cruces

*M. D. Haines*  
Brian D. Haines  
*Interim County Manager*

\_\_\_\_\_  
 Print Name and Title

Date: 9/25/12

Date: \_\_\_\_\_

\*\*\*\*\*

Contractor's NM Taxation and Revenue Department ID Number: \_\_\_\_\_

The following Attachments and Addenda have been reviewed and approved by the County Contract Officer or approved designee:

Document Name	Approved	Comments	Notes
Attachment A - Scope of Work	<i>✓</i>		Required all Contracts
Attachment B - Cost per Unit Service	<i>✓</i>		Required all Contracts
Attachment C - Contribution Disclosure	<i>✓</i>		Required all Contracts
Attachment D - Related Party Disclosure	<i>✓</i>		Required all Contracts
Attachment E - Debarment Certification	<i>✓</i>		Required all Contracts
Attachment F - Non Collusion Affidavit	<i>✓</i>		Required all Contracts
Attachment G - Insurance Certificates	<i>✓</i>		By Attachment A Specifications
Attachment H - 1. Business License(s) 2. Professional Licenses 3. Staff Resumes	<i>✓</i>		1. Required All Contracts 2. Required Licensed Professionals 3. Required all contracts
Attachment I - Procurement Method	<i>✓</i>		Purchasing Dept. Determines
Attachment J - Other	<i>✓</i>		Purchasing Dept. Determines

# ATTACHMENT A

## CITY OF LAS CRUCES

### INSURANCE, SCOPE OF SERVICES, ADDITIONAL AGREEMENTS

#### I. INSURANCE: None

#### II. SCOPE OF SERVICES:

##### **WHAT (summary) is being procured in this contract:**

Maintenance and repair services for traffic signal and street lighting at Dripping Springs Road and Sonoma Ranch Roads

##### **WHAT (detailed) is being procured?.**

*The City of Las Cruces shall:*

1. Certify annually the signal control equipment with cabinet, signal heads, luminaries, telephone drop and wiring ("Signal System") for complete signalization, including making all timing adjustments to the signal control equipment and review the signal system(s) for efficient and satisfactory operation.
2. Maintain the street lighting and signal control equipment ("Controller"), and repair or replace the Controller, conduit, conductors, pull-boxes, signal heads, lighting fixtures and signal poles in the event of accident damage or equipment failure.
3. Coordinate with El Paso Electric Company to establish CLC as client for the street lighting and to pay electricity billings,
4. Invoice the County monthly for all routine maintenance on both the street lighting and signal system including personnel costs, and authorized expenses involving for major accident damage. Invoices shall be due the end of the first work week for the preceding month and shall be itemized listing total personnel time/cost, items repaired or replaced and cost. List invoice details in routine maintenance and non-routine maintenance classifications.
5. In the event of accidental damage or equipment failure, provide for street lighting and signal system power down and emergency traffic control. In cases of accidental damage or equipment failure involving the Controller or other in stock items, replace and re-establish signal system operations and notify the County with an estimate of the cost.
6. In case of accidental damage to poles or fixtures, respond with traffic control signage and notify the County contact person with an estimate of replacement costs,
7. Maintain in stock signal cabinets, controllers, and video detection system and parts needed for emergency replacement. All parts used during maintenance or repairs shall be documented and reported to the County contact person during invoicing. Some component parts shall be purchased in advance by the County in advance to be stored at the City for parts replacement. Exhibit "A" lists the component parts to be stored,
8. The contact person for notifying the County of damage or failure to the project shall be Robert Armijo, County Engineer, 575-525-6164 and 575-644-2103.

The County shall:

1. Allow the City access to the Dripping Springs Road right-of-way to certify signal operation and operate and maintain the traffic signal and street lighting systems,
2. Notify City personnel of accidents damaging the traffic signals or lighting,
3. Respond to accidents by assisting the city with signs or barrels for traffic control,
4. Pay City invoices on the project for routine maintenance, personnel, and replacement parts each month not to exceed \$1,375 each month.
5. Budget, purchase sensitive signal cabinets, controllers, and video detection system, and deliver items listed in attachment "A" to be placed in-stock with the City Streets and Traffic Operations Department. Specifications for equipment shall be provided by CLC.
6. Contact person for billing and signal system issues shall be Jeff Honeycutt, Administrator, Streets and Traffic Operations, 575-541-2595.

**B. WHY is this service or item being purchased?**

1. The BOCC approved participation in the installation of the traffic signal and intersection lighting.
2. The County Manager authorized the County to pay all electrical and repair and replacement costs associated with operating the signal system.
3. The County does not have trained personnel to conduct the traffic signal operations.
4. The City of Las Cruces is trained and equipped to provide the services for the County.
5. Contracts between public entities are permitted without competitive bidding.

**C. WHEN will the services or items be delivered?**

1. Once the agreement has been approved by both government entities, the services shall begin uninterrupted until either issues a written 60 day notice to terminate to the other party.

**D. HOW will the delivery of services described in paragraph "A" be documented?**

**City of Las Cruces**

Item "A" Reference	Required Measurements of Attainment	Due Date(s)
1. Certify annually the signal control equipment	1.a. Certification document of annual certification performed by CLC staff	1.a. – Annually
2. Maintain the street lighting and signal control equipment ("Controller"), and repair or replace the Controller, conduit, conductors, pull-boxes, signal heads, lighting fixtures and signal poles	2.a - Schedule of Maintenance reflecting the signal site on the listing. - Inspection reports - Repair reports - Invoices per below	2.a. – As needed
3. Pay routine maintenance costs and street lighting electrical costs	3.a .Invoice the County documenting service schedules and any parts.	3.a. – Monthly
4. Provide for signal equipment power down, emergency traffic control as needed	4.a Reports of response to emergency signal system failure and set up traffic control for accidents	4.a. – As needed
5. In case of damage to poles or fixtures, respond with traffic control signage and notify the County contact person	5.a Document notice of accident to signal system and provide estimate of repairs	5.a. – Invoice Monthly after accident detailing response, setting up traffic control and

with an estimate of replacement costs		providing a cost estimate
6. Maintain in stock signal cabinets, controllers, and video detection system and parts needed for emergency replacement	6.a DAC shall purchase items listed by specification to be held in stock for emergency replacement.	6.a. – Not a compensation item
7. Invoice monthly for all expenses documenting routine maintenance personnel, parts used, and non-routine maintenance or major accident damage.	7.a County receipt and payment of invoice	7.a. Invoicing due first week of the month compensating for the previous months expenses.
8. Contact the County of damage or failure to the project	8.a Robert Armijo, County Engineer, 575-525-6164 and 575-644-2103 shall be notified as contact person.	8.a. Notice shall be within 24 hours of project damage or failure.

### Dona Ana County

1. Allow access on Dripping Springs Road to certify signal operation and operate/maintain traffic signal and street lighting systems	1.a Certify signal operation and operate/maintain traffic signal and street lighting systems	1.a. – Not a compensation item
2. Notify City personnel of accidents damaging the traffic signals or lighting.	2.a Continuous operation of system	2.a. 24/7 operation
3. Respond to accidents by assisting the city with signs or barrels for traffic control	3.a Immediate response to accidents or operational failure	3.a. – Response to each incident
4. Pay City invoices for routine maintenance, including personnel, and replacement parts costs each month not to exceed \$1,375 each month.	4.a Continuous operation of system	4.a. Invoicing due first week of the month compensating for the previous months expenses.
5. Purchase signal cabinets, controllers, and video detection system to be placed in-stock with the City Streets and Traffic Operations Department.	5.a Delivery of parts to CLC	5.a. – Not a compensation item
6. Contact person for billing and signal system issues shall be Jeff Honeycutt, Administrator, Streets and Traffic Operations, 575-541-2595.	6.a Continuous operation of system	6.a. Invoicing due first week of the month compensating for the previous months expenses.

E. Describe how the contract will be EVALUATED to determine if objectives in paragraph "B above were attained?"

1. Name the staff positions and qualifications to conduct the evaluation of this contract? *Henry Cornelius, Professional Engineer, DAC Traffic Engineer*
2. Describe in measurable detail the evaluation criteria to be used to demonstrate that the need identified in Section B (WHY) was satisfactorily addressed by the Contractor's services. **Not Applicable**
3. When and how will the contract evaluation and recommendations be compiled and distributed? **Not Applicable**

**III. ADDITIONAL AGREEMENTS**

A. Contractor agrees to accept ACH (Automated Clearing House) payments for invoices submitted and approved by the County and will complete and submit any required documents to implement the ACH process.

B. Non-Waiver of Rights: No failure of either party to exercise any power given to it hereunder or to insist upon strict compliance by the other party with its obligations hereunder, and no customer or practice of the parties at variance with the terms hereof, not any payment under this Agreement shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

C. Any additional agreements, not included in this document, will be agreed to by written amendment executed by all parties.

176  
**ATTACHMENT B**

*City of Las Cruces*

**TOTAL COST, PAYMENTS, UNIT VALUE OF SERVICE OR GOODS**

**I. TOTAL CONTRACT PRE-GRT AMOUNT NOT TO EXCEED \$16,500** annually for routine maintenance and a \$40,000 one-time purchase for emergency in stock items.

**II. PAYMENT SCHEDULE**

Payments will be made in accordance with Article 5 – Section I of this Agreement.

**III. COST PER UNIT OF SERVICE OR GOOD(S) PROCURED:**

**A. ESTIMATED INFORMATION FOR EACH SERVICE / ITEM TO BE PROVIDED BY THE CONTRACTOR:**

Service Description (List each Service)	Unit Value of Service per Defined Unit	Units of Service to Be Provided	Total Annual Value
1. Pay all actual costs for replaced equipment, personnel costs during routine maintenance including parts used each month.	\$ 100/ month electricity	12	\$1,200
	\$425/mo. routine maintenance personnel	12	\$5,100
	\$425/mo. Parts/as needed only	12	\$5,100
2. Emergency response, repairs and equipment replacement	\$5,100 non-routine (accident damage) maintenance and repairs	annually	\$5,100
3. Stock signal cabinets, controllers, and video detection system and misc. parts needed for emergency replacement	\$40,000 initial stock purchase then replace stock as needed. One-time purchase as needed.	One Time Purchase, not included in total.	
<b>TOTAL VALUE</b>			<b>\$ 16,500</b>

**B. JUSTIFICATION FOR UNIT VALUE OF SERVICE CALCULATIONS.**

Service Description (List each Service)	Justification for Unit of Service Valuation
Routine maintenance	Intergovernmental agreement
Non-routine maintenance	Intergovernmental agreement
Maintain stock items	Listed stock item costs are estimated and shall go through competitive bidding when purchased

177  
**ATTACHMENTS C, D, E, F, G, H, I and J**  
**not applicable to this agreement, ccw**

**From:** Misty Dawn Benavidez  
**Sent:** Wednesday, August 01, 2012 1:26 PM  
**To:** Albert Racelis  
**Subject:** FW: Street Lights

*Misty Dawn Benavidez  
Doña Ana County  
Facilities & Parks/Vector Control  
Phone: 575.525.6183  
Fax: 575.525.6191*

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**From:** Misty Dawn Benavidez  
**Sent:** Monday, September 19, 2011 11:30 AM  
**To:** Robert F. Duran  
**Cc:** Armando Cordero  
**Subject:** Street Lights

Robert:

It is approximately \$1,300 to repair a street light which is contracted out.

It is approximately \$5,000 to install one which is also contracted out.

It is approximately \$500/yr. for electricity on each light.

*Misty Dawn Benavidez  
Doña Ana County  
Facilities & Parks/Vector Control  
Phone: 575.525.6183  
Fax: 575.525.6191*

## Exhibit "A"

Purchase items to held in-stock for use on the Project for repairs or replacement. The County shall purchase the items listed below and shall replace used stock as needed.

<u>Equipment</u>	<u>Estimated Cost</u>
Signal Cabinets	\$17,000
Controllers	\$ 3,000
Video Detection	\$20,000