City of Las Cruces®

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Council Action and Executive Summary

Item # 6 **Ordinance/Resolution#** 13-167

For Meeting of _____ (Ordinance First Reading Date)

For Meeting of June 17, 2013 (Adoption Date)

Please check box that applies to this item:

☐ QUASI JUDICIAL ☐ LEGISLATIVE ☒ ADMINISTRATIVE

TITLE: **A RESOLUTION APPROVING A SIGNAL AND INTERSECTION LIGHTING MAINTENANCE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR THE MAINTENANCE OF TRAFFIC SIGNALS AND ROADWAY LIGHTING AT THE INTERSECTION OF US70/N. MAIN STREET AND MADRID AVENUE, CONTROL NO. 1100470.**

PURPOSE(S) OF ACTION:

Approve agreement.

COUNCIL DISTRICT: 1, 4		
Drafter/Staff Contact: Willie Roman	**Department/Section:** Transportation / Street and Traffic Operations	**Phone:** 541-2595
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The New Mexico Department of Transportation (NMDOT) is designing and constructing a project (Control No. 1100470) that includes the installation of replacement traffic signals and roadway lighting at the intersection of US70/N. Main Street and Madrid Avenue within the boundaries of the City of Las Cruces.

Pursuant to the Signal and Intersection Lighting Maintenance Agreement, attached hereto as Exhibit "A", NMDOT will provide for the design and construction of the signal and lighting system at the aforementioned intersection. This will entail the installation of all equipment and materials for complete signalization and lighting of the intersection. The project is expected to start in December of 2013 and the anticipated completion date is November/December of 2014. This agreement is for the maintenance of those signals and street lights by City forces to include replacement material and power costs. The estimated annual maintenance costs will be in the range of $9,000 (approximately 60% power costs; 40% material costs) which is roughly similar to existing maintenance costs paid by the City. Expenditures for estimated future maintenance costs will be allocated out of fiscal year 2014 General Fund operating budget.

(Continue on additional sheets as required)

The signal and lighting system are being installed primarily to assist in relieving traffic congestion and to promote traffic safety. No prior written maintenance agreement was in place for the maintenance of the existing signal and lighting system at this location, therefore, the NMDOT requests that the City enter into the attached maintenance agreement to facilitate the future upkeep of the signal and lighting system upon final acceptance of the project.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Signal and Intersection Lighting Maintenance Agreement.

SOURCE OF FUNDING:

Is this action already budgeted?			
	Yes	☒	See fund summary below
	No	☐	If No, then check one below:
	Budget Adjustment Attached	☐	Expense reallocated from: _____
		☐	Proposed funding is from a new revenue source (i.e. grant; see details below)
		☐	Proposed funding is from fund balance in the Fund.
Does this action create any revenue?			
	Yes	☐	Funds will be deposited into this fund: _____ in the amount of $_____for FY__.
	No	☒	There is no new revenue generated by this action.

BUDGET NARRATIVE

The estimated annual maintenance cost for the signal and lighting system is $9,000.00, which will be paid out of the Fiscal Year 2013/2014 Budget as the project is expected to start in December of 2013 with an anticipated completion date of November/December, 2014. Funds for the expenditures have been budgeted under the General Fund/1000 under account numbers: 10323040-726200 (Street Lighting Electricity), 10323040-730110 (Street Lighting Supplies), 10323050-726200 (Traffic Signals Electricity) and 10323050-730110 (Traffic Signals Supplies) per Resolution 13-153.

FUND EXPENDITURE SUMMARY:

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

(Continue on additional sheets as required)

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this action approves the Resolution and authorizes the City of Las Cruces to accept maintenance responsibilities of the signal and intersection lighting system, as specified in the Signal and Intersection Lighting Maintenance Agreement, once accepted by both the State and City entities.
2. Vote "No"; this action denies the Resolution and will not authorize the City of Las Cruces to accept maintenance responsibilities of the signal system, which will place maintenance responsibilities upon the NMDOT office headquartered out of Santa Fe, NM. Local traffic conditions may be adversely affected by the longer response time by NMDOT crews to any issues related to the signal and lighting system.
3. Vote to "Amend"; this action could approve the agreement 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 agreement 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

(Continue on additional sheets as required)

RESOLUTION NO. 13-167

A RESOLUTION APPROVING A SIGNAL AND INTERSECTION LIGHTING MAINTENANCE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR THE MAINTENANCE OF TRAFFIC SIGNALS AND ROADWAY LIGHTING AT THE INTERSECTION OF US70/N. MAIN STREET AND MADRID AVENUE, CONTROL NO. 1100470.

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

WHEREAS, the New Mexico Department of Transportation (NMDOT) is currently designing and constructing a project (Control No. 1100470) which will include the replacement of traffic signals and roadway lighting at the intersection of US70/N. Main Street and Madrid Avenue; and

WHEREAS, this will entail the installation of all equipment and materials for complete signalization and lighting of the intersection; and

WHEREAS, the estimated annual maintenance costs will be in the range of $9,000.00, which would be approximately 60% power costs and 40% materials costs; and

WHEREAS, the parties want to set forth their responsibilities on operation and maintenance of the traffic signals and intersection lighting; and

WHEREAS, the signal and lighting system is being 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 a signal and intersection lighting maintenance agreement attached hereto as Exhibit "A" with the New Mexico Department of Transportation for maintenance of traffic signal and roadway lighting system at the intersection of US70/N. Main Street and Madrid Avenue 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 _____, 2013.

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

Contractor No.: _____
Vendor No.: _____

MAINTENANCE AGREEMENT

SIGNAL AND INTERSECTION LIGHTING

This Agreement is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** ("Department"), and the **CITY OF LAS CRUCES, NEW MEXICO** ("Public Entity"). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, the Department contemplates the letting of a contract for the construction of a highway project within the boundaries of the Public Entity, identified as US70/N. Main Street Reconstruction, Project Number 1100470, CN 1100470, ("Project"); and,

Whereas, the Department and Public Entity agree with the need for installation of traffic signals with intersection lighting at the following location(s): US70/Madrid Ave.; and,

Whereas, the installation of the traffic signals and intersection lighting will assist in relieving traffic congestion and promote traffic safety; and,

Whereas, the parties want to set forth their responsibilities on operation and maintenance of the traffic signals and intersection lighting.

Now therefore, pursuant to NMSA 1978, Sections 67-3-28, the parties agree as follows:

1. The Department Shall:

a. Provide the necessary plans, designs and estimates and documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
b. Determine the design, provide and install new signal control equipment with cabinet, footings, poles, signal heads, luminaires on extended shaft, vehicle detection system, fiber optic interconnect, telephone drop and wiring (the "Signal System") for complete signalization at the following location(s): US70/Madrid Ave.
c. Provide and install underground conduit, conductor, pull boxes, and concrete foundations for the intersection lighting.
d. Provide and install new roadway lighting equipment with cabinet, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway intersection lighting at the following location(s): US70/Madrid Ave.
e. Provide and install approximately four (4) 250 watt high pressure sodium, with full cutoff fixtures and flat glass, on four (four) type III standards at US70/Madrid Ave., for a fully operational lighting system.

2. The Public Entity Shall:

a. After the signal system and lighting system has been constructed, provide for at its own expense all electrical energy, telephone communication, lighting fixtures, routine maintenance such as lamp and/or luminaire replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the underground conduit, cables, pull-boxes, signal heads, lighting fixtures and poles.

b. In the event that accidental damage or equipment failure should occur, provide for equipment shut down and/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller, promptly notify the Department's Traffic Services Section.

c. In the event that accidental damage or equipment failure should occur on or near a weekend or holiday and service must be restored before the Department's Traffic Services Section's personnel can perform the required repairs, provide a qualified signal technician to perform the necessary repairs and reset the signal into operation. Signal technicians may not perform the required work on these signals unless they have the following qualifications:

    1. Certification from vendors on traffic signal controllers and controller cabinets;
    2. Thorough knowledge of the Manual on Uniform Traffic Control Devices as it pertains to traffic signals and work zone traffic control requirements;
    3. Certified in Work Zone Safety; and
    4. Three years minimum experience working on traffic signals, controller cabinets and their components. The Department's Traffic Services Section must be notified as soon as possible whenever work is performed on the Controller.

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

e. Maintain, repair or replace the Controller, as needed, when the Controller and/or cabinet are damaged, or there is an equipment failure, including the vehicle detection system and cameras.

f. In case of damage, replace the roadway lighting system's poles, fixtures, pull boxes, lighting cabinets, conduits with the same kind or brand for continued satisfactory operation of the roadway lighting system.

g. Make all timing adjustments to the signal control equipment and review the signal system(s) for efficient and satisfactory operation.

h. Make ample provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and lighting systems.

3. Term.

This Agreement becomes effective upon signature of all parties. The effective date is the date when the last party signed the Agreement on the signature page below.

4. Third Party Beneficiaries.

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

5. New Mexico Tort Claims Act.
As between the Department and Public Entity, neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, *et seq*. This paragraph is intended only to define the liabilities between the parties and it is not intended to modify, in any way, the parties' liabilities as governed by common law or the New Mexico Tort Claims Act.

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

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

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

9. Appropriations and Authorizations.
The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by the Department to the Public Entity. The Department is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for

expenditure by the Department. The Department's decision as to whether its funds are sufficient for fulfillment of this Agreement shall be final.

10. 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.

11. Public Entity Sole Jurisdiction.
The Department is not incorporating this Project into the State Highway System, nor is the Department assuming maintenance responsibility or liability for the Project.

12. Project Responsibility.
Design, construction and installation of this Project are the Department's sole responsibility and nothing is intended to give the Department any responsibility for future maintenance of the Project or related road improvements within the Public Entity's road system.

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

14. Applicable Law.
The Laws of the State of New Mexico shall govern this Agreement, without giving effect to its choice of law provisions. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

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

In witness whereof, each party is signing this Agreement on the date stated opposite of that party's signature.

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By:_____ Date: _____
Cabinet Secretary or Designee

Recommended by:

By:_____ Date: _____
State Traffic Engineer

By:_____ Date: _____
District Engineer

Approved as to form and legal sufficiency by the New Mexico Department of Transportation's Office of General Counsel

By: Cynthia A Chart Date: 5-13-13
Assistant General Counsel

CITY OF LAS CRUCES

By:_____ Date: _____

Title: _____

Attest: _____