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**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 11 Resolution # 10-033 Council District: All

**For Meeting of July 20, 2009**

(Adoption Date)

**A RESOLUTION APPROVING A BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY DOÑA ANA COMMUNITY COLLEGE FOR THE TERM OF AUGUST 1, 2009 TO MAY 31, 2010.**

**PURPOSE(S) OF ACTION:** To approve a Bus Shuttle Service Agreement between the City of Las Cruces and New Mexico State University Doña Ana Community College (NMSU DACC) for the 2009-2010 academic year.

<b>Name of Drafter:</b> Michael Bartholomew		<b>Department:</b> Public Services / Transit	<b>Phone:</b> 541-2500		
<b>Department</b>	<b>Signature</b>	<b>Phone</b>	<b>Department</b>	<b>Signature</b>	<b>Phone</b>
Originating Department	<i>[Signature]</i>	528-3477	Budget	<i>[Signature]</i>	2300
			Assistant City Manager	<i>[Signature]</i>	2271
Legal	<i>[Signature]</i>	2129	City Manager	<i>[Signature]</i>	2076

**BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:** The City of Las Cruces has had a longstanding agreement since 1986 to provide a bus shuttle service on the New Mexico State University (NMSU) campus. Now, there is a new interest in a cooperative venture along similar lines between NMSU's Doña Ana Community College (NMSU DACC) and the City to provide service to benefit students attending the East Mesa Campus of DACC.

Transit Staff has been working on developing a shuttle route between the East Mesa Campus of DACC and the Mesilla Valley Mall that would enable timed transfers between DACC and the RoadRUNNER transit routes on each hour and half-hour.

Initially, the City would provide the service with a 14 passenger cut-away van such as what is used on Dial-A-Ride. There would be no fare charged on this segment. Fares would be collected from riders at the point they connect to the regular RoadRUNNER service at Mesilla Valley Mall.

The proposed service would operate during the 2009-2010 academic year on a one year trial. If successful, DACC and the City of Las Cruces would enter into longer term agreements for continued or even enhanced bus service.

(Continue on additional sheets as required)

Staff is requesting Council approval to enter into the agreement shown as Exhibit "A". This approval will permit the City to make necessary arrangements to begin the service in August 2009. NMSU DACC will fully fund this service which is estimated to cost about \$114,000 for the academic year.

**SUPPORT INFORMATION:**

<b>Fund Name / Account Number</b>	<b>Amount of Revenue</b>	<b>Budget Amount</b>
NMSU Bus Subsidy 5920 – 59680010- 543711	\$114,000	\$114,000

1. Resolution.
2. Exhibit "A" - Agreement with NMSU DACC to provide service during the 2009-2010 academic year.

**OPTIONS / ALTERNATIVES:**

1. Approval of the Resolution to approve a service agreement with NMSU DACC to provide transit service to the East Mesa Campus during the 2009-2010 academic year.
2. Not approve the Resolution which would cancel the cooperative effort to better serve DACC students.
3. Modify the Resolution and provide alternative direction to Staff to pursue other options specified by Council.

**A RESOLUTION APPROVING A BUS SERVICE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO STATE UNIVERSITY DOÑA ANA COMMUNITY COLLEGE FOR THE TERM OF AUGUST 1, 2009 TO MAY 31, 2010.**

The City Council is informed that:

**WHEREAS**, the City has maintained a bus service agreement with New Mexico State University (NMSU) since 1986; and

**WHEREAS**, the City and New Mexico State University Doña Ana Community College (NMSU DACC) also wish to enter into an agreement to provide a shuttle bus service between NMSU DACC East Mesa Campus and Mesilla Valley Mall; and

**WHEREAS**, this service would be provided during the regular academic semesters of the 2009-2010 school year and would be fully funded by NMSU DACC.

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

**(I)**

**THAT** the City of Las Cruces authorize the Service Agreement with NMSU DACC for the 2009-2010 school year, designated as Exhibit "A", attached hereto and made a part of this Resolution.

**(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 \_\_\_\_\_, 2009.

APPROVED:

(SEAL)

\_\_\_\_\_  
Mayor

ATTEST:

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

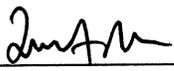
Moved by: \_\_\_\_\_

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

VOTE:

Mayor Miyagishima:	_____
Councillor Silva:	_____
Councillor Connor:	_____
Councillor Archuleta:	_____
Councillor Small:	_____
Councillor Jones:	_____
Councillor Thomas:	_____

APPROVED AS TO FORM:

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

**CITY OF LAS CRUCES/ NEW MEXICO STATE UNIVERSITY,  
DOÑA ANA COMMUNITY COLLEGE  
BUS SERVICE AGREEMENT**

**THIS AGREEMENT** is hereby entered into between the City of Las Cruces, a municipal corporation, hereinafter referred to as "the City," and the New Mexico State University, Doña Ana Community College, hereinafter referred to as "NMSU DACC."

WHEREAS, the City operates RoadRUNNER Transit as a public benefit mass transit system under authorization as a federal Section 5307 provider; and

WHEREAS, the City and the NMSU DACC desire a partnership with the goal of creating improved public transit services to the students of NMSU DACC; and

WHEREAS, the City and NMSU DACC mutually agree that such partnerships enhance to quality of life and transit service for both NMSU DACC the City; and

WHEREAS, to begin this partnership the City and NMSU DACC wish to enter into a Joint Powers Agreement (JPA) for initial transit services to the East Mesa Campus of the NMSU DACC as outlined in the following agreement;

NOW, THEREFORE, in consideration of the mutual obligations and covenants herein expressed, the parties agree as follows:

**1. TERM OF AGREEMENT**

This Agreement shall be from August 1, 2009 until May 31, 2010, subject however to paragraph No. 3.

**2. TRANSPORTATION SERVICES TO BE PROVIDED BY CITY**

- A. **Determination of Services to be Provided** — In consideration of the payments by NMSU DACC to the City, as provided in paragraph No. 4, the City or its agents agree to provide transit service in accordance with routings and schedules to be negotiated with NMSU DACC representatives. For any future extensions of this agreement, the City and NMSU DACC representatives shall agree to service levels for the next academic semester prior to the end of the previous semester. An initial proposed service is in Appendix "A".
- B. **Service Period** — Unless otherwise requested, NMSU DACC transit services shall operate for the entirety of the spring and fall college semesters. Services will operate Monday through Friday, when classes are in session, holidays excepted.
- C. **Fares and Access** — There will be no fare charged for riders on this route. Fares will be collected for any connects made to other RoadRUNNER

routes at the time the riders board regular RoadRUNNER routes at Mesilla Valley Mall. This route may be accessed by any transit rider.

- D. **Vehicles and Drivers** — Effective the fall semester 2009, the City shall provide ADA accessible vehicles and drivers to operate one route of transit service connecting the Mesilla Valley Mall, NMSU DACC East Mesa Campus, and the RoadRUNNER transit area at Venus/Northrise.
- E. **Customer Information**—The City and NMSU DACC will jointly provide current public/customer information relative to the services to be provided.
- F. **Reports**—Provide periodic reports during the academic year as requested and regarding ridership, use of paratransit services as well as operational conditions. An annual report will be included with the billing at the end of each academic year.
- G. **Schedule Performance**—The City shall exercise due diligence in adhering to all published time schedules, but minor deviations due to variations in traffic, weather, or road conditions shall not be deemed to be default hereunder.
- H. **Schedules**—Transit service shall run as agreed to by the parties subject to the availability of equipment.

### 3. TERMINATION

- A. This Agreement is contingent upon both parties receiving appropriations to carry out its terms. If during the term of this Agreement, either party receives insufficient appropriations, said party may terminate this Agreement by giving ninety (90) days written notice of its intent to terminate this Agreement due to insufficient appropriations.
- B. This Agreement may also be terminated by either party upon 30 days advance written notice from one party to the other.
- C. In case of termination by either party, NMSU DACC shall pay to the City a pro rata share of its subsidy level as determined pursuant to paragraph No. 4B.

### 4. CONSIDERATION AND METHOD OF PAYMENT

- A. In consideration of the agreements contained herein, NMSU DACC shall pay to the City a cost reimbursement calculated pursuant to this paragraph. In determining the total reimbursement due herein, the following cost calculations shall be used:

- (1) **Part-time Seasonal Bus Operators**—The hourly rate times the actual hours employed driving or being trained for operation of the contracted service, will determine the reimbursement rate for the part-time seasonal bus operators used to provide this service. The current hourly wage rate, plus applicable federal and State of New Mexico required benefits, will be used for the period that the service is provided.
- (2) **Maintenance/Operating Costs**—the vehicle operating costs will be calculated using the number of actual miles per semester, multiplied by the cost per actual mile. The National Transit Database (NTD) Reporting System prepared in accordance with Federal Transit Administration (FTA) regulations will be the source of financial and non-financial operating data. The reimbursement for operating expenses will be based on cost per actual mile using NTD Operating Expenses MB Form 301 and MB Service Form 406. Vehicle operator labor costs will not be included in the cost per mile calculations. Administrative costs, including administrative and maintenance labor, will be included in the cost per actual mile.
- (3) **Increases in Operating Costs**—If the City determines prior to the start of a given semester of any contract year that the projected subsidy amount will exceed the prior year's actual subsidy by 5%, the City will inform NMSU DACC in writing no later than thirty days prior to the beginning of the given semester.

- B. **Payment**—Payment from NMSU DACC to the City for transit services operated under this Agreement shall be made at the end of each semester. The request for payment will be submitted to:

Andrew J. Burke  
 Vice President for Business and Finance  
 NMSU Dona Ana Community College  
 MSC 3DA, P.O. Box 30001  
 Las Cruces, NM 88003-8001  
 (575) 527-7560

The City shall submit a request for payment will be made no later than 30 days following the end of the semester. Payment shall be due and payable within thirty (30) days following receipt of invoice by NMSU DACC. If this Agreement is terminated as herein provided, the City shall be entitled to a pro rata share of that annual payment based on the service rendered during the academic year in which this Agreement is terminated.

- C. **Other Liability**—Under no circumstances shall NMSU DACC be liable for any monies for any reason other than the Maximum Subsidy Level set forth in paragraph No. 5A.

- D. **Payment Location**—Payment against invoices shall be mailed to the Transit Department, P. O. Box 20000, Las Cruces, NM 88004.
- E. **Annual Estimate of Cost of Service** – The City shall provide an estimate of the cost of service for each academic school year prior to the beginning of the fall semester. An estimated cost for the initial year of service is in Attachment “B”

## 5. CAPITAL PROGRAM REQUIREMENTS

The City will work with NMSU DACC to identify capital requirements to operate this service, which will result in a capital equipment replacement plan. Capital requirements will include vehicles, stop signs, passenger shelters and/or benches. Capital requirements will be handled as follows:

- A. **Vehicles**—The City will provide one (1) bus and all the needed drivers for this service. The City will identify and attempt to secure federal funding for any replacement vehicles required to continue to operate these transit services. NMSU DACC commits to assisting the City with financing the local match requirements for replacement vehicles needed to insure continued operation of the service. NMSU DACC may opt to pay for a negotiated annual vehicle depreciation in lieu of assisting with new vehicle purchases. For planning purposes, vehicles will be replaced at the approved federal life cycle for the type of vehicle being used. The City will act as the purchasing agent in acquiring all vehicles, which are to be purchased with federal grant funds.

Any vehicles purchased by the City to operate service under the Agreement using FTA funds authorized to the City will remain the property of the City if this Agreement is terminated.

- B. **Bus Stop Signs**—will be installed and maintained by the City except NMSU DACC will provide a bus stop on its East Mesa campus.
- C. **Shelters/Benches**—The City and NMSU DACC will work together to identify locations appropriate for installing benches and/or shelters to accommodate intended passengers. The City will also work with NMSU DACC to identify possible funding sources to pay for capital and installation costs associated with benches and shelters. Shelters and benches on the NMSU DACC campus will be funded by NMSU DACC.

## 6. INDEPENDENT CONTRACTOR RELATIONSHIP

In providing and furnishing said transit service during the term hereof, the City shall act solely in the capacity of an independent contractor, and not as an agent or employee of NMSU DACC, and NMSU DACC shall have no control over the City's transit operations in connection with providing said services, except as hereinabove provided, and NMSU DACC shall have no control or supervision

whatsoever over the drivers of the vehicle(s) used in said service who shall be employed by the City.

## **7. MAINTENANCE/EQUIPMENT REPAIR**

The City agrees to maintain all vehicles used in providing the service in a safe, efficient, and lawful manner, and in so doing, shall comply with all applicable state and FTA requirements for the preventive and regular maintenance of transit equipment. Any physical damage to vehicles purchased for or by NMSU DACC to operate services established herein shall be repaired by the City in a timely and high quality manner using the same standards that are applied to the City's current 5307 operation, regardless of cause.

## **8. INDEMNIFICATION**

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 or other New Mexico law.

## **9. APPLICABLE LAW**

The City agrees that it will adhere to all federal, state, and local laws applicable to the provision of the services outlined herein. This includes federal grant prohibitions against providing special events charter services.

The City will not be liable for a decision by NMSU DACC to operate transit service that does not comply with Title VI and/or transportation requirements established under the Americans with Disabilities Act and will not be obligated to operate such service.

## **10. ACCOUNTING**

The City and NMSU DACC shall provide strict accounting for all receipts and disbursements, if any, made pursuant to the Agreement. The City will furnish accounting reports to NMSU DACC upon request.

## **11. REPRESENTATIVES**

Any notice required under this Agreement shall be mailed to the following addresses, except as changed by written notice to the other party. As well, the City hereby designates the persons listed below as the City representatives to be responsible for daily supervision of the operation of service:

<b>CITY:</b>	Transit Administrator P. O. Box 20000 Las Cruces, NM 88004 (575) 541-2500 Fax (575) 541-2545
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**NMSU DACC:** Andrew J. Burke  
Vice President for Business and Finance  
NMSU Dona Ana Community College  
MSC 3DA, P.O. Box 30001  
Las Cruces, NM 88003-8001  
(575) 527-7560

**12. BINDING EFFECT**

This Agreement is binding upon the City and NMSU DACC and their respective assignees, successors in interest, and legal representatives of any kind.

**13. ENTIRE AGREEMENT**

- A. This agreement embodies the entire agreement between the City and NMSU DACC and may only be amended upon a written agreement signed by the parties.
- B. This Agreement incorporates all the conditions, agreements and understandings between the parties concerning the subject matter of this agreement and all such conditions, understandings, and agreements have been merged into this written agreement. No prior condition, agreement, or other understanding verbal or otherwise, shall be valid or enforceable unless embodied in this agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on this \_\_\_\_ day of \_\_\_\_\_, 2009 pursuant to the approval of their respective governing bodies.

**CITY OF LAS CRUCES:**

**FOR DONA ANA  
COMMUNITY COLLEGE:**

\_\_\_\_\_  
Terrence R. Moore, City Manager

\_\_\_\_\_  
*Andrew J. Burke*  
Andrew J. Burke

ATTEST:

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

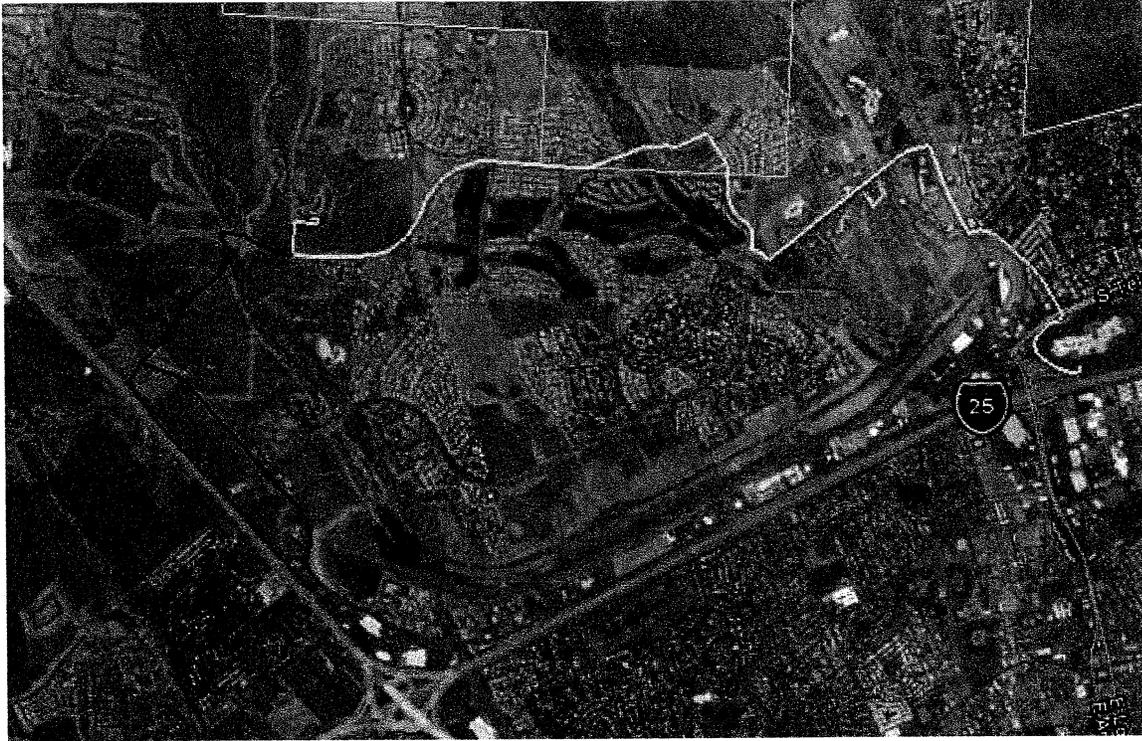
(SEAL)

Approved as to form:

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

**Appendix "A"**

**DACC/MVM Shuttle (Yellow)  
One (1) Round Trip each half hour**



**MESILLA VALLEY MALL**

- 7:00 AM
- 7:30 AM
- 8:00 AM
- 8:30 AM
- 9:00 AM
- 9:30 AM
- 10:00 AM
- 10:30 AM
- 11:00 AM
- 11:30 AM
- 12:00 PM
- 12:30 PM
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- 6:00 PM
- 6:30 PM
- 7:00 PM

**DACC EAST MESA**

- 7:12 AM
- 7:42 AM
- 8:12 AM
- 8:42 AM
- 9:12 AM
- 9:42 AM
- 10:12 AM
- 10:42 AM
- 11:12 AM
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Appendix "B"  
Estimated cost

**SUBSIDY CALCULATION ESTIMATE SHEET**

DACC Shuttle 2009/2010 Academic Year

<u>SERVICE PROVIDED</u>	<u>Route 1</u>
DACC Shuttle Hours (154 Days of service)	1,848.0
Other Shift Hours -- report time, logout time, changeout time - 1.8 hr/route/day	136.8
Driver Training hours	168.0
<b>A Sum</b>	<b>2,152.8</b>
<b>B</b> DACC Shuttle Miles provided with CLC bus	34003
 <b>Factors used in DACC subsidy calculation</b>	
<b>C</b> Bus Operator Wage (\$12.25/hr+ 6.2% FICA + 5.68% WC + Medicare 1.45%)	\$13.88
<b>D</b> Total RoadRunner Operating Cost (FY08 NTD)	\$3,670,009.00
<b>E</b> Motorbus Total Operating Expenses (Vans)	\$1,112,494.00
<b>F</b> Less vehicle Operator wages (wages + 13.33% benefits)	\$513,602.49
<b>G</b> Adjusted Motorbus Bus Operating expenses	\$598,891.51
<b>H</b> Motorbus Total Miles (FY08 NTD)	242,358
 <b>Intermediate Calculations</b>	
<b>#1</b> Motorbus Operating Expense per mile (= G/H)	\$2.47
 <b>Subsidy Calculation</b>	
Drivers' Wages (= A x C)	\$29,887.16
CLC Bus Operating Expenses calculated by miles (= B x #1)	\$84,024.90
<b>Total Cost</b>	<b>\$113,912.07</b>
 <b>Estimated cost for 2009/2010 academic year DACC shuttle</b>	
	<b>\$113,912.07</b>