

City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 4

Ordinance/Resolution # 14-177

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of May 5, 2014
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL

LEGISLATIVE

ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A COOPERATIVE PROJECT AGREEMENT AND ACCEPTING A GRANT FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT), FOR THE DESIGN OF EL PASEO ROAD SAFETY IMPROVEMENTS PROJECT IN THE AMOUNT OF \$30,500.00 AND TO AMEND FISCAL YEAR 2013/2014 BUDGET.

PURPOSE(S) OF ACTION:

Approve a cooperative project agreement, accept grant and amend Budget.

COUNCIL DISTRICT: 2, 3, 4		
Drafter/Staff Contact: Louis Grijalva, PE	Department/Section: Public Works/ Project Development	Phone: 528-3479
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In February 2011, City Council approved resolution 11-184 endorsing the El Paseo Road Safety Assessment Final Report and Recommendations.

In February 2013, the City of Las Cruces (City) submitted an application to the New Mexico Department of Transportation (NMDOT), Highway Safety Improvement Program (HSIP), for safety improvements to El Paseo Road as recommended by the final safety assessment report. In May 2013, the City was notified that the El Paseo Road safety improvements were approved as a project for the grant.

The total grant amount is \$335,000.00; \$30,500.00 for design and right-of-way acquisition, and \$304,500.00 for construction of the project. The grant does not require a City match.

The NMDOT requires the City enter into an initial Cooperative Project Agreement (Control Number: LC00130), in the amount of \$30,500.00 for design and right-of-way acquisition.

A second Cooperative Project Agreement for the construction portion, in the amount of \$304,000.00, will be forthcoming once design is complete.

The El Paseo Road Safety Improvements project (Main Street to University Avenue) will include installation of additional signing, pavement markings, raised curb medians, crosswalks, upgrade pedestrian signals, Americans with Disabilities Act (ADA) improvements to sidewalks, modification to channelized right turns lanes, street lighting, improvements to mid-block pedestrian crossing, and construction traffic control.

At this time, staff recommends Las Cruces City Council accept the grant and enter into an initial Cooperative Project Agreement with the NMDOT for the design and right-of-way acquisition phase of the El Paseo Road Safety Improvements project, in the amount of \$30,500.00, and to amend the Fiscal Year 2013/2014 budget.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Cooperative Project Agreement.
3. Exhibit "B", Budget Adjustment.
4. Attachment "A", Vicinity map.
5. Attachment "B", Letter from the NMDOT, dated May 21, 2013.

SOURCE OF FUNDING:

Is this action already budgeted?	Yes	<input type="checkbox"/>	See fund summary below
	No	<input checked="" type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____
		<input checked="" type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)
		<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.
Does this action create any revenue?	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: 4212 in the amount of <u>\$30,500.00</u> for FY 14.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

Grant funds will be deposited into Fund 4212 to be used by the Public Works Department to pay for the preliminary survey and design of the El Paseo Road Safety Improvements Project.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
St. Street Improvements: 4212	42806030-854121-14315	\$30,500.00	\$30,500.00*	\$0.00	N/A

*Pending Adjustment

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution accepting a grant and approving the Cooperative Project Agreement with the NMDOT, HSIP, for Fiscal Year 2013/2014, in the amount of \$30,500.00 for the El Paseo Road Safety Improvements project design and right-of-way acquisition phase; and to amend the Fiscal Year 2013/2014 budget.
2. Vote "No"; this will reject the Resolution. The Cooperative Project Agreement and grant will not be accepted from the NMDOT, HSIP, for Fiscal Year 2013/2014 budget.
3. Vote to "Amend"; this could modify the Resolution and provide staff alternate direction on how to proceed with the project and/or grant award. This could impact the availability of the funding from the NMDOT.
4. Vote to "Table"; this could impact the availability of funding from the NMDOT.

REFERENCE INFORMATION:

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

1. Resolution 11-184.

RESOLUTION NO. 14-177

A RESOLUTION APPROVING A COOPERATIVE PROJECT AGREEMENT AND ACCEPTING A GRANT FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT), FOR THE DESIGN OF EL PASEO ROAD SAFETY IMPROVEMENTS PROJECT IN THE AMOUNT OF \$30,500.00 AND TO AMEND FISCAL YEAR 2013/2014 BUDGET.

The City Council is informed that:

WHEREAS, in February 2011, Las Cruces City Council approved resolution 11-184 endorsing the El Paseo Road Safety Assessment Final Report and Recommendations; and

WHEREAS, in February 2013, the City of Las Cruces (City) submitted an application to the New Mexico Department of Transportation (NMDOT), Highway Safety Improvement Program (HSIP), for safety improvements to El Paseo Road as recommended by the final safety assessment report. In May 2013, the City was notified that the El Paseo Road safety improvements were approved as a project for the grant; and

WHEREAS, the El Paseo Road Safety Improvements project (Main Street to University Avenue) will include installation of additional signing, pavement markings, raised curb medians, crosswalks, upgrade of pedestrian signals, Americans with Disabilities Act (ADA) improvements to sidewalks, modifications to channelized right turn lanes, street lighting, improvements to med-block pedestrian crossing, and construction traffic control; and

WHEREAS, the NMDOT requires the City enter into an initial Cooperative Project Agreement (Control Number: LC00130), in the amount of \$30,500.00 for design and right-of-way acquisition.

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

(I)

THAT acceptance of the grant and approval of an initial Cooperative Project Agreement with the NMDOT for the design and right-of-way acquisition phase of the El Paseo Road Safety Improvements project, in the amount of \$30,500.00, is hereby approved as outlined on Exhibit "A", attached hereto and made part of this resolution.

(II)

THAT Fiscal Year 2013/2014 budget is hereby amended as outlined on Exhibit "B", attached hereto and made part of this resolution.

(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 _____, 20____.

APPROVED:

Mayor

ATTEST:

City Clerk

(SEAL)

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

VOTE:

Mayor Miyagishima: _____
Councillor Silva: _____
Councillor Smith: _____
Councillor Pedroza: _____
Councillor Small: _____
Councillor Sorg: _____
Councillor Levatino: _____

Contract Number	_____
Vendor Number	<u>0000054342</u>
Control Number	<u>LC00130</u>

COOPERATIVE PROJECT AGREEMENT – DESIGN WORK

This Agreement is between the **NEW MEXICO DEPARTMENT OF TRANSPORTATION** (“Department”), and the City of Las Cruces (“Public Entity”), collectively referred to as the “Parties.” This Agreement is effective as of the date of the last party to sign it on the signature page below.

In consideration of the covenants contained herein and pursuant to NMSA 1978, Section 67-3-28, the Parties agree as follows:

1. Purpose.

The purpose of this Agreement is to provide Federal Highway Administration (FHWA) funds to the Public Entity for the preliminary and final design, project development and certification, and production of a Plans Specifications and Estimate (PS&E) Certification Package for a transportation project described in the Public Entity’s Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). The deliverables under this Agreement may be referred to as the “Design Work” is referred to interchangeably as “Project” or “Project Control No. LC00130.” The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction.

2. Funding.

- a. The total funding for Project Control No. LC00130, is Thirty Thousand Five Hundred Dollars and No Cents (\$30,500) which will be shared by the Parties as follows:

1. **2013/2014 HIGHWAY SAFETY IMPROVEMENT PROGRAM (HSIP) Funds**

Department’s 92.64% share \$28,255

El Paseo (FL 4537) from South Main Street to University Avenue. Install signs, pavement markings, raised curb medians, crosswalks, install "No Turn On Red" signs at intersection, upgrade pedestrian signals, ADA improvements to sidewalks, modifications to channelized right turn lanes, install street lighting, improvements to a mid-block pedestrian crossing, construction traffic control, right-of-way acquisition and design of construction plans/specifications. (Description as per STIP database and Agreement Request Form, this agreement only pertains to the design portion of Project Control No. LC00130.)

2. **State’s matching 7.36% share** \$2,245
For the purpose stated above.

3. **The Total Project (Design Work) Funding** **\$30,500**

- b. The Public Entity shall pay all Project costs that exceed the total funding amount specified in this section.

- c. FHWA's obligation of federal funds shall be supported by a certified cost estimate based on the Public Entity's Engineer's Opinion of Probable Cost (EOPC). The EOPC shall be submitted to the Department's South Region T/LPA Coordinator prior to the PS&E Review pursuant to 23 CFR Part 630B.
- d. The amount of federal funds obligated by the FHWA for the Project will be reviewed, after the Project is advertised. The Department's South Region T/LPA Coordinator will review and determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106.

3. Method of Payment -- Reimbursement.

The Department's District T/LPA coordinator shall reimburse the Public Entity upon receipt of payment requests for the purposes stated in Section 2 above, with supporting documentation as determined and/or approved by the Department, certifying that costs have been incurred in compliance with this Agreement. Invoices will be accepted monthly, but must be submitted at a minimum quarterly to the Department's District T/LPA coordinator. Payment requests shall be identified by the project control number and certified that the requests accurately reflect work completed, amount due and the remaining Agreement balance. All expenses must be actual, rather than estimated, and listed on the payment request as charged. Only those expenses that are properly documented and deemed eligible will be reimbursed. Incomplete submittals will be returned to the Public Entity for corrections.

The Department's District T/LPA coordinator will not reimburse the Public Entity for costs incurred prior to obligation of federal funding and the full execution of this Agreement, after the expiration of the Agreement, or in excess of the maximum dollar amount of the Agreement. The Project request for reimbursement shall be submitted to the Department's District T/LPA coordinator within thirty (30) calendar days of completion of the Project and prior to the termination date identified within Section 20.

4. Public Entity Shall:

- a. Act in the capacity of the lead agency for the Project.
- b. Use the Project Control Number in all correspondence and submittals to the Department.
- c. Pay all costs, perform all labor, and supply all material for the Project.
- d. Identify a single point of contact for the Project who may be either a Public Entity employee or consultant, for all communications to or from the Department.
- e. Adopt a written resolution of support for the Project, including, as appropriate, an assumption of ownership, liability, maintenance, related amenities, and the availability of required matching funds.
- f. Complete all necessary Design Work, including preliminary engineering, environmental clearance documentation, right-of-way clearance, project development, and utility clearance.
- g. Obtain written authorization from the Department's South Region T/LPA Coordinator prior to issuing a solicitation for design or certification services and provide verification that the solicitation is in conformance with governing federal, state and local procurement requirements.
- h. Obtain concurrence from the Department's South Region T/LPA Coordinator prior to award of the design contract.

- i. Submit to the Department's South Region T/LPA Coordinator for concurrence, as a deliverable of this Agreement, a proposed PS&E Certification Package which includes the following:
 1. Construction Plans;
 2. Engineer's Opinion of Probable Cost;
 3. Specifications;
 4. Contract Book;
 5. Proposed Invitation for Bid; and
 6. Project PS&E Certification Package, shall also contain the following documents:
 - Signed Certification of Pre-Construction Phase (**Appendix E**);
 - Environmental clearance and certification documentation;
 - The State Historic Preservation Officer's concurrence;
 - Right of Way certification documentation;
 - Utility certification documentation;
 - Work Zone Checklist, Sections J and K;
 - Intelligent Transportation Systems (ITS) certification documentation; and,
 - Railroad certification documentation.
- j. Develop and execute the Project in accordance with the Department's current Tribal/Local Public Agency Handbook, Construction Procedures Handbook for Federal Aid Local Government Lead Projects, Right of Way Handbook, Volume VII, and the New Mexico Transportation Department's Office Procedures Manual.
- k. Insure all designs comply with **Appendix A**, "Preliminary Engineering/Construction Engineering" and are performed under the direct supervision of a Registered New Mexico Professional Engineer and/or Registered New Mexico Architect, as required by NMSA 1978, Sections 61-23-21 and 61-15-1.
- l. Design the Project in accordance with **Appendix C**, "Design Standards."
- m. Comply with **Appendix D**, "Survey and Right of Way Acquisition Requirements."
- n. Warrant, covenant, and agree that they will comply with conditions and terms contained in all appendices attached hereto. They will perform any and all applicable obligations contained herein.
- o. Complete the environmental process as described in the Department's Tribal/Local Public Agency Handbook and in accordance with state and federal guidelines and regulations including the National Environmental Policy Act (NEPA), FHWA Technical Advisory T 6640.8, 23 CFR Part 771, and guidance for preparing environmental documents. This effort includes, but is not be limited to:
 1. Completion of a Location Corridor Study, if applicable, as described in **Appendix B**. Initiate and cause to be prepared an Initial Corridor Analysis Report "Phase A Report," a Location Study Report "Phase B Report," and the appropriate level of environmental documentation "Phase C";
 2. Submit a scope of work to the Department's South Region T/LPA Coordinator for concurrence with the determination of the level of effort needed for completing the environmental certification process;
 3. Conduct a cultural resources survey, if required, and submit the cultural resources survey report to the Department's South Region T/LPA Coordinator for review and assistance with making the submittal to the State Historic Preservation Office (SHPO).

The survey shall be conducted and the report shall be prepared in accordance with the Department's Guidelines for Cultural Resource Investigations;

4. Conduct and document hazardous materials investigations according to the Department's Environmental Geology Bureau's Hazardous Materials Assessment Handbook. The appropriate environmental documents shall be prepared by a qualified environmental professional, as defined in 40 CFR Part 312, and submitted to the Department's South Region T/LPA Coordinator for review;
 5. Conduct and document appropriate public notifications and public involvement activities;
 6. Submit appropriate and acceptable NEPA documents, prepared by a qualified environmental professional, to the Department's South Region T/LPA Coordinator for review and concurrence. "Acceptable" means documents that meet the criteria specified in the Department's Tribal/Local Government Agency Handbook; and,
 7. Produce and distribute an appropriate number of copies of environmental documents to regulatory agencies and interested parties.
- p. Comply with **Appendix G** if the Project involves lighting and/or highway lighting.
 - q. Comply with **Appendix H** if the Project involves signal(s) and/or highway signal(s).
 - r. Register with www.ccr.gov and DUNS and provide such information to the Department as well as the total compensation and names of the Public Entity's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.
 - s. If the Public Entity receives a combined \$500,000 in Federal Funding, which would require an audit pursuant to OMB Circular A-133, it must provide the Department a copy of the most recent completed audit report before the start of work.
 - t. Ensure all design and Project plans require that all construction materials, including those associated with utility facilities and relocations, are in accordance with "Buy America" requirements (23 CFR Section 635.410), which require proof of origin and place of manufacture of iron and steel products and materials to be made in America. Additional information is available at: <http://www.fhwa.dot.gov/construction/cquit/buyam.cfm>; <http://www.fhwa.dot.gov/utilities/buyam.cfm>.
 - u. Ensure all design and Project plans fully comply with Title II of the Americans with Disabilities Act of 1990 (ADA), implemented by 28 CFR 35, Section 504 of the 1973 Rehabilitation Act, implemented by 49 CFR 27, United States Access Board *Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way* a.k.a. Public Right-of-Way Accessibility Guidelines (PROWAG) section 300R.

5. The Department Shall:

- a. Assign the Department's South Region T/LPA Coordinator as the single point of contact to provide technical assistance for the development of the Project and to monitor and oversee progress under this Agreement.
- b. Ensure the Department's Environmental Development and Environmental Geology Sections timely reviews and concurs with Public Entity's:
 1. NEPA and related environmental documentation for appropriate level of effort and completeness, and timely assists the Public Entity by transmitting the Public Entity's NEPA documents to the FHWA for review and concurrence.
 2. Cultural resource technical reports and timely assists the Public Entity by transmitting the reports to FHWA and the SHPO officer for review and concurrence.

- c. Review the Public Entity's hazardous material investigation deliverables to concur Public Entity has certified each is compliant with American Society for Testing and Materials (ASTM) and Department standards.
- d. Review required certification documents and deliverables submitted by Public Entity for Acceptability, as that term is defined in the Department's current Standard Specifications for Highway and Bridge Construction, as a prerequisite to obligating the remainder of the Project's federal funding for construction.

6. Both Parties Agree:

Review of documents by the Department does not relieve the Public Entity, or its consultants, of its responsibility for errors and omissions.

7. Project Responsibility.

The Public Entity is solely responsible for ensuring that the Project is carried out to completion. The services required under this Agreement shall remain the full responsibility of the Public Entity, unless stated otherwise in the Agreement.

8. Public Entity Sole Jurisdiction.

After the completion of this Agreement, ownership of the Project design and development documentation shall remain solely with the Public Entity.

9. Legal Compliance.

The Public Entity shall comply with all applicable federal, state and local laws and regulations, and applicable Department policies including Design Directives in the performance of this Agreement. These laws include, but are not limited to: FHWA memorandums; Authorization to proceed and project monitoring at 23 CFR Part 630.106; Agreement provisions at 23 CFR Part 630.112; Project approval and oversight at 23 U.S.C. § 106 [as amended by SAFETEA-LU section 1904]; Single Audit Act Amendments of 1996 (P.L. 104-156)/OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations; Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 49 CFR Part 18; Titles VI and VII of the Civil Rights Act of 1964 and related statutes; applicable provisions of the Disadvantaged Business Enterprise Program, 49 CFR Part 26; the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, Executive Order 12898, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order 11246 entitled "Equal Employment Opportunity" as amended by Executive Order 11375; the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109-282), as amended by section 6202 of Public Law 110-252; 2 CFR Part 170; and 2 CFR Part 25; the NMAC 17.4.2; Public Utilities and Utility Services, Utility right of Way and Easements, Requirements for Occupancy of State Highway System Right-of-Way by Utility Facilities.

Additionally, the Public Entity shall comply with all applicable federal, state and local laws and regulations governing environmental issues, workplace safety, employer-employee relations and all other laws and regulations governing operation of the workplace. The Public Entity shall ensure that the requirements of this compliance are made a part of each contract and subcontract on this Project at all tiers.

10. Federal Grant Reporting Requirements.

Under the Federal Funding Accountability and Transparency Act, the Department is required to report on projects or activities, which are awarded federal grants of \$25,000 or more. This information will be made available to the public on www.USASpending.gov. For this reporting, Public Entity is the “subgrantee.”

The type of information the Department is required to report includes:

- a. Name of subgrantee receiving the award;
- b. Amount of award;
- c. Funding Agency;
- d. NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants;
- e. Program source;
- f. Award title descriptive of the purpose of the funding action;
- g. Location of the subgrantee, which includes the Congressional District;
- h. Place of performance of the program or activity, which includes the Congressional District;
- i. Unique identifier – DUNS -- of the subgrantee and its parent organization, if one exists; and,
- j. Total compensation and names of the top five executives of the subgrantee. This information is required, if the subgrantee in the preceding year received eighty (80) percent or more of its annual gross revenues in federal awards, which exceeds \$25 million annually, and the public has no access to this information under the Securities Exchange Act or the Internal Revenue Code.

The Department will extract as much information as possible from the Public Entity’s grant application and standard reports. As specified in Section 4, Paragraph r, the Public Entity will be required to provide the total compensation and names of the Public Entity top five executives, if applicable, and shall register with www.ccr.gov and DUNS and provide that information to the Department.

More information on the Transparency Act may be located via the following links: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>; and, <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>.

11. Disadvantaged Business Enterprise (DBE) Program.

- a. Required Contract Assurance: Each contract the Department signs with the Public Entity and each subcontract the Public Entity signs with a consultant or subconsultant must include the following assurance: “The contractor, sub-recipient or subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of U.S. Department of Transportation-assisted contracts”. Failure by the contractor to carry out these requirements is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy, as the Department deems appropriate.

- b. DBE Program Obligations: The portion of the Department's tri-annual state DBE goal applicable to federal-aid design projects is 7.69%, which shall be attained through race neutral measures. Accordingly, even though design and other consultant contracts do not have contract specific DBE goals assigned to them, the Department encourages the Public Entity and its consultants and contractors to facilitate small business and DBE participation on this Project and to take all reasonable steps to eliminate obstacles that may preclude such participation.
- c. Provision of DBE Program Information: The Public Entity shall provide any DBE related information or data to the Department's South Region T/LPA Coordinator or the Department's Office of Equal Opportunity Programs, including but not limited to lists of quoters and DBE monthly participation forms, as required or upon request.

12. Title VI Program Obligations.

- a. Public Entity Assurances – Each contract the Public Entity enters into with a design consultant, other consultant or recipient on a project assisted by the United States Department of Transportation (USDOT), and any subcontract thereto, shall include the assurances contained in **Appendix F** as applicable:
- b. The Public Entity shall sign and submit the attached **Appendix F (Title VI Nondiscrimination Assurances For FHWA Recipients)** to the Department's Office of Equal Opportunity Programs. By signing **Appendix F**, assurance is given in consideration of and for the purpose of obtaining any and all federal grants, loans, contracts, property, discounts or other federal financial assistance extended after the date hereof to the Public Entity.
- c. The Public Entity shall require sub-recipients to sign and submit the attached **Appendix F (Title VI Nondiscrimination Assurances For FHWA Recipients)** to the Department's Office of Equal Opportunity Programs for each contract the Public Entity enters into with a design consultant, other consultant or sub-recipient on a USDOT-assisted project, and any subcontract thereto.

13. Third Party Beneficiary.

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.

14. 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.

15. Office of Inspector General Reviews.

The Public Entity shall provide to all firms or individuals seeking a services contract related to this Agreement the reporting and oversight requirements that each will be bound to from the time of bid or proposal submission. The following provisions must be included in all contracts or subcontracts for services for a federally-funded project.

- a. Inspector General Reviews. Any Inspector General of a federal department or executive agency shall review, as appropriate, any concerns raised by the public about specific investments using federal funds. Any findings of such reviews not related to an ongoing criminal proceeding shall be relayed immediately to the head of the department or agency concerned.
- b. Access of Offices of Inspector General to Certain Records and Employees. With respect to each contract or grant awarded using federal funds, any representative of an appropriate Inspector General appointed under the Inspector General Act of 1978, 5 U.S.C. App. §§ 3 or 8G, is authorized to examine any records of the contractor or grantee, any of its subcontractors or sub-grantees, or any state or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or sub-grant; and to interview any officer or employee of the contractor, grantee, sub-grantee, or agency regarding such transactions.
 1. Allow access by the Government Accountability Office Comptroller General and his representatives to examine any records of the contractor or any of contractor's subcontractors, or any state or local agency administering such contract that directly pertain to, and involve transactions relating to, the contract or subcontract.
 2. Allow the Comptroller General and his representatives to interview any officer or employee of the contractor or any of contractor's subcontractors, or of any state or local government agency administering the contract, regarding such transactions.
 3. Nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.
- c. New Mexico Department of Transportation/Office of Inspector General. As specified in New Mexico State Transportation Commission Policy Number 30 (CP-30), current as of the date of execution of this Agreement, has the authority to carry out all duties required, which are the same as those specified in federal law: Office of Inspector General, 23 U.S.C. §302 (the capability to carry out the duties required by law); 23 U.S.C. §112 (contracting for engineering and design services); the review of Federal-aid construction contracts references; 23 U.S.C. § 106 (project approval); 23 U.S.C. § 112 (letting of contracts); 23 U.S.C. § 113 (prevailing rate of wage); 23 U.S.C. § 114 (construction); 23 CFR Parts 635 and 636 (design build); 23 CFR Part 637 (construction inspection approval); the State Departments of Transportation are responsible for ensuring that all federal-aid projects are carried out in accordance with federal requirements. This responsibility was specifically clarified in 23 U.S.C. § 106, as amended by Section 1904(a) of the Safe, Accountable, Flexible, and Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU, Public Law 109-59).

16. Access to Records, Accountability of Receipts and Disbursements.

There shall be strict accountability for all receipts and disbursements. The Public Entity shall maintain all records and documents relative to the Project for five (5) years after completion of the Project or termination of this Agreement. The Public Entity shall furnish the Department, State Auditor, or appropriate federal auditors, upon demand, any and all records relevant to this

Agreement for auditing purposes. If an audit determines that a specific expense was inappropriate or not related to the Project, the Public Entity shall reimburse that portion to the Department within thirty (30) days of written notification. If documentation is insufficient to support an audit by customarily accepted accounting practices, the expense identified shall be reimbursed to the Department within thirty (30) days of written notification.

17. Appropriation.

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. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice 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, 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.

18. Scope of this Agreement.

This Agreement constitutes the entire Agreement between the Parties. Any claimed covenant, term, condition, warranty or promise of performance not expressly included in this document or its amendments, is not part of this Agreement and not enforceable pursuant to this Agreement. Performance of all duties and obligations herein shall conform with and shall not contravene any state, local, or federal statutes, regulations, rules, or ordinances.

19. 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.

20. 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. This Agreement shall terminate on **September 30, 2016**. Neither party shall have any obligation after said date except as stated in Sections 7 and 16 above.

21. Termination.

- a. The Department may terminate this Agreement if the funds identified in Section 2 above have not been contractually committed between the Public Entity and a contractor within three (3) months from the date this Agreement is effective.
- b. The Department will review inactive projects on a quarterly basis. An inactive project is a project for which no expenditures have been charged against federal funds for the past 12 months. If the Department determines a project to be inactive, the Department may, as directed by FHWA, terminate the agreement and redirect the unexpended balance pursuant to 23 CFR Part 630.106.
- c. The Department may, at its option, terminate this Agreement if the Public Entity 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.

22. Principal Contacts and Notices.

The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

South Region T/LPA Coordinator

Jessica Hunter, P.E.
 Project Development Engineer
 New Mexico Department of Transportation
 750 N. Solano Drive
 Las Cruces, New Mexico 88001
 Office: 575-525-7343
 E-mail: Jessica.Hunter@state.nm.us

District T/LPA Coordinator

Aaron Chavarria, P.E.
 TSE
 New Mexico Department of Transportation
 2912 East Pine Street
 Deming, New Mexico 88030
 Office: 575-544-6554

Public Entity

Louis Grijalva
 Projects Development Administrator
 City of Las Cruces
 P.O. Box 20000
 Las Cruces, New Mexico 88004
 Office: 575-528-3479
 E-mail: lhg@las-cruces.org

23. Amendment.

This Agreement shall not be altered, modified, supplemented, 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: _____
Kathryn E. Bender, Deputy Secretary
Programs & Infrastructure

Date: _____

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

By: Gynetha A. Chert
Assistant General Counsel

Date: 3-13-14

CITY OF LAS CRUCES

By: _____
City Manager

Date: _____

ATTEST

By: _____
Clerk

Date: _____

Approved as to form and legal sufficiency by the State's Attorney

By: _____
Attorney

Date: _____

Preliminary Engineering/Construction Engineering

1. The Public Entity may select design consultants for studies and preliminary engineering and construction engineering. The selection procedures shall be in accordance with 23 CFR Part 172 and the New Mexico Procurement Code, NMSA 1978, Section 13-1-28 et seq. If the Public Entity is a Home Rule Entity, its Procurement Code shall be followed.
2. On occasion, state funds are used for the design of a federal aid construction project. Stand-alone projects funded with these monies, such as Municipal Arterial Program, Severance Tax, or General Fund are normally certification projects that require minimal oversight by the Department. If state funds are used for preliminary engineering for a federal aid construction project, the associated Request for Proposals and Architectural/Engineering Contracts must follow the same procedures as if federal funds were being used.
3. Engineering consultants shall prepare a final fee estimate of any work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. They shall keep this on file for five years.
4. Requests for Proposals (RFP) for federally funded professional engineering services shall be reviewed by the Department's South Region T/LPA Coordinator before the Public Entity may advertise the procurement. After concurrence, the Public Entity can advertise the RFP and can enter into a contract with the consultant pursuant to the Department's Consultant Services Procedures Manual or the Public Entity's own procedures as long as those comply with 23 CFR Part 172. If the Public Entity uses its own funds for design or construction engineering, no approvals for the consultant selection or process are required.
5. Reimbursements to the Public Entity for preliminary engineering or construction engineering will be made in accordance with reimbursement provisions of this Agreement, and based upon appropriate, timely submittals by the Public Entity and compliance with this **Appendix A**. Costs incurred prior to execution of this Agreement are generally ineligible for reimbursement but maybe eligible with additional justification pursuant to 23 CFR Part 1.9.
6. The Public Entity's Project Manager shall keep the Department's South Region T/LPA Coordinator apprised of the progress of Design Work under this Agreement and any important issues in a timely manner.
7. The Public Entity shall invite the FHWA Area Engineer and the Department's South Region T/LPA Coordinator and District T/LPA Coordinator to participate in any design reviews, project development conference or any related partnering meetings.

Location Corridor Study Guidelines

The Public Entity shall:

1. Be responsible for the Location Corridor Study, preliminary design, environmental documentation, and preliminary right of way activities.
2. Comply with the Department's Location Study Procedures, as follows:
 - a. **Phase A – Initial Corridor Study**
Determine the need for the project, define the full range of viable alternates, identify social, economic, environmental constraints, and select the most practical alignments for further study.
 - b. **Phase B – Detailed Alternative Evaluation**
Refine alternate alignments and generate feasible designs for each alternate at a conceptual level and provide adequate detailed information to serve as a basis for the preparation of the environmental documentation and the selection of the final alternate.
 - c. **Phase C – Environmental Documentation**
Complete the environmental documentation process, subsequent circulation and public hearing procedures in accordance with the action plan and federal requirements.
3. Initiate and ensure the reports detailed in Paragraph 2 above are prepared and accepted by FHWA as part of its deliverables under this Agreement.
4. Require its Engineering Consultant to prepare a final fee estimate of the work to be performed, indicating each element or task with estimated personnel-hours and associated unit costs. The Public Entity shall keep this on file for a minimum of five years.
5. Secure the Department's concurrence of the reports detailed in Paragraph 2 above. The Department may assist the Public Entity by transmitting reports to the FHWA, but the Public Entity is responsible for completing all studies with its own employees or consultants.

Design Standards

1. Roadway Projects (paving, landscaping, parking lots, etc.)

- a. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, United States Access Board *Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way* a.k.a. Public Right-of-Way Accessibility Guidelines (PROWAG) section 300R.
- b. New construction or reconstruction of pavement shall have, at a minimum, a 20-year-life. Rehabilitation of pavement shall have, at a minimum, a 10-year-life.
- c. The Department's current Standard Specifications for Highway and Bridge Construction, current edition applicable at the time this Agreement is executed, shall be used for this Project, including any Special Provisions and Supplemental Specification(s) issued to that edition.
- d. The following documents listed below shall be used as a minimum, for the design of this Project and for projects on the State Highway System or the National Highway System. With prior approval from the T/LPA Region Coordinator, standards different from NMDOT may be used on Public Entity facilities. Public Entity shall use the latest edition, current as of the date this Agreement is executed, unless otherwise specified below:
 1. FHWA Manual on Uniform Traffic Control Devices;
 2. American Association of State Highway and Transportation Officials (AASHTO), A Policy on Geometric Design of Highways and Streets;
 3. AASHTO Guide for the Development of Bicycle Facilities;
 4. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways;
 5. Department's Urban Drainage Design Criteria;
 6. Department's Geotechnical Manual;
 7. Department's Tribal/Local Public Agency Handbook;
 8. Department's Hazardous Materials Assessment Handbook;
 9. Department's Location Study Procedures;
 10. Department's Right of Way Handbook;
 11. Department's Right of Way Mapping Development Procedures;
 12. AASHTO Guide to Design of Pavement Structures;
 13. Public Right-of-Way Accessibility Guidelines (PROWAG); and,
 14. Department's New Mexico State Access Management Manual (SAMM).

2. Architectural Projects (Transportation Related Buildings, etc.)

- a. Project design shall comply with all federal and state laws and regulations, including but not limited to the Americans with Disabilities Act, the Americans with Disabilities Accessibility Guidelines, and NMSA 1978 Sections 67-3-62 and 67-3-64.
- b. New construction or reconstruction of structure(s) or artwork shall have, at a minimum, a 20-year-life. Rehabilitation of structure(s) or artwork shall have, at a minimum, a 10-year-life.
- c. The Local International Building Code, electrical code, plumbing code or federal or state codes shall be used, as applicable, for design, construction or rehabilitation project(s).
- d. The following documents shall be used, as a minimum, in the design of this Project and for architectural projects, transportation related buildings, associated with the State Highway System or the National Highway System. Current New Mexico APWA or the Public Entity standards may be used on Public Entity facilities. The Public Entity shall use the latest edition, current as of the date this Agreement is executed, unless otherwise specified below:

1. FHWA Manual on Uniform Traffic Control Devices;
2. AASHTO, A Policy on Geometric Design of Highways and Streets;
3. AASHTO Guide for the Development of Bicycle Facilities;
4. Department's Regulations for Driveway and Median Openings on Non-Access Controlled Highways;
5. Department's Urban Drainage Design Criteria;
6. Department's Geotechnical Manual;
7. Department's Hazardous Materials Assessment Handbook;
8. Department's Location Study Procedures;
9. Department's Right of Way Handbooks;
10. Department's Right of Way Mapping Development Procedures;
11. AASHTO Guide to Design of Pavement Structures;
12. New Mexico Commercial Building Code;
13. New Mexico Plumbing Code;
14. New Mexico Mechanical Code;
15. New Mexico Electrical Code;
16. U.S. Department of Interior, National Park Service Preservation Assistance Division, Standards for Rehabilitation and Guidelines for Rehabilitation Historic Buildings;
17. Public Right-of-Way Accessibility Guidelines (PROWAG); and,
18. Department's New Mexico State Access Management Manual (SAMM).

Survey and Right of Way Acquisition Requirements

1. All Department right of way handbooks, including particularly Volume VII of the Right of Way Handbook and the Tribal/Local Public Agency (T/LPA) Handbook, shall be adhered to for all right of way operations, including title search, property survey, right of way mapping, appraisal, appraisal review, acquisition (including donations), relocation, and right of way certification.
2. *ONLY QUALIFIED PERSONNEL MAY UNDERTAKE RIGHT OF WAY FUNCTIONS.* Non-compliance with state, federal and/or Uniform Standards of Professional Appraisal Practice (USPAP) requirements may result in the Project being deemed ineligible for federal funds.
3. The Public Entity must provide the Department's South Region T/LPA Coordinator a progress schedule for Right of Way and Survey activities.
4. All right of way surveying, mapping, and monumentation shall be performed by a licensed professional surveyor experienced in right of way projects and shall conform with the current, Minimum Standards for Surveying in New Mexico adopted by the New Mexico State Board of Registration for Professional Engineers and Surveyors, as provided in NMSA 1978, Sections 61-23-1 to 61-23-32.
5. Right of way surveying, mapping, and monumentation shall be performed in accordance with the Department's Surveying Manual, the Right of Way Mapping Development Procedures, latest edition, and subsequent Department guidelines, policies, and procedures.
6. Right of way maps and documents must be 100% complete to be eligible for reimbursement. Information, additional guidance, and early technical assistance can be obtained from the Department's South Region T/LPA Coordinator.
7. Title reports shall be obtained and prepared to meet Department format and standards for all affected right of way parcels. Title reports shall be submitted to the Department's South Region T/LPA Coordinator for review by the ROW Bureau prior to the final right of way map submittal and shall be certified by the Public Entity as complying with the Right of Way Handbook, Volume VII the applicable sections of the T/LPA Handbook, and other state and federal requirements.
8. All real property appraisals shall be developed and reported in accordance with the right of way regulations, policies, and procedures of the Department, and the USPAP and where federal funds are involved, 49 CFR Parts 103 and 104. All appraisal and appraisal review actions are subject to Department and FHWA review.
9. Before the initiation of negotiations, the Public Entity shall, through a proper appraisal, establish an amount which it believes is just compensation for the real property to be acquired. The Public Entity shall not utilize the same individual/firm to conduct both the appraisals and the appraisal reviews. Upon the completion of the acquisition function, the Public Entity shall inform the Department's South Region T/LPA Coordinator and schedule an on-site review of the work. The Department will review the work to render an opinion as to the apparent conformance of the Public Entity's work with federal and state statutes and regulations (see Right of Way Acceptance Plan). In the event that a significant amount of the work is found to be unacceptable, during acquisition or any other right of way process, no concurrence of the Public Entity's right of way certification will be issued for the Project until the Department is satisfied that the work meets the requirements.
10. The Public Entity shall maintain all records and documents relating to the right of way acquisition for a minimum of five years and shall record all transfer of ownership documents with the Public Entity Clerk.

11. Department and FHWA personnel shall be provided access to project right of way files upon reasonable notice.
12. The Public Entity shall furnish the Department's South Region T/LPA Coordinator with a written right of way certification stating that Public Entity performed the right of way acquisition and relocations, if applicable, in compliance with federal and state laws and regulations. Right of Way Certifications will be considered by the Right of Way Bureau and the FHWA. Conditional certification of necessary right of way acquisition and relocations, if applicable, will not be accepted.

Certification of Pre-Construction Phase

Control No. LC00130

I, _____, in my capacity as _____ of _____ do hereby certify with reference to the aforementioned

Project Control Number as follows:

1. That the State has complied with all applicable terms, conditions and certification requirements of this Agreement.
2. That the State has completed environmental coordination and obtained Department and FHWA approval of the Environmental, Right of Way, Utility, Railroad, and ITS documents and completed the consultation process with the State Historic Preservation Officer as required by law. Furthermore, the State has complied with Section Four of the Agreement.

CITY OF LAS CRUCES

By: _____ Date: _____
Mayor or designee

When complete, please send APPENDIX to:

Jessica Hunter, P.E., Project Development Engineer
NMDOT South Region Design
750 N. Solano Drive
Las Cruces, New Mexico 88001

Title VI Nondiscrimination Assurances for FHWA Recipients

The _____ (Title of Recipient) ("Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (the Federal Highway Administration), it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 ("Act"), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations (CFR), Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures ("Regulations") and other pertinent nondiscrimination authorities and directives, to the end that in accordance with the Act, Regulations, and other pertinent nondiscrimination authorities and directives, no person in the United States shall, on the grounds of race color, or national origin, sex (23 USC 324), age (42 USC 6101), disability/handicap (29 USC 790) and low income (Executive Order 12898) be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Recipient receives Federal financial assistance from the U.S. Department of Transportation, including the Federal Highway Administration, and HEREBY GIVES ASSURANCE THAT it will promptly take any measures necessary to effectuate this Agreement. This assurance is required by 49 CFR subsection 21.7(a)(1) and 23 CFR section 200.9(a) (1).

More specifically and without limiting the above general assurance, the Recipient gives the following specific assurances with respect to its (Name of Appropriate Program):

1. That the Recipient agrees that each "program" and each "facility" as defined in 49 CFR subsections 21.23(e) and (b) and 23 CFR 200.5(k) and (g) of the Regulations, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the Regulations.
2. That the Recipient shall insert the following notification in all solicitations for bids for work or material subject to the Regulations and made in connection with all (Name of Appropriate Program) and, in adapted form in all proposals for negotiated agreements:

The (Recipient), in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office the Secretary, Part 21, Nondiscrimination in Federally - assisted programs of the U.S. Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes, issued pursuant to such Acts, hereby notifies all bidders that it will affirmatively insure that in any contact entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, sex, age, disability/handicap and low income in consideration for an award.

3. That the Recipient shall insert the clauses of **Appendix F** of this assurance in every contract subject to the Acts and the Regulations.

4. That the Recipient shall insert the clauses of **Appendix F** of this assurance, as a covenant running with the land, in any deed from the United States effecting a transfer of real property, structures, or improvements thereon, or interest therein.
5. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the assurance shall extend to the entire facility and facilities operated in connection therewith.
6. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the assurance shall extend to rights to space on, over or under such property.
7. That the Recipient shall include the appropriate clauses set forth in **Appendix F** of this assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the Recipient with other parties: (a) for the subsequent transfer of real property acquired or improved under (Name of Appropriate Program); and (b) for the construction or use of or access to space on, over or under real property acquired, or improved under (Name of Appropriate Program).
8. That this assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property or interest therein or structures or improvements thereon, in which case the assurance obligates the Recipient or any transferee for the longer of the following periods: (a) the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or (b) the period during which the Recipient retains ownership or possession of the property.
9. The Recipient shall provide for such methods of administration for the program as are found by the Secretary of the U.S. Department of Transportation or the official to whom he delegates specific authority to give reasonable guarantee that it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Act, the Regulations and this assurance.
10. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Act, the Regulations, and this assurance.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Recipient Department of Transportation under the (Name of Appropriate Program) and is binding on it, other recipients, subgrantees, contractors, subcontractors, transferees, successors in interest and other participants in the (Name of Appropriate Program). The person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Recipient.

Date: _____ Project Control Number: LC00130
Recipient Name: City of Las Cruces
Signature of Authorized Official: _____
Print Name: _____ Title: _____
Phone: _____ E-mail: _____

This Appendix should be signed and mailed to the following:
New Mexico Department of Transportation
OEOP
Aspen Plaza, Suite 201
1596 Pacheco Street
Santa Fe, New Mexico 87505
Phone: 1-800-544-0936 or 505-827-1774
Fax: 505-827-1779

During the performance of this Agreement, the Public Entity, for itself, its assignees and successors in interest ("contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor shall comply with the Regulation relative to nondiscrimination in Federally-assisted programs of the U.S. Department of Transportation ("USDOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration ("FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, ("Regulations"), which are incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The contractor, with regard to the work performed by it under this Agreement, shall not discriminate on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by 49 CFR section 21.5 of the Regulations, including employment practices when the Agreement covers a program set forth in Appendix B of the Regulations.
3. **Solicitations for Subcontractors, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, or national origin, sex, age, and disability/handicap and low income.
4. **Information and Reports:** The contractor shall provide all information and reports required by the Regulations or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the (Recipient) or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information the contractor shall so certify to the (Recipient), or the FHWA as appropriate, and shall set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the (Recipient) shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding of payments to the contractor under the contract until the contractor complies, and/or
 - b. cancellation, termination or suspension of the contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (1) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The contractor shall take such action with respect to any subcontract or procurement as the (Recipient) or the FHWA may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the (Recipient) to enter into such litigation to protect the interests of the (Recipient), and, in addition, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The following clauses shall be included in any and all deeds effecting or recording the transfer of real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that the (Name of Recipient) will accept title to the lands and maintain the project constructed thereon, in accordance with (Name of Appropriate Legislative Authority), the Regulations for the Administration of (Name of Appropriate Program) and the policies and procedures prescribed by FHWA, also in accordance with and in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation and Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes (hereinafter referred to as the Regulations) pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the (Name of Recipient) all the right, title and interest of the Department of Transportation in and to said lands described in Exhibit "___" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto (Name of Recipient) and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on the (Name of Recipient), its successors and assigns.

The _____ (Name of Recipient), in consideration or the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person shall on the grounds of race, color, or national origin, sex, age, and disability/handicap, and low income be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on over or under such lands hereby conveyed (2) that the _____ (Name of Recipient) shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended and (3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the Department shall have a right to re-enter said lands and facilities on said land, and the above described land and facilities shall thereon revert to and vest in and become the absolute property of the Department of Transportation and its assigns as such interest existed prior to this instruction. *

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

The following clauses shall be included in all deeds, licenses, leases, permits, or similar instruments entered into by the _____ (Name of Recipient) pursuant to the provisions of Assurance 7(a).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, _____ (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [licenses, lease, permit, etc.] had never been made or issued.

[Include in deed.]*

That in the event of breach of any of the above nondiscrimination covenants, _____ (Name of Recipient) shall have the right to re-enter said lands and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of _____ (Name of Recipient) and its assigns.

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by _____ (Name of Recipient) pursuant to the provisions of Assurance 7(b).

The (grantee, licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, sex, age, disability/handicap, and low income shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the ground of, race, color, or national origin sex, age, disability/handicap, and low income shall be excluded from participation in, denied the benefits of, or be otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) shall use the premises in _____

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations. Department of Transportation, Subtitle A, Office of the Secretary. Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, Title 23 Code of Federal Regulations, Part 200, Title VI Program and Related Statutes – Implementation and Review Procedures, and as said Regulations may be amended.

[Include in licenses, leases, permits, etc.]*

That in the event of breach of any of the above nondiscrimination covenants, _____ (Name of Recipient) shall have the right to terminate the [license, lease, permit, etc.] and to re-enter and repossess said land and the facilities thereon, and hold the same as if said [license, lease, permit, etc.] had never been made or issued.

[Include in deeds]*

That in the event of breach of any of the above nondiscrimination covenants, _____ (Name of Recipient) shall have the right to re-enter said land and facilities thereon, and the above described lands and facilities shall thereupon revert to and vest in and become the absolute property of _____ (Name of Recipient) and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

Lighting and/or Highway Lighting

If the Project involves lighting and/or highway lighting, the Public Entity shall:

1. Provide at its own expense, all electrical energy, routine maintenance such as bulb and/or luminaire replacement, and in case of accidental damage or vandalism to poles or fixtures, replace them with the same brand or equivalent for continued satisfactory operation of said subject lighting system.
2. Service and maintain the lighting system with its own funds.

If the project involves highway lighting, the lighting improvements and services required to be provided under this Agreement shall remain the full responsibility of the Public Entity. The roadway shall remain part of the State Highway System. The Department shall maintain ownership over the state or federal route and shall maintain the route with its own funds.

Signal(s) and/or Highway Signal(s)

If the Project involves signal(s) and/or highway signal(s), the Public Entity shall plan to provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage, vandalism or equipment failure and make any repairs necessary due to accidental damage or vandalism to, or equipment failure of, the signal head, poles, conduits and wiring.

In addition, the Public Entity shall plan to:

1. Provide for equipment shut down/or emergency traffic control in the event of accidental damage or equipment failure.
2. Maintain the signal controller and control equipment (the "controller"), at its own expense, including maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the controller in the event the controller and/or cabinet is damaged or there is an equipment failure.
3. After the installation of the roadway signal system, if any, provide any and all utilities, maintenance, and such other items as may be necessary for continued satisfactory operation of the subject signal system.
4. Make all timing adjustments to the signal control equipment and review the signal system(s) for efficient and satisfactory operation.
5. Obtain approval from the Department for all signal equipment prior to installation.
6. Ensure the Project construction contractor is required by contract to name the Department and the Public Entity as an additional insured in the construction contractor's general liability policy.
7. Maintain the signal system and all facilities constructed with its own funds.

Signal improvements and services required under this Agreement shall remain the responsibility of the Public Entity. If the Project involves highway signals, the signal system, improvements and services required under this Agreement shall remain the full responsibility of the Public Entity.

**CERTIFICATION OF COOPERATIVE PROJECT AGREEMENT – DESIGN WORK
COMPLIANCE/COMPLETION**

I, _____, in my capacity as _____ of
_____ do hereby certify as follows:

That the State has complied with all the terms and conditions in the Agreement for

Control Number: LC00130

By: _____ Date: _____
Mayor or designee

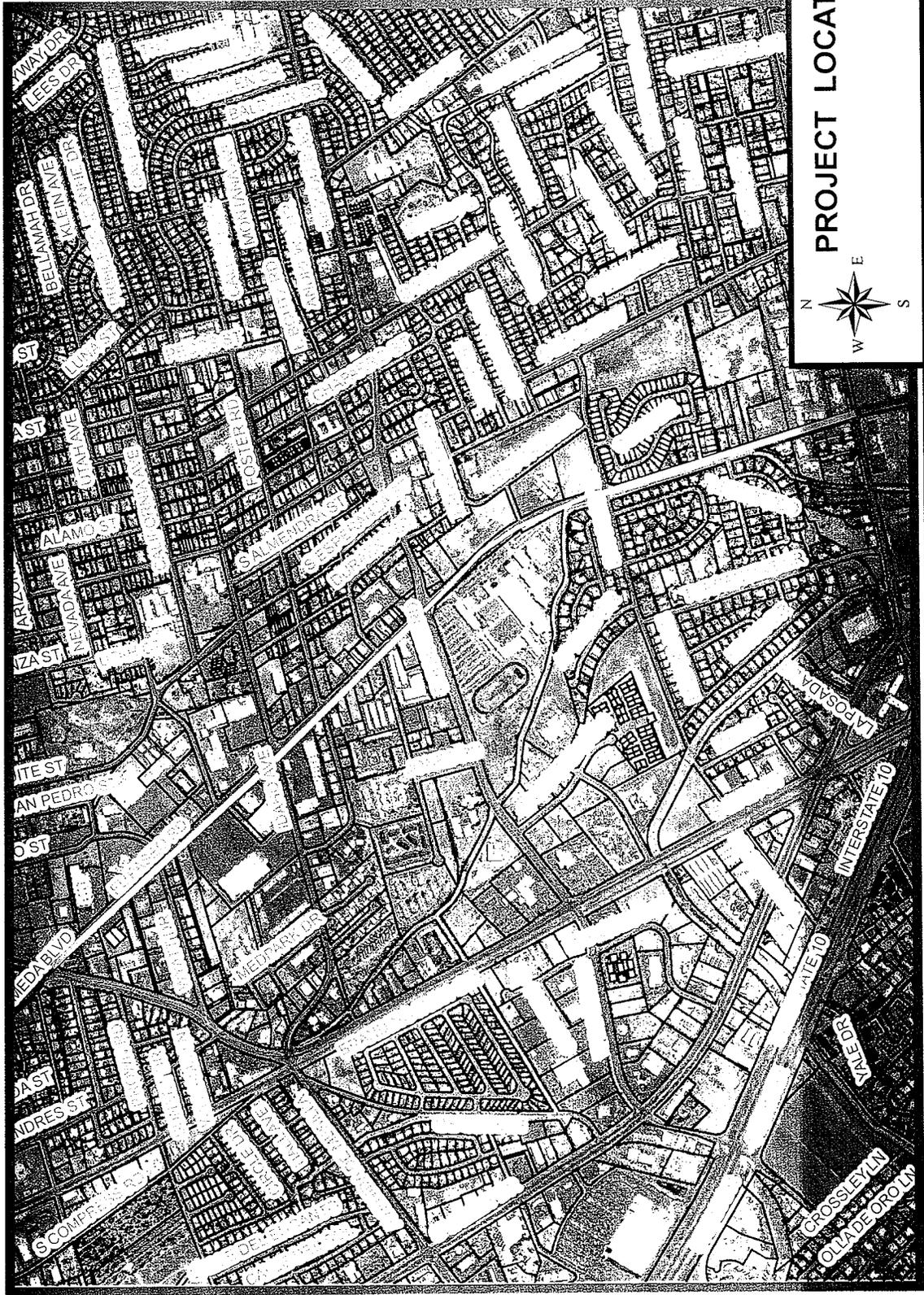
When completed, please send Certification to:

Jessica Hunter, P.E.
Project Development Engineer
New Mexico Department of Transportation
750 N. Solano Drive
Las Cruces, New Mexico 88001
Office: 575-525-7343

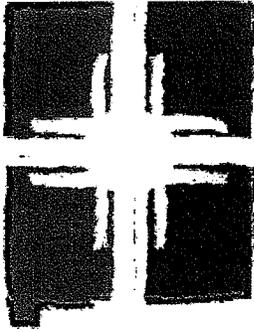
CITY OF LAS CRUCES
2013-14 Fiscal Year Budget

FUND	DIVISION		FUND TYPE	
State Street Improvement Grants Fund 4212	Public Works		Capital Project	
	2012-13 Projected	2013-14 Adopted	2013-14 Adjustment	2013-14 Amended
RESOURCES				
Beginning Balance	\$ 79,534	79,534		79,534
Revenues				
State Grants	1,267,983	880,205	30,500	910,705
Operating Transfers In	0	0		0
Total Revenues	<u>1,267,983</u>	<u>880,205</u>	<u>30,500</u>	<u>910,705</u>
TOTAL RESOURCES	<u>\$ 1,347,517</u>	<u>959,739</u>	<u>30,500</u>	<u>990,239</u>
Expenditures				
Public Works	0	0		0
14315 - El Paseo Safety Improvements	0	0	30,500	30,500
70M31 - El Paseo Medians	0	40,663		40,663
70P20 - Outfall Channel Trail	188,100	0		0
70W01 - Main St Rehab Stp-9991-2	869,865	299,738		299,738
70Y03 - Telshor Ada Improvements	0	39,804		39,804
70Z03 - Amador Ave 17Th To Motel Blvd	210,018	0		0
30120 - Safe Routes to School FY 14	0	500,000		500,000
Operating Transfers Out	0	0		0
Total Expenditures	<u>\$ 1,267,983</u>	<u>880,205</u>	<u>30,500</u>	<u>910,705</u>
Accrual Adjustments	0	0	0	0
ENDING BALANCE	<u>\$ 79,534</u>	<u>79,534</u>	<u>0</u>	<u>79,534</u>

EL PASEO ROAD SAFETY PROJECT



PROJECT LOCATION



New Mexico DEPARTMENT OF
TRANSPORTATION

MOBILITY FOR EVERYONE

Memorandum

Date: May 21, 2013

From: Steve Eagan, P.E., Safety Project Engineer, for:

Afshin Jian, P.E., State Traffic Engineer, NMDOT, Traffic Tech. Support Bureau
NM Highway Safety Improvement Program (HSIP)

To: MPO or RPO or NMDOT Agency recipient:

Subject: Approved HSIP Safety Project, Las Cruces MPO, City of Las Cruces
Lead, El Paseo Rd Corridor, Various Locations, Las Cruces, Intersection Improvements

The subject safety project that you have submitted has been approved for programming, funding and implementation according to the attached NM HSIP Safety Project Definition Form for Approved Project. On April 12, 2013 the NMDOT General Office Safety Project Selection Committee met and recommended the subject project for approval, and subsequently, after further review, the FHWA NM Division Office concurred in the funding of the proposed project.

This form is being sent to Rebecca Maes of the NMDOT STIP Management Unit, requesting that this approved safety project be programmed into the designated Program Year of the STIP as a STIP amendment, and, if a metropolitan area project, into the appropriate metropolitan area TIP as a TIP amendment. Also this is a request to the NMDOT STIP Management Unit that the subject project's lead agency be provided with a Control Number and Project Number so that they can begin the project development and implementation phase. Also, it is acknowledged that the STIP Management Unit will fill in the Production Date and Letting Date data fields in the form for their recordkeeping purposes at a later time when those dates have been determined.

This form is also being sent to the appropriate NMDOT General Office Planning Liaison staff, for their information.

If this is a local government lead agency project this notice is also being sent to the NMDOT Local Government Agreement Unit so that the process can begin for the local

government lead agency to apply and complete a local government agreement with NMDOT.

If the initially listed Fiscal Year located in the "STIP Year" field on this attached NM HSIP Safety Project Definition Form for Approved Project is incorrect please provide Rebecca Maes of the NMDOT STIP Management Unit your best estimate of a project development schedule incorporating the needs of the project to perform preliminary and final design, acquire right-of-way, achieve environment clearances and other project permits, and perform construction. This is needed to establish the correct STIP Program Year (FY 2013, FY 2014 or FY2015) for an appropriate STIP amendment. Her contact information is: Rebecca.sena@state.nm.us and Phone: (505) 476-3785.

If you are a tribal government or local government lead agency, you will also have to work with Kimberly Wildharber, Contract Manager with the NMDOT Local Government Agreement Unit, to develop and complete an executed legal agreement between your agency and NMDOT to implement this federally funded safety project. Her contact information is: Kimberly.Wildharber@state.nm.us and Phone: 505-827-5309.

If you have any questions, contact Safety Project Engineer Steve Eagan at steve.eagan@state.nm.us or by office phone at (505) 476-3545.