

# City of Las Cruces<sup>®</sup>

PEOPLE HELPING PEOPLE

## Council Action and Executive Summary

Item # 11 Ordinance/Resolution # 15-079

For Meeting of \_\_\_\_\_ For Meeting of November 3, 2014  
 (Ordinance First Reading Date) (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 CONSTRUCTION OF THE LA LLORONA TRAIL IMPROVEMENTS PROJECT IN THE AMOUNT OF \$384,480.00, WITH A REQUIRED MATCH AMOUNT OF \$65,520.00 AND TO AMEND FISCAL YEAR 2014/2015 BUDGET.

### PURPOSE(S) OF ACTION:

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

<b>COUNCIL DISTRICT:</b> 4		
<b><u>Drafter/Staff Contact:</u></b> S. Nicole Williams	<b><u>Department/Section:</u></b> Financial Services/Grants	<b><u>Phone:</u></b> 541-2716
<b><u>City Manager Signature:</u></b>		

### BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Transportation Alternative Program (TAP) is a new federal program authorized under Section 1122 of the most recent Federal Transportation Funding Act, Moving Ahead for Progress in the 21<sup>st</sup> Century (MAP-21). Funding for the TAP is derived from several programs and encompasses most of the activities previously funded under Transportation Enhancements (TE), Recreational Trails Program (RTP), and the Safe Routes to School (SRTS) Program of the previous Federal Transportation Bill, SAFETEA-LU.

The TAP funding is being allocated through the Metropolitan Planning Organizations (MPOs) and Regional Planning Organizations (RPOs) in New Mexico. The Mesilla Valley Metropolitan Planning Organization (MVMPO) staff scored all applications according to the TAP application requirements. The scores were submitted to the Bicycle and Pedestrian Advisory Committee, as well as the Technical Advisory Committee for their recommendations on which applications should move forward for final approval.

MVMPO staff submitted the La Llorona Trail Improvements Project and the MVMPO Policy Committee approved the project to be considered for the TAP funding for Federal Fiscal Year 2013/2014. On October 7, 2013, City Council approved Resolution 14-062 that completed the TAP application process.

The project will consist of reconstructing 1.1 miles of the existing trail from La Llorona Park north to the Las Cruces Outfall Channel Trail. The existing gravel trail surface will be removed and replaced with permeable durable surface that will allow the storm water to recharge the water table adjacent to the trail. The project will provide the users with a more skid-resistant surface and will reduce future maintenance costs. The project will also include additional trail amenities like benches and dog waste stations. The estimated construction cost is \$465,000.

Recently, the City has been offered \$384,480.00 from the NMDOT, Transportation Alternative Program to complete the project (see letter from NMDOT, dated July 28, 2014, Attachment "B"). The City is required to fund any difference in the total NMDOT project grant and the total construction cost. Acceptance of this grant will supplement a portion of the construction costs. This would require the City to contribute a 14.56% match of \$65,520.00 for the total project amount of \$450,000.00. The 14.56% match and the excess of the grant amount to construct the project will be funded through the Infrastructure and Rehabilitation Fund (4001).

At this time, staff recommends Las Cruces City Council accept the grant and ratify the City Manager's signature on the Cooperative Project Agreement with the NMDOT for the construction of the La Llorona Trail Improvements Project, CN: LC00180, in the amount of \$384,480.00, and to amend the Fiscal Year 2014/2015 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 July 28, 2014.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b>	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.	
<b>Does this action create any revenue?</b>	Yes	<input checked="" type="checkbox"/>	Funds will be deposited into this fund: 4212 in the amount of <u>\$384,480.00</u> for FY 15.
	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 construction of the La Llorona Trail 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	42806030-854121-70M33	\$384,480.00	\$384,480.00*	\$0.00	N/A
Infrastructure and Rehabilitation: 4001	40806060-854222-70M33	\$65,520.00	\$65,520.00*	\$0.00	N/A

\*Pending Budget Adjustment.

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Resolution accepting a grant and the cooperative project agreement from the NMDOT, Transportation Alternative Program, in the amount of \$384,480.00 for the La Llorona Trail Improvements Project and to amend the Fiscal Year 2014/2015 budget. A \$65,520.00 City match is required.
2. Vote "No"; this will reject the Resolution. The grant and the cooperative project agreement will not be accepted from NMDOT, Transportation Alternative Program.
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 NMDOT.

4. Vote to "Table"; this could impact the availability of the funding from 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 14-062.

RESOLUTION NO. 15-079

**A RESOLUTION APPROVING A COOPERATIVE PROJECT AGREEMENT AND ACCEPTING A GRANT FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT), FOR THE CONSTRUCTION OF THE LA LLORONA TRAIL IMPROVEMENTS PROJECT IN THE AMOUNT OF \$384,480.00, WITH A REQUIRED MATCH AMOUNT OF \$65,520.00 AND TO AMEND FISCAL YEAR 2014/2015 BUDGET.**

The City Council is informed that:

**WHEREAS**, the City of Las Cruces has been awarded grant funding in the amount of \$384,480.00 from the New Mexico Department of Transportation; and

**WHEREAS**, the City is required to contribute a 14.56% match of \$65,520.00 for the total project amount of \$450,000.00; and

**WHEREAS**, grant funding will be used for improvements to 1.1 miles of the existing trail from La Llorona Park north to the Las Cruces Outfall Channel Trail; and

**WHEREAS**, grant funding is authorized under Section 112 of the most recent Federal Transportation Funding Act, Moving Ahead for Progress in the 21st Century (MAP-21); and

**WHEREAS**, the period of performance for this funding is from September 17, 2014 through September 30, 2016.

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

**(I)**

**THAT** the City of Las Cruces is authorized to enter into a cooperative project agreement for grant funding in the amount of \$384,480.00 with the New Mexico Department of Transportation; as reflected in Exhibit "A", attached hereto and made part of this resolution.

(II)

THAT the City Manager's signature on the cooperative project agreement is hereby ratified.

(III)

THAT the City is required to contribute a 14.56% match of \$65,520.00 for the total project grant amount of \$450,000.00.

(IV)

THAT the City's FY 2015 adopted budget is adjusted as outlined in Exhibit "B" attached hereto and made part of this resolution.

(V)

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: \_\_\_\_\_

VOTE:

Mayor Miyagishima: \_\_\_\_\_

Councillor Silva: \_\_\_\_\_

Councillor Smith: \_\_\_\_\_

Councillor Pedroza: \_\_\_\_\_

Councillor Small: \_\_\_\_\_

Councillor Sorg: \_\_\_\_\_

Councillor Levatino: \_\_\_\_\_



Contract Number	<u>D14525</u>
Vendor Number	<u>0000054342</u>
Control Number	<u>LC00180</u>

## COOPERATIVE PROJECT AGREEMENT-CONSTRUCTION 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 a transportation project described in the Public Entity's Plans Specifications and Estimate Package (PS&E), the Project Identification Form (PIF) and the Statewide Transportation Improvement Program (STIP). The deliverables under this Agreement may be referred to as the "Construction Work" for the project, which is referred to interchangeably as "Project" or "Project Control No. LC00180." The Project is a joint and coordinated effort for which the Department and the Public Entity each have authority or jurisdiction. Additionally, the purpose of this Agreement is to ensure that the scope of work is maintained throughout the life of the Project.

### 2. Funding:

- a. The total funding for Project Control No. **LC00180**, is **Four Hundred Fifty Thousand Dollars and No Cents** (\$450,000) which will be shared by the Parties as follows:

- |   |                  |
|---|------------------|
| <b>1. <u>FY 2014 TRANSP. ALT FLEXIBLE (TAPF) Funds</u></b>  |                  |
| <b><u>Department's 85.44% share</u></b>   | \$211,608        |
| Transportation Alternative Program funding for Improvements to the Las Cruces Llorona Trail. La Llorona Trail – Picacho Ave. (La Llorona Park) to the Las Cruces Outfall Channel Trail ( 1.1 miles North of Picacho Ave. along the Rio Grande). (Description as per STIP database and Agreement Request Form, this agreement only pertains to the construction portion of Project Control No. LC00180.) |                  |
| <b>2. <u>City's matching 14.56% share</u></b>   | \$36,061         |
| For the purpose stated above.   |                  |
| <b>3. <u>Total FY 2014 TAPF Funds</u></b>   | <b>\$247,669</b> |
| <b>4. <u>FY 2014 TRANSP. ALT. SMALL URBAN (TAPS) Funds</u></b>  |                  |
| <b><u>Department's 85.44% share</u></b>   | \$172,872        |
| Transportation Alternative Program funding for Improvements to the Las Cruces Llorona Trail. La Llorona Trail – Picacho Ave. (La Llorona Park) to the Las Cruces Outfall  |                  |

Channel Trail ( 1.1 miles North of Picacho Ave. along the Rio Grande). (Description as per STIP database and Agreement Request Form, this agreement only pertains to the construction portion of Project Control No. LC00180.)

5. <b><u>City's matching 14.56% share</u></b>	\$29,459
For the purpose stated above.	
6. <b><u>Total FY 2014 TAPS Funds</u></b>	<b>\$202,331</b>
7. <b><u>The Total Project (Construction Work) Funding</u></b>	<b><u>\$450,000</u></b>

- b. **If current federal fiscal year funding is not obligated by September 30<sup>th</sup> of the current federal fiscal year, this Agreement shall terminate.** Should this occur the Public Entity shall be solely responsible for all termination costs. However, if prior federal fiscal year funding has been authorized, this Agreement will remain in effect. If the Public Entity cannot meet the federal fiscal year deadline, and the money is reprogrammed for the next fiscal year, this Agreement will remain in effect.
- c. The Public Entity shall pay all Project costs that exceed the total funding amount specified in this section and all costs determined to be ineligible for reimbursement under the terms of the listed funding sources.
- d. FHWA's obligation of federal funds shall be supported by a certified cost estimate based on the Public Entity's Engineer's Estimate (EE). The EE shall be submitted to the Department's South Region T/LPA Coordinator prior to the PS&E Review pursuant to 23 CFR Part 630B.
- e. After the project is advertised, bids shall be submitted in accordance with the advertisement for bids. The Public Entity will open sealed bids in accordance with the Public Entity established procurement procedures. The Department will review the Public Entity's determination of lowest responsive bid to determine if the amount of federal funds obligated by the FHWA requires adjustment pursuant to 23 CFR Part 630.106. The Public Entity's responsive low bid for the project, including approved alternates, will be compared to the amount obligated. The Department will allow a 15% increase over the base bid and any approved alternates to cover Engineering and Contingencies and Gross Receipts Tax. If the difference between the FHWA's obligation amount and the responsive low bid plus the 15% is within \$250,000, the amount of funds obligated will not change. If the difference between the obligation amount and the responsive low bid plus the 15% exceeds \$250,000, the difference will be deducted reducing the amount of funds obligated.
- f. The Public Entity may not add additional work to the Project after the construction contract has been let in order to take advantage of any savings that might result from the lowest responsible bid being lower than the projected cost used to set the obligation. State and Federal law do not allow additional work to be added to a project as a change order unless such work could not have been reasonably anticipated at the time of letting and such work is necessary to the completion of the project. If at any point in the construction, the Public Entity identifies Extra Work as defined by the Department's current specifications that may be justified for incorporation into the contract, this proposed work shall be reviewed by the Department (State Construction Engineer or Designee), which must concur prior to the commencement of the Extra Work.

### 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, 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. Only invoices for approved/undisputed work will be processed.

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. Final payment requests shall be submitted to the Department's District T/LPA Coordinator within thirty (30) calendar days of physical 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. Provide notice to the Department's **South** Region T/LPA Coordinator of the bid tabs and the lowest responsive bidder.
- d. Pay all costs, perform all labor and supply all material for the Project, or procure construction services to perform all labor and supply all materials for the Project.
- e. Identify a Project Manager who shall be the single point of contact for all communications to and from the Department.
- f. 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.
- g. Provide the written authorization received from the Department's South Region T/LPA Coordinator to the District T/LPA Coordinator prior to advertising the Project for bids or performing work with the Public Entity's personnel, equipment, and /or resources.
- h. Advertise, let, and supervise the construction of Project Control No. LC00180 using applicable federal, state or local requirements or procure services to accomplish these tasks.
- i. Ensure and maintain proof of compliance with 23 CFR Section 635.410 and ensure construction materials, including those associated with utility facilities and relocations, to be in accordance with "Buy America" requirements which require proof of origin and place of manufacture of iron and steel products and materials to be made in America. Additionally, ensure that this provision is included in all advertisement, construction and supply contracts at all tiers associated with the Project.
- j. Ensure construction of the Project complies 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, NMDOT Pedestrian Access Details, and NMSA 1978

- Sections 67-3-62 and 67-3-64. Additionally, ensure that this provision is included in all advertisement, construction and supply contracts at all tiers associated with the Project.
- k. If the Project will be built with Public Entity resources, prepare a detailed report of equipment and labor, including a project schedule, for submission to the Department's District T/LPA Coordinator. If Public Entity is not building the Project with Public Entity resources a detailed report is not required.
  - l. The Public Entity shall ensure that the contractor and all subcontractors register and enter all required data into B2Gnow and LCPtracker programs. Assistance can be obtained in this effort by contacting the Office of Equal Opportunity Programs ("OEOP") as identified in Section 11. The Public Entity shall verify all entries by the contractor and all subcontractors into the B2Gnow and LCPtracker programs. Failure by the Public Entity to adhere to this reporting provision may result in the Project being deemed ineligible for reimbursement.
  - m. Ensure construction activities comply with approved design, environmental commitments, right of way activities, utility coordination, and construction management and testing.
    1. Construction management, testing and inspection services may be eligible for reimbursement if the underlying procurement is consistent with federal aid funding and state procurement laws and regulations.
    2. The Public Entity's award of contracts for construction management testing or inspection services shall be independent and shall not be procured through the construction contractor.
  - n. Develop and execute the Project in accordance with the Department's current Specifications, Tribal/Local Public Agency Handbook, and the Construction Procedures Handbook for Federal Aid Local Government Lead Projects.
  - o. Comply with Appendix A, "Construction Phase Duties and Obligations," which is hereby incorporated in this Agreement, for construction projects.
  - p. Timely submit and receive all required environmental documentation and authorization for the construction phase to the Project. Copies of all approvals shall be provided to the District T/LPA Coordinator prior to construction.
  - q. Shall register with www.sam.gov and DUNS and provide such information to the Department as well as the total compensation and names of the Public Entity 2014's top five executives to comply with the Federal Funding Accountability and Transparency Act of 2006.
  - r. If the Public Entity has received a combined \$500k in Federal Funding, which under OMB Circular A-133 requires the Public Entity to have a single audit performed, the Public Entity must provide the Department a copy of the most recent completed audit report before the start of work.

**5. The Department Shall:**

- a. Assign the District T/LPA Coordinator as the representative to provide technical assistance to develop, monitor and oversee progress under this Agreement.
- b. Assign a T/LPA Construction Liaison Engineer to oversee the Project for Federal funding compliance.
- c. Timely process accepted requests for reimbursement.

**6. Both Parties Agree:**

Upon termination of this Agreement, the Public Entity shall account for any remaining property, materials or equipment that belongs to the Department, and dispose of it as directed by the Department.

**7. Project Responsibility:**

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

**8. Public Entity Sole Jurisdiction:**

Unless otherwise specified in this agreement the Department is not incorporating this Project into the State Highway System and ownership of the project shall remain 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 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; Disadvantaged Business Enterprise Program, 49 CFR Part 26; External Equal Opportunity/Contractor Compliance Program, including On-the-Job training requirements, 23 CFR Part 230; the Americans with Disabilities Act, 42 §§ 12101-12213 and 28 CFR Parts 35 and 36; 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.

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](http://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 subgrantee will be required to provide the total compensation and names of the subgrantee's top five executives, if applicable, and shall register with [www.sam.gov](http://www.sam.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. DBE Goal Setting – In accordance with 49 CFR Part 26, The Department establishes an overall state DBE goal tri-annually. In the event the Department assigns a project specific DBE goal, the Public Entity is required to meet that goal through its contractors or demonstrate good faith efforts. The Public Entity shall ensure that DBE provisions and goals are included in its invitations to bid and resulting contracts. DBE payment and utilization information shall be tracked through the B2Gnow software.
- b. Record Keeping Responsibilities – The Public Entity shall appoint a DBE liaison officer and assure that its officer completes and submits required Program forms and information to the Department's Office of Equal Opportunity Programs (OEOP). The OEOP can be contacted as follows:

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

- c. Sanctions – Compliance with the DBE provisions is mandatory. Failure to comply will be treated as a violation of this Agreement. Furthermore, if the Public Entity fails to comply with the DBE provisions, the Department may impose sanctions as provided in 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. § 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801, et seq.).
- d. Required Contract Assurance: Each contract Department signs with the Public Entity Contractor and each subcontract the Public Entity Contractor signs with a contractor or subcontractor must include the following assurance: “The contractor, sub-recipient or subcontractor 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 USDOT-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 NMDOT deems appropriate.
- e. Provision of DBE Program Information: The Public Entity contractor shall provide any DBE related information or data to the District’s 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 construction contractor, 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 C**.
- b. The Public Entity shall sign and submit the attached **Appendix C (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances)** to the Department’s Office of Equal Opportunity Programs as identified within the Appendix. By signing **Appendix C**, 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 recipients to sign and submit the attached **Appendix C (Equal Employment Opportunity (EEO) and Title VI Program Recipient Assurances)** to the Department’s Office of Equal Opportunity Programs as identified within the Appendix for each contract the Public Entity enters into with a construction contractor, design consultant, other consultant or recipient on a USDOT-assisted project, and any subcontract thereto.

#### 13. Third Party Beneficiary:

No provision of this Agreement creates in the public, or any member thereof, a third-party beneficiary nor authorizes anyone not a party to the Agreement to maintain a suit(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.

The Department will not be a party to any claim between Public Entity and their designated contractor or subcontractor at any tier. The Public Entity shall solely defend any claim brought against the Department as a result of the Project.

**14. New Mexico Tort Claims Act:**

No provision of this Agreement establishes any waiver of immunity from liability for alleged tortious conduct of any employee of the Department or the Public Entity arising from the performance of this Agreement apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, §§ 41-4-1, et seq.

**15. Office of Inspector General Reviews:**

The Public Entity shall provide to all bidders the reporting and oversight requirements that they are bound to from the time of bid submission. The following provisions must be included in all prime contracts, subcontracts, and other contracts 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), dated June 2006, has the authority to carry out all duties required. The duties 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 years after completion. Project files should be kept in accordance with the Department's "Office Procedures Manual" current edition. 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:**

This Agreement shall terminate on **September 30, 2016**. Neither party shall have any obligation after said date unless otherwise provided in this agreement.

- a. The Department may terminate this Agreement if the funds identified in Section Two have not been contractually committed between the Public Entity and a contractor.

- 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 three (3) months.
- c. If the Department determines a project to be inactive, the Department may, as directed by FHWA, redirect the unexpended balance pursuant to 23 CFR Part 630.106.
- d. 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**

Kimberley Fetherlin  
 Engineer Coordinator  
 New Mexico Department of Transportation  
 750 N. Solano Drive  
 Las Cruces, New Mexico 88001  
 Office: 575-525-7343  
 E-mail: Kimberley.Fetherlin@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.

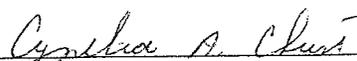
In witness whereof, the Parties have set their hands and seal the day and year set forth below.

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By:   
Cabinet Secretary or Designee

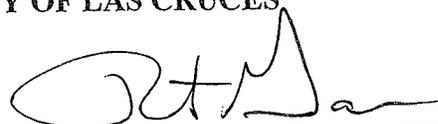
Date: 8/22/14

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

By:   
Assistant General Counsel

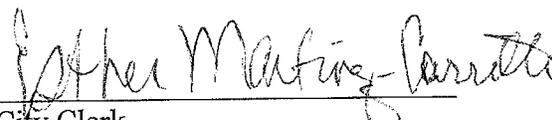
Date: 7-28-14

**CITY OF LAS CRUCES**

By:   
City Manager

Date: 8-15-14

**ATTEST**

By:   
City Clerk

Date: 8-15-14

**APPROVED AS TO FORM BY THE City ATTORNEY**

By:   
City Attorney

Date: 08/13/14

**Construction Phase Duties and Obligations**

1. The Public Entity shall be responsible for all construction engineering; including project supervision, surveying, inspection, and testing. The Public Entity shall comply with the current edition of the Department's Specifications, Construction Procedures Handbook for Federal-Aid Local Government Projects, the New Mexico Transportation Departments Office Procedures Manual, and the Department's Tribal/Local Public Agency Handbook.
2. Mix designs, price reduction guidelines, daily production, and test reports shall be pursuant to the Department's or the Public Entity's established procedures as approved by the Department, depending on the governing specifications. The American Standard Testing Method equivalents of the American Association of State Highway and Transportation Officials test methods are acceptable. Technician and Training Certification Program (TTCP) procedures are acceptable.
3. The Department's Minimum Acceptance Testing requirements, as identified in the Department's Construction Procedures Handbook for Federal Aid Local Government Projects shall be adhered to.
  - a. The Public Entity's lab personnel or consultant may perform project acceptance testing of materials in accordance with the Public Entity's procedures and requirements, if approved by the Department. All test reports shall be available for review by the Department and FHWA (if applicable).
  - b. Independent assurance testing is required and is the sole responsibility of the Public Entity and shall be done by an independent lab not responsible for acceptance testing. Periodic independent assurance testing may be conducted by the Department's District personnel to ensure material and construction compliance.
  - c. The Department maintains a listing of pre-approved independent testing assurance labs, which may be used by the Public Entity or the Public Entity's consultant for independent assurance testing, aggregate source acceptance, and concrete mix designs, relative to equipment and procedures used by the Public Entity and/or their consultant.
  - d. The Public Entity's Engineer or the Public Entity's consultant shall certify that all materials incorporated into the project meet or exceed the specification requirements, The Minimum Acceptance Requirements are available on the Department's external website.
  - e. All personnel doing sampling and testing for Acceptance/Independent Assurance on federally funded projects shall have current certifications by the Technical Training and Certificate Program.
5. The Public Entity Engineer or Public Entity consultant shall certify with each reimbursement request that the Certificates of Compliance are on file with the Public Entity Engineer's Office and Public Entity consultant's office, for products and materials incorporated into the Project and for the quantities shown on the progress payment estimate. The Department may periodically conduct an audit of the Certificates of Compliance pursuant to Section 106.4 of the Department's Standard Specifications. Department personnel may occasionally check the Public Entity's procedures for handling of all Certificates of Compliance.
6. The Public Entity Engineer or Public Entity consultant shall certify with each reimbursement request that the items shown on the estimate have been completed and accepted in accordance with the contract requirements.
7. The Department may periodically audit the Public Entity's source documents for each project. The Department's established guidelines shall be used to prepare the Source Document Books.

Department or FHWA (if applicable) personnel may periodically review the Public Entity's procedures for documentation.

8. Change Orders:
  - a. Changes to conform to the field conditions may be warranted; however, these changes shall be discussed with and approved by the Department prior to implementation, in accordance with the Department's Change Order Procedures. The change order shall be submitted soon thereafter to the Project Manager. All decreases/increases shall be documented on factor sheets, which may be obtained from the Department and attached to the change order. No payment shall be made for additional quantities until the Department approves the change orders.
  - b. "Extra Work" for which there is no unit bid price shall be negotiated and the price shall be supported by a cost breakdown, the Department's average unit bid price, or the Public Entity's average unit price list on comparable projects. "Extra Work" shall not be performed unless approved by the Department and approved by FHWA, if participation is requested. If, "Extra Work" cannot be negotiated by the preceding manner, then the contractor may be required to do similar work on a "Force Account" basis as per the Department's specifications.
  - c. Change orders for non-participating work shall be submitted to the Department for review and approval. If the work impacts the scope of work, contract time in excess of pro-rated time, and/or additional contracted funds, it shall require Department approval.
9. The Public Entity shall identify a Project Manager to the Department as the single point of contact for all communications to and from the Department and shall be in charge of the Project.
10. The Public Entity's Project Manager shall keep the Department's District T/LPA Coordinator routinely apprised of the Project's progress and important issues concerning the Project, and send copies of all pertinent correspondence on a monthly basis.



### Title VI Nondiscrimination Assurances For FHWA Recipients

The \_\_\_\_\_ (Title of Recipient) (hereinafter referred to as the "Recipient") HEREBY AGREES THAT as a condition to receiving any Federal financial assistance from the 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 (hereinafter referred to as the 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 (hereinafter referred to as the 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 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 Title 49 Code of Federal Regulations, subsection 21.7(a)(1) and Title 23 Code of Federal Regulations, section 200.9(a) (1) of the Regulations.

More specifically and without limiting the above general assurance, the Recipient hereby 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 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 contract 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 C of this assurance in every contract subject to the Acts and the Regulations.
4. That the Recipient shall insert the clauses of Appendix C 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 C 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 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: LC00180

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  
OEOB  
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 contract, the contractor, for itself, its assignees and successors in interest (hereinafter referred to as the "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 (hereinafter, "UsDOT") Title 49, Code of Federal Regulations, Part 21, and the Federal Highway Administration (hereinafter "FHWA") Title 23, Code of Federal Regulations, Part 200 as they may be amended from time to time, (hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, 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 contract 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 [and]\* (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

\* 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.

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. \*

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

\* 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.

\* 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.

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 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.

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\* 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.

**CERTIFICATION OF COOPERATIVE AGREEMENT – CONSTRUCTION WORK  
COMPLIANCE/COMPLETION**

I, \_\_\_\_\_, in my capacity as \_\_\_\_\_ of

\_\_\_\_\_ do hereby certify as follows:

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

Control Number: LC00180

By: \_\_\_\_\_

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

Mayor or designee

When completed, please send Certification to:

Aaron Chavarria, P.E., TSE  
New Mexico Department of Transportation  
District 1  
2912 East Pine Street  
Deming, New Mexico 88030

**U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL HIGHWAY ADMINISTRATION  
FEDERAL-AID PROJECT AGREEMENT**

203354

STATE: NEW MEXICO

PROJECT NO: LC00(180)

STATE PROJ. NO: LC00180

THE STATE, THROUGH ITS HIGHWAY AGENCY, HAVING COMPLIED, OR HEREBY AGREEING TO COMPLY, WITH THE APPLICABLE TERMS AND CONDITIONS SET FORTH IN (1) TITLE 23, U.S. CODE, HIGHWAYS, (2) THE REGULATIONS ISSUED PURSUANT THERETO AND (3) THE POLICIES AND PROCEDURES PROMULGATED BY THE FEDERAL HIGHWAY ADMINISTRATION RELATIVE TO THE ABOVE DESIGNATED PROJECT, AND THE FEDERAL HIGHWAY ADMINISTRATION HAVING AUTHORIZED CERTAIN WORK TO PROCEED AS EVIDENCED BY THE DATE ENTERED OPPOSITE THE SPECIFIC ITEM OF WORK, FEDERAL FUNDS ARE OBLIGATED FOR THE PROJECT NOT TO EXCEED THE AMOUNT SHOWN HEREIN, THE BALANCE OF THE ESTIMATED TOTAL COST BEING AN OBLIGATION OF THE STATE. SUCH OBLIGATION OF FEDERAL FUNDS EXTENDS ONLY TO PROJECT COSTS INCURRED BY THE STATE AFTER THE FEDERAL HIGHWAY ADMINISTRATION AUTHORIZATION TO PROCEED WITH THE PROJECT INVOLVING SUCH COSTS. (N)

**PROJECT DESCRIPTION:** *LPA* Las Cruces La LLorona Trail, Transportation Alternative Program Funding for Improvements to the Las Cruces La LLorona Trail.

DUNS #: 95-677-9029

**CLASSIFICATION OF PHASE OF WORK  
TO BE PUT UNDER AGREEMENT**

**EFFECTIVE DATE  
OF AUTHORIZATION**

HIGHWAY PLANNING & RESEARCH  
PRELIMINARY ENGINEERING  
RIGHT-OF-WAY  
CONSTRUCTION  
MCSAP  
OTHER

09/17/2014

PROGRAM CODE	URBAN/ WITH	TOTAL COST	FEDERAL SHARE	FEDERAL FUNDS UNDER AGREEMENT	ADVANCED CONST. FUNDS
M302		\$202,331.00	85.44%	\$172,872.00 ✓	\$0.00
M300		\$247,669.00	85.44%	\$211,608.00	\$0.00
TOTAL		\$450,000.00		\$384,480.00	

ESTIMATED TOTAL COST: \$450,000.00  
TOTAL AUTHORIZED FOR PROJECT: \$384,480.00

**NEW MEXICO STATE HIGHWAY DEPARTMENT**

AVAILABLE FUNDS CERTIFIED BY: SHARON A. HOBACK DATE: 08/26/2014  
APPROVED AND AUTHORIZED BY: SHARON A. HOBACK DATE: 08/26/2014  
AGRMT/MODIFY REQUESTED BY: JOHANNA D. KEHOE DATE: 09/03/2014

**FEDERAL HIGHWAY ADMINISTRATION**

PROJECT INFORMATION REVIEWED BY: ELOY M. VALERIO DATE: 09/17/2014  
APPROVAL RECOMMENDED BY: ELOY M. VALERIO DATE: 09/17/2014  
APPROVED AND AUTHORIZED BY: MONICA J. GOURD ✓ DATE: 09/17/2014

**STATE REMARKS:** Requesting M300 & M302 Funds.  
PDE-Jessica Hunter 575-525-7343  
Engineer's Estimate - \$477,274.82  
2% DBE goal  
"This agreement is subject to the following award terms: <http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf> and <http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>."

**DIVISION REMARKS:** Authorize funds. EMV 9/17/2014

*SHARE*  
**POSTED**  
SEP 23 2014  
**SH**

*[Handwritten Signature]*

4009151  
4022359

CITY OF LAS CRUCES  
2014-15 Fiscal Year Budget

FUND	DIVISION		FUND TYPE	
Facilities Improvements Fund (General) Fund 4001	Public Works		Capital Project	
	2013-14 Un-Audited	2014-15 Adopted      Adjustment		2014-15 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ 3,700,792	3,052,733	435,623	3,488,356
<b>Revenues</b>				
Miscellaneous Revenues	97,629	80,000	0	80,000
Operating Transfers In	337,279	2,000,000	0	2,000,000
<b>Total Revenues</b>	434,908	2,080,000	0	2,080,000
<b>TOTAL RESOURCES</b>	\$ 4,135,700	5,132,733	435,623	5,568,356
<b>Expenditures</b>				
Information Technology	\$ 0	47,087	0	47,087
Public Works	725,499	2,054,581	0	2,054,581
60506 - CONVENTION CENTER	0	0	0	0
60D02 - CITY HALL COMPLEX-GENERAL FUND 2008	18,581	11,932	0	11,932
60E14 - JARDIN DE LOS NIÑOS	85,349	0	0	0
63E01 - CASTAÑEDA BUILDING RENOVATION	26,010	573,990	0	573,990
70M28 - BURN LAKE FLOOD CHANNEL	253	48,069	0	48,069
70M33 - LA LLORONA TRAIL IMPROVEMENTS	0	0	65,520	65,520
Operating Transfers Out	0	0	0	0
<b>Total Expenditures</b>	\$ 855,692	2,735,659	65,520	2,801,179
Accrual Adjustments	(227,275)	0	0	0
<b>ENDING BALANCE</b>	\$ 3,052,733	2,397,074	370,103	2,767,177

CITY OF LAS CRUCES  
2014-15 Fiscal Year Budget

FUND	DIVISION		FUND TYPE	
State Street Improvement Grants Fund 4212	Public Works		Capital Project	
	2013-14 Un-Audited	2014-15 Adopted	2014-15 Adjustment	2014-15 Adjusted
<b>RESOURCES</b>				
Beginning Balance	\$ 79,534	79,534	(0)	79,534
<b>Revenues</b>				
State Grants	(67,041)	620,156	384,480	1,004,636
Operating Transfers In	0	0	0	0
<b>Total Revenues</b>	<u>(67,041)</u>	<u>620,156</u>	<u>384,480</u>	<u>1,004,636</u>
<b>TOTAL RESOURCES</b>	\$ <u>12,493</u>	<u>699,690</u>	<u>384,480</u>	<u>1,084,170</u>
<b>Expenditures</b>				
Public Works				
70M31 - EL PASEO MEDIANS	\$ 0	40,663	0	40,663
70M32 - NMDOT LGRF FY 14/15	0	51,238	0	51,238
70M33 - LA LLORONA TRAIL IMPROVEMENTS	0	0	384,480	384,480
70P20 - OUTFALL CHANNEL TRAIL	0	0	0	0
70W01 - MAIN ST REHAB STP-9991-2	(106,845)	0	0	0
70Y03 - TELSHOR ADA IMPROVEMENTS	39,804	0	0	0
70Z03 - AMADOR AVE 17TH TO MOTEL BLVD	0	0	0	0
14315 - EL PASEO SAFETY LMP LC00130MAIN-UNI	0	28,255	0	28,255
30120 - SAFE ROUTES TO SCHOOL FY14	0	500,000	0	500,000
Operating Transfers Out	0	0	0	0
<b>Total Expenditures</b>	\$ <u>(67,041)</u>	<u>620,156</u>	<u>384,480</u>	<u>1,004,636</u>
Accrual Adjustments	0	0	0	0
<b>ENDING BALANCE</b>	\$ <u>79,534</u>	<u>79,534</u>	<u>(0)</u>	<u>79,534</u>

# La Llorona Trail Improvements Project



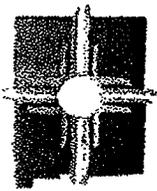
LC Outfall  
Channel Trail

EOP

Existing  
Gravel Area

Existing  
18WC ROW

EOP



*New Mexico* DEPARTMENT OF  
**TRANSPORTATION**

**RECEIVED**

AUG 11 2014

CITY OF LAS CRUCES  
PW/PROJECT DEVELOPMENT

July 28, 2014

Mr. Louis Grijalva  
Projects Development Administrator  
City of Las Cruces  
P.O. Box 20000  
Las Cruces, New Mexico 88004

RE: Control Number: LC00180

Dear Mr. Grijalva:

Enclosed for your coordination of signatures are three originals of the Cooperative Project Agreement – Construction Work referenced above. Please return them to your Region T/LPA Coordinator.

Also, please Do Not fill in the date on the first page of the enclosed agreements. An original will be mailed to you at the time they are fully executed.

If you have any questions concerning the agreement or if I can be of further assistance, please contact me at 505-476-3784.

Sincerely,

Sean Sandoval  
PINF Finance

Concur:

Region T/LPA Coordinator

**Susana Martinez**  
Governor

**Tom Church**  
Cabinet Secretary

Commissioners

**Pete K. Rahn**  
Chairman  
District 3

**Ronald Schmeits**  
Vice Chairman  
District 4

**Dr. Kenneth White**  
Secretary  
District 1

**Robert R. Wallach**  
Commissioner  
District 2

**Butch Mathews**  
Commissioner  
District 5

**Jackson Gibson**  
Commissioner  
District 6