



### Council Action and Executive Summary

Item # 4 Ordinance/Resolution# 15-146

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

For Meeting of February 17, 2015  
(Adoption Date)

Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE:** A RESOLUTION APPROVING A ROADWAY LIGHTING AND SIGNALIZATION MAINTENANCE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR THE MAINTENANCE OF ROADWAY LIGHTING ALONG INTERSTATE 25, AT THE MISSOURI OVERPASS, MISSOURI, TRIVIZ, AND DON ROSER, ALONG WITH SIGNALIZATION AT THE MISSOURI / TRIVIZ AND MISSOURI / DON ROSER INTERSECTIONS, NMDOT CONTROL NO. LC00100.

**PURPOSE(S) OF ACTION:**

Approve agreement.

<b>COUNCIL DISTRICT: 2, 3</b>		
<b><u>Drafter/Staff Contact:</u></b> Willie Roman	<b><u>Department/Section:</u></b> Transportation / Streets and Traffic Operations	<b><u>Phone:</u></b> 541-2595
<b><u>City Manager Signature:</u></b>		

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

The New Mexico Department of Transportation (NMDOT) is designing and constructing a project (Control No. LC00100) that includes the installation of roadway lighting along Interstate 25, at the Missouri Overpass, Missouri, Triviz and Don Roser along with replacement of traffic signals at the Missouri/Triviz and Missouri/Don Roser Intersections within the boundaries of the City of Las Cruces.

Pursuant to the Roadway Lighting and Signalization Maintenance Agreement, attached hereto as Exhibit "A", NMDOT will provide for the design and construction of the roadway lighting and traffic signal improvements at the aforementioned locations. This will entail the installation of all equipment and materials for fully operational systems. The project is expected to start by March of 2015. This agreement is for the maintenance of those street lights and traffic signals by City forces to include routine maintenance, replacement of material, and power costs.

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

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Roadway Lighting and Signalization Maintenance Agreement.

**SOURCE OF FUNDING:**

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

**BUDGET NARRATIVE**

Estimated annual maintenance and power cost for the lighting and signal systems will be approximately \$11,200.00. Street lighting power and materials costs are anticipated to be approximately \$4,600.00 annually and will be taken from the General Fund street lighting operating budget. Signal system power and materials costs are anticipated to be approximately \$6,600.00 annually and will be taken from the General Fund signal systems operating budget.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
General Fund	10323040-726200	\$2,400.00	\$374,725.04	\$372,325.04	Street lighting operational expenditures
General Fund	10323040-730110	\$2,200.00	\$52,007.12	\$49,807.12	Street lighting operational expenditures
General Fund	10323050-726200	\$3,000.00	\$59,841.67	\$56,841.67	Signal systems operational expenditures
General Fund	10323050-721110	\$3,600.00	\$4,800.00	\$1,200.00	Signal systems operational expenditures

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this action approves the Resolution and authorizes the City of Las Cruces to accept maintenance responsibilities of the roadway lighting and signal systems, as specified in the Roadway Lighting and Signalization Maintenance Agreement, once accepted by both the State and City entities.
2. Vote "No"; this action denies the Resolution and will not authorize the City of Las Cruces to accept maintenance responsibilities of the roadway lighting and signal systems, which will place maintenance responsibilities back upon the NMDOT office headquartered out of Santa Fe, NM for the roadway lighting system under NMDOT jurisdiction and NMDOT may not proceed with the roadway lighting and signal system improvements under City jurisdiction. Local traffic conditions may be adversely affected by the longer response time by NMDOT crews to any issues related to the roadway lighting system under NMDOT jurisdiction. Antiquated roadway lighting and signal system improvements under City jurisdiction will not be improved.
3. Vote to "Amend"; this action could approve the agreement with adjustments to conditions or changes as requested by City Council.
4. Vote to "Table"; this would allow City Council to postpone consideration of the Resolution to approve the agreement and direct staff accordingly.

**REFERENCE INFORMATION:**

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

N/A

(Continue on additional sheets as required)

RESOLUTION NO. 15-146

**A RESOLUTION APPROVING A ROADWAY LIGHTING AND SIGNALIZATION MAINTENANCE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR THE MAINTENANCE OF ROADWAY LIGHTING ALONG INTERSTATE 25, AT THE MISSOURI OVERPASS, MISSOURI, TRIVIZ, AND DON ROSER, ALONG WITH SIGNALIZATION AT THE MISSOURI / TRIVIZ AND MISSOURI / DON ROSER INTERSECTIONS, NMDOT CONTROL NO. LC00100.**

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

**WHEREAS**, the New Mexico Department of Transportation is currently designing and constructing a project (Control No. LC00100) that includes the installation of roadway lighting along Interstate 25, at the Missouri Overpass, Missouri, Triviz and Don Roser along with replacement of traffic signals at the Missouri/Triviz and Missouri/Don Roser Intersections; and

**WHEREAS**, this will entail the installation of all equipment and materials for fully operational roadway lighting and signal systems for the roadway; and

**WHEREAS**, the estimated annual maintenance costs will be in the range of \$11,200.00, which would be approximately 48% power costs and 52% materials costs; and

**WHEREAS**, the parties want to set forth their responsibilities on installation, operation and maintenance of the roadway lighting and signal systems; and

**WHEREAS**, the roadway lighting and signal systems are being installed primarily to promote traffic safety.

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

(I)

**THAT** the City Manager of the City of Las Cruces is hereby authorized to enter into a roadway lighting and signalization maintenance agreement attached hereto as Exhibit "A"

with the New Mexico Department of Transportation to maintain the roadway lighting system along Interstate 25, at the Missouri Overpass, Missouri, Triviz and Don Roser and to maintain the signal system at the Missouri/Triviz and Missouri/Don Roser Intersections.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

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 No.: \_\_\_\_\_  
 Vendor No.: \_\_\_\_\_

## MAINTENANCE AGREEMENT

### ROADWAY LIGHTING and SIGNALIZATION

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

#### RECITALS

Whereas, the Department contemplates the construction of a highway project within the boundaries of the Public Entity, identified as the **I-25/MISSOURI BRIDGE REPLACEMENT PROJECT**, PN: LC00100 CN: LC00100 ("Project"); and,

Whereas, the Department and Public Entity agree with the need for installation of roadway lighting and signalization at the following location(s): **I-25 WITHIN THE PROJECT AREA, I-25/MISSOURI BRIDGE, AND CITY STREETS (MISSOURI, TRIVIZ AND DON ROSER)**; and,

Whereas, the installation of the roadway lighting and signalization will promote traffic safety; and,

Whereas, the parties want to set forth their responsibilities on operation and maintenance of the roadway lighting and signalization.

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

#### 1. The Department Shall:

- a. Provide the necessary plans, designs and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
- b. Determine the design, provide and install new electric services, new roadway lighting and signalization system equipment, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway lighting and signalization system.
- c. Provide and install new electric services and
  - a. Lighting – Interstate and City Streets: approximately twelve luminaires type LED on Type V Standard 35' and 40' poles, approximately six underpass luminaires type LED, remove and reset approximately three existing luminaires and poles, and all other appurtenances;
  - b. Signalization – City Streets: approximately four Type I Standard 10' Arm poles, two Type III Standard 35' Arm poles, two Type III Standard 40' Arm poles, four Internally Illuminated Street Name Signs (LED), Cabinets, Conductor Cable, Communication Cable, Traffic Signal Assemblies, Pedestrian Signals, Video

Cable, Video Cameras, Traffic Actuated Controllers, and all other appurtenances;

**2. The Public Entity Shall:**

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

**3. Term.**

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

**4. Third Party Beneficiaries.**

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

**5. New Mexico Tort Claims Act.**

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

**6. Scope of Agreement.**

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

**7. Terms of this Agreement.**

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

**8. Equal Opportunity Compliance.**

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

the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

**9. Appropriations and Authorizations of State and Federal Funds.**

Construction of this Project is contingent upon sufficient appropriations and authorizations being made by the Legislature of New Mexico or the Congress of the United States. If sufficient appropriations and authorizations are not made by the Legislature or the Congress of the United States to the Department, this maintenance agreement shall terminate upon written notice being given by the Department to the City. The Department is expressly not committed to expenditure of any funds for this Project until such time as they are programmed, budgeted, encumbered, and approved for expenditure by the Department.

**10. Severability.**

In the event that any portion of this Agreement is determined to be void, unconstitutional or otherwise unenforceable, the remainder of this Agreement shall remain in full force and effect.

**11. Public Entity Sole Jurisdiction.**

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

**12. Project Responsibility.**

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

**13. Contingent on Project Being Let.**

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

**14. Applicable Law.**

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

**15. Amendment**

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Cabinet Secretary or Designee

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

Recommended by:

By: \_\_\_\_\_  
State Traffic Engineer

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

By: \_\_\_\_\_  
District Engineer

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

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

By: Cynthia A. Christ  
Assistant General Counsel

Date: 9-21-14

**CITY OF LAS CRUCES**

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

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

Title: \_\_\_\_\_

Attest: \_\_\_\_\_