



City of Las Cruces®

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Council Action and Executive Summary

Item # 14Ordinance/Resolution# 16-054For Meeting of _____
(Ordinance First Reading Date)For Meeting of September 8, 2015
(Adoption Date)

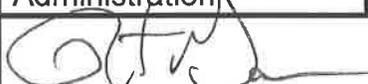
Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND DOÑA ANA COUNTY TRANSFERRING PARTIAL OWNERSHIP OF EXISTING CITY FIBER INFRASTRUCTURE TO DOÑA ANA COUNTY FOR \$46,750 AND TO ADJUST THE FY16 BUDGET.

PURPOSE(S) OF ACTION:

Approve Memorandum of Agreement.

COUNCIL DISTRICT: N/A		
<u>Drafter/Staff Contact:</u> Scott Marr	<u>Department/Section:</u> Information Technology/ Administration	<u>Phone:</u> 541-2031
<u>City Manager Signature:</u>		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) owns and operates a fiber optic network interconnecting City facilities which includes a conduit and inner duct infrastructure which has unused excess capacity. Doña Ana County (County) has a need to use the City's fiber inner duct infrastructure. This agreement transfers partial ownership of existing City fiber infrastructure to the County for \$46,750.00. The City and the County acknowledge that this agreement relates to the use of the physical conduit or inner duct pathways and its maintenance, and fiber optic cabling shared at the time of this agreement. The City and County also acknowledge that this agreement in no way constitutes any agreements in regard to Internet, data, voice or video connectivity.

Due to the sale of the former City Hall, failure to approve this agreement could result in Doña Ana County losing its fiber optic connectivity to its offsite backup storage located in the County Health Facility thereby significantly impacting its operations.

SUPPORT INFORMATION:

1. Resolution.

(Continue on additional sheets as required)

2. Exhibit "A"; Memorandum of Agreement. The map and table included with this exhibit are protected by Federal Statute, for further information please contact the IT Director.
3. Exhibit "B"; Budget Adjustment Request.
4. Exhibit "C"; This information is protected by Federal Statute, for further information please contact the IT Director.

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: <u>1020</u> in the amount of <u>\$46,750.00</u> for <u>FY16</u> .
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

BUDGET NARRATIVE

N/A

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Fiber Repair	10240130-721126	\$46,750.00	\$46,750.00*	0.00	N/A

*PENDING APPROVAL

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve an agreement between the City and County providing the transfer of partial ownership of the City's fiber inner duct infrastructure.
2. Vote "No"; this could result in the County losing its fiber optic connectivity to the County Health Facility.
3. Vote "Amend"; staff will proceed as directed by City Council.

(Continue on additional sheets as required)

4. Vote "Table"; this action will cause the County to be without fiber connectivity to the County Health Facility.

REFERENCE INFORMATION:

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

1. N/A

RESOLUTION NO. 16-054

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND DOÑA ANA COUNTY TRANSFERRING PARTIAL OWNERSHIP OF EXISTING CITY FIBER INFRASTRUCTURE TO DOÑA ANA COUNTY FOR \$46,750 AND TO ADJUST THE FY16 BUDGET.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) owns and operates a fiber optic network interconnecting City facilities which includes a conduit and inner duct infrastructure; and

WHEREAS, the City currently has unused excess capacity in its fiber inner duct infrastructure; and

WHEREAS, Doña Ana County (County) has a need to use the City's fiber inner duct infrastructure; and

WHEREAS, the City and the County acknowledge that this agreement relates to the use of the physical conduit or inner duct pathways and its maintenance, and fiber optic cabling shared at the time of this agreement; and

WHEREAS, the City and County acknowledge that this agreement in no way constitutes any agreements in regard to Internet, data, voice or video connectivity.

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

(I)

THAT the Memorandum of Agreement attached hereto as Exhibit "A" is hereby approved and made part of this resolution.

(II)

THAT the City accepts payment in the amount of \$46,750.00 from the County for partial ownership in a City owned conduit and inner duct infrastructure.

(III)

THAT the City Manager's signature on the Memorandum of Agreement is ratified.

DONE AND APPROVED on this _____ day of _____, 20____.

APPROVED:

Mayor

ATTEST:

Interim City Clerk

(SEAL)

VOTE:

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

Moved by: _____

Seconded by: _____

APPROVED AS TO FORM:



City Attorney

MEMORANDUM OF AGREEMENT BETWEEN CITY OF LAS CRUCES AND DOÑA ANA COUNTY CONCERNING FIBER OPTIC USE, MAINTENANCE AND OWNERSHIP

This agreement (hereinafter referred to as the "Agreement") is made by and between the City of Las Cruces ("the City"), and Doña Ana County ("the County"), as of the date of last signature below (the "effective date").

WHEREAS, the City owns and operates a fiber optic network interconnecting City facilities which includes a conduit and inner duct infrastructure; and,

WHEREAS, the County wishes to use the City's fiber inner duct infrastructure, and;

WHEREAS, the City currently has unused capacity in its fiber inner duct infrastructure, and;

WHEREAS, the City and the County acknowledge that this Agreement relates to the use of the physical conduit or inner duct pathways, and fiber optic cabling shared at the time of this agreement, and in no way constitutes any agreements in regard to Internet, data, voice or video connectivity.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Downtown Conduit

A. Definition of "Downtown Conduit". As listed in Exhibit C.

B. Transfer of partial ownership of 25% of Downtown Conduit from City to County. In exchange for payment of \$46,750, the City will transfer irrevocably a 25% ownership interest in title to the aforementioned Downtown Conduit to the County. Payment by the County to the City shall be made within thirty (30) days of the signing of this agreement. One cell of the 3 cell Maxcell inner duct in the Downtown Conduit will be selected by the City and henceforth become the County's property for its exclusive use.

C. Usage of the Downtown Conduit. All fiber installations shall be physically separated from other entity fiber installations in a manner consistent with generally accepted engineering standards. Each party shall be responsible for obtaining the necessary permits and shall provide notification 30 days prior to commencement of construction projects affecting the Downtown conduit. Each party shall be liable for any damage to existing fiber optic cable and infrastructure caused by its staff or third parties that it hires. The County understands and hereby acknowledges that no new County fiber optic installations will be permitted to pass through City buildings. Each party shall provide its own splice trays and enclosures and identify their ownership. All installation costs will be borne by the party installing new fiber.

- D. Equipment and Access.** The City hereby grants to the County the right to access all handholds and manholes associated with the Downtown Conduit and inner duct pathways assigned to the County. Absent an emergency, the County shall notify the City Information Technology Department whenever they need to access these facilities before the access occurs.
- E. Maintenance and Repairs.** All repairs and maintenance on the Downtown Conduit will be done by the City or a city selected contractor. The cost of such maintenance and repairs will be shared 75% by the City and 25% by the County, so long as the conduits remain in use by both parties and have not been abandoned. In the event of an abandonment, all repair and maintenance cost shall be borne by the sole remaining owner. The City reserves the right to use a third party contractor. Notwithstanding the above, the cost for any repairs for damage to the Downtown Conduit caused by one party shall be borne by that party.
- F. Abandonment.** Permanent abandonment shall require 180 days written notice to the other party of intent to permanently cease use of the Downtown Conduit or a part thereof. In the event of abandonment, full ownership shall be vested in the other party.

2. Fiber Optic Segment 1 and Fiber Optic Segment 2

- A. Definition of "Fiber Optic Segment 1".** As listed in Exhibit C.
- B. Definition of "Fiber Optic Segment 2".** As listed in Exhibit C.
- C. City Ownership of "Fiber Optic Segments 1 and 2".** The City represents that it has 100% ownership of Fiber Optic Segments 1 and 2.
- D. County Usage of "Fiber Optic Segments 1 and 2".** The City has previously agreed to allow the County its exclusive use of two strands of Fiber Optic Segment 1 and two strands of Fiber Optic Segment 2. The City agrees to allow the County continued usage of the aforementioned segments for a period of not less than 10 years.
- E. Maintenance and Repairs.** The City is responsible for maintenance of Fiber Optic Segment 1 and Fiber Optic Segment 2 and will notify the County in advance of maintenance and repairs. The City reserves the right to use a third party contractor. The County will contribute one third of the costs of any repairs and maintenance associated with the Fiber Optic Segment 1 and Fiber Optic Segment 2, conduit, manholes, pull boxes and other appurtenances, but shall pay no rent during the term of the agreement for such use.

3. Fiber Optic Segment 3, Fiber Optic Segment 4 and Fiber Optic Segment 5

- A. Definition of "Fiber Optic Segment 3".** As listed in Exhibit C.
- B. Definition of "Fiber Optic Segment 4".** As listed in Exhibit C.
- C. Definition of "Fiber Optic Segment 5".** As listed on Exhibit C.

D. Transfer of ownership to Fiber Optic Segment 3 and Fiber Optic Segment 5. Ownership of the Fiber Optic Segment 3 and Fiber Optic Segment 4 are hereby transferred irrevocably to the County at no cost and shall become the County's fiber with all rights and responsibilities associated with them. Parties acknowledge that the segments lie within City right of way and/or City property. The City will advise the County should any of the above segments become subject to City projects and development. Parties agree to collaborate on any necessary changes to the location of the above mentioned segments.

E. Usage of Fiber Optic Segment 4. Parties agree that future use of Fiber Optic Segment 5 will be discussed at the request of either party.

4. Fiber Optic Segments Not Covered Elsewhere in this Agreement. Any other conduits, cables, pull boxes, inner ducts and other appurtenances, beyond that specifically mentioned herein, shall remain unaffected by this agreement.

5. Term. The term of this Agreement shall be for a period of 25 (twenty five) years. Either party may notify the other of its intent to terminate this Agreement by providing 180 days prior written notice.

6. Existing Fiber Optic Segment 1 and Fiber Optic Segment 2 Damage. Both parties acknowledge that Fiber Optic Segment 1 and Fiber Optic Segment 2 have incurred damage. Should either segment become unusable and both parties fail to negotiate a satisfactory agreement for repair and/or restoration, this agreement shall no longer include the unusable segment.

As regards transfers of title made under this agreement, all shall be considered final, irrevocable and shall survive the termination of this agreement, excepting the terms in section 1. Payment to the City by the County for 25% title to the Downtown Conduit shall be within 30 days of the signing of this agreement.

7. Limitation of Liability. In no event shall either party be liable to the other for any special, incidental, direct, indirect, punitive, reliance, or consequential damages, whether foreseeable or not, arising out of, or in connection with, transmission interruptions or problems, including but not limited to, damage or loss of property or equipment, loss of revenue, cost of capital, cost of replacement services, or claims of customers, whether occasioned by any repair or maintenance performed by, or failed to be performed by the other party, or any other cause whatsoever, including, without limitation, breach of contract, breach of warranty, negligence or strict liability. The County's access to and use of the assigned conduits, inner duct, or fiber is provided without any warranty or condition, expressed or implied. The County understands and acknowledges that the assigned fiber may not operate totally without interruption.

8. Default. Either party's failure to timely perform work required pursuant to the terms of this agreement or to pay sums due within 90 days of written notice shall constitute a default of this Agreement, and shall subject that party to any remedy provided under this Agreement or by law.

9. Assignment. Neither party to this agreement may assign or transfer any of its rights, duties, or obligations outlined herein without the prior written consent of the other party.

10. Notice. All notices, certificates, or other communication shall be in writing, signed by the parties' duly authorized agent and shall be deemed to be given when personally delivered or mailed via the US Postal Service to the parties at their respective places of business. FAX transmissions are acceptable, provided, however, that a proof of facsimile transmission is made and retained. All notices shall be delivered to the addresses noted and photocopy, facsimile, electronic or other copies shall have the same effect for all purposes as an ink-signed original. Notices shall be addressed to the individuals listed below:

IT Infrastructure Manager
845 N. Motel Blvd.
Las Cruces, NM 88007
bobb@donaanacounty.org
(575) 525-5903

IS Manager
700 N. Main St.
Las Cruces, NM 88001
slithgow@las-cruces.org
(575) 528-4600

Updates to the above contact information will be provided in writing. Changes to this contact information will not be deemed revisions to the agreement and will not require updated signatures.

11. Binding Agreement. This Agreement shall be binding upon each party and their respective successors and assigns.

12. Complete Agreement. This Agreement and any documents, instruments and materials incorporated by reference constitutes the entire agreement between the parties with respect to the subject matter contained herein. This Agreement may only be modified, altered, or amended by a written document signed by both parties.

13. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by a court of competent jurisdiction, it is understood and agreed that all other provisions of this Agreement shall remain in force.

14. Governing Law. The rights and obligations of the parties and all interpretations of performance under this agreement shall be governed in all respects by the laws of the State of New Mexico.

15. Partnership/Joint Venture. This Agreement does not evidence a partnership or joint venture between the City and the County.

16. Dispute Resolution. Both parties agree to resolve any disputes arising from this agreement through binding arbitration. If either party is required to commence any proceeding or legal action to enforce or interpret any item, covenant or condition of this Agreement, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable

attorney's fees and legal expenses in addition to any other relief to which the prevailing party may be entitled.

17. Authorized Representatives. Each party shall designate an authorized representative for purposes of administration of this Agreement. Each authorized representative shall have authority for acceptance of services and shall be the point of contact for all communications under this Agreement. A party changing the designation of its authorized representative shall notify the other party as outlined in the Notice section of this Agreement.

City of Las Cruces: Information Technology Director

Dofia Ana County: Information Technology Director

18. Force Majeure. The parties understand that acts of God, acts of civil or military authority, government regulations, embargoes, epidemics, war, terrorist acts, riots, fires, explosions, earthquakes, floods, or other unusually severe weather conditions or other environmental disturbances, strikes, or other circumstances not under the control of the parties may delay performance as set forth in this Agreement. In the event a Force Majeure event materially limits one or all of the Parties' ability to perform under this Agreement, such limitation shall not be considered a breach of the terms of this Agreement.

19. Non-Appropriation. The City's and County's obligation to make any payment under the terms of this Agreement is contingent upon approval by their respective governing body of sufficient funds to make such payment. If the City's or County's governing body does not appropriate sufficient funds for such payment, the City's or County's obligation to make such payment shall terminate upon written notice of that effect to the other party. The determination by the respective governing body that sufficient funds have not been appropriated shall be firm, binding and not subject to review.

20. Insurance. Each party represents that it carries the insurance coverage necessary for municipalities and counties or that it is self-insured.

21. Enforcement. The failure of a party to give notice of default, or to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of any extension of time for performance shall not constitute a permanent waiver of any term or condition of this Agreement. All terms of this Agreement shall remain in full force at all times until modified by both parties in writing.

22. Third Party Benefit. None of the provisions of this Agreement are intended to be, nor shall they be construed to be for the benefit of any third party.

IN WITNESS WHEREOF, the parties have entered into this Agreement on the date of last signature below.

CITY OF LAS CRUCES

DONA ANA COUNTY

Robert Garza
City Manager

Julia T. Brown, Esq.
County Manager

Date: _____

Date: _____

APPROVED AS TO FORM

APPROVED AS TO FORM

William R. Babington Jr.
City Attorney

David B. Medeiros
Deputy County Attorney

CITY OF LAS CRUCES

Fund Summary

EXHIBIT "B"

Fund: 1020
DFA: 101

Fund Name: SOFTWARE FUND
DFA Name: General Fund

	2015-16 Budget			%
	Adopted	Adjustment	Amended	Inc. / Dec.
<i>Beginning Balance</i>	\$ 19,972	0	19,972	0.00%
Resources				
Revenue	\$ 0	46,750	46,750	0.00%
Transfers In	0	0	0	0.00%
Total Resources	\$ 0	46,750	46,750	0.00%
Expenditures				
Operating Costs	0	46,750	46,750	0.00%
Total Expenditures	\$ 0	46,750	46,750	0.00%
<i>Ending Balance</i>	\$ 19,972	0	19,972	0.00%

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City of Las Cruces®

PEOPLE HELPING PEOPLE

COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

For Meeting of _____
(Ordinance First Reading Date)

For Meeting of September 8, 2015
(Adoption Date)

TITLE: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND DOÑA ANA COUNTY TRANSFERRING PARTIAL OWNERSHIP OF EXISTING CITY FIBER INFRASTRUCTURE TO DOÑA ANA COUNTY FOR \$46,750.00 AND TO ADJUST THE FY16 BUDGET.

Purchasing Manager's Request to Contract (PMRC) {Required?} Yes No

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact			
Department Director	<i>S. Man</i>	541-2031	8-18-15
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	529-3100 541-2106	8-24-15 8-20-15
Assistant City Manager/COO	<i>[Signature]</i>		8-26-15
City Attorney	<i>[Signature]</i>	Ext 2128	26 August 2015
City Clerk			