



# City of Las Cruces®

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## Council Action and Executive Summary

Item # 8Ordinance/Resolution# 16-089For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)For Meeting of October 5, 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 THE NEW MEXICO DEPARTMENT OF TRANSPORTATION ALLOWING SHARED USE OF FIBER INFRASTRUCTURE OWNED BY EITHER THE CITY OR NEW MEXICO DEPARTMENT OF TRANSPORTATION.**

### PURPOSE(S) OF ACTION:

Approve Memorandum of Agreement.

<b>COUNCIL DISTRICT: N/A</b>		
<b><u>Drafter/Staff Contact:</u></b> Steve Lithgow	<b><u>Department/Section:</u></b> Information Technology/ Infrastructure Services	<b><u>Phone:</u></b> 528-3056
<b><u>City Manager Signature:</u></b>	<i>Daniel Arda</i>	

### BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) and the New Mexico Department of Transportation (NMDOT) each own and operate fiber optic network interconnecting facilities which include conduit and inner duct infrastructure which has unused excess capacity. The City has a need to use the NMDOT's fiber inner duct infrastructure for traffic operations and fiber connectivity to the East Mesa Public Safety and Recreation Complex. This agreement allows the shared use of fiber optical cable and/or pathway installed by either party. The City and NMDOT acknowledge that this agreement relates to the use of the physical conduit or inner duct pathways and its maintenance and fiber optic cabling. The City and NMDOT also acknowledge that this agreement in no way constitutes any agreements in regard to Internet, data, voice or video connectivity.

### SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Memorandum of Agreement.

(Continue on additional sheets as required)

- Attachment "A", this information is protected by Federal Statute, for further information please contact the Information Technology Director.

**SOURCE OF FUNDING:**

<b>Is this action already budgeted?</b> N/A	Yes	<input 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> N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of ___ for FY _____
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

N/A
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**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

**OPTIONS / ALTERNATIVES:**

- Vote "Yes"; this will approve an agreement between the City and NMDOT providing the shared use of pathway and fiber optic cable.
- Vote "No"; this would result in requiring the City to find an alternative path to the East Mesa Public Safety and Recreation Complex.
- Vote "Amend"; staff will proceed as directed by City Council.
- Vote "Table"; this action will require the City to find an alternative path to the East Mesa Public Safety and Recreation Complex.

(Continue on additional sheets as required)

**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

(Continue on additional sheets as required)

**RESOLUTION NO. 16-089**

**A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND NEW MEXICO DEPARTMENT OF TRANSPORTATION ALLOWING THE SHARED USE OF FIBER INFRASTRUCTURE OWNED BY EITHER THE CITY OR NEW MEXICO DEPARTMENT OF TRANSPORTATION.**

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 New Mexico Department of Transportation (NMDOT) currently has fiber optic cable and unused pathway in its fiber infrastructure; and

**WHEREAS**, the City has a need to use the NMDOT's fiber pathway infrastructure; and

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

**WHEREAS**, the City and NMDOT 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 and NMDOT acknowledge no remuneration will be exchanged.

(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

Contract No. \_\_\_\_\_  
 Vendor No. \_\_\_\_\_

## MEMORANDUM OF AGREEMENT

### INTELLIGENT TRANSPORTATION SYSTEMS

**This Memorandum of Agreement** is between the New Mexico Department of Transportation ("Department") and the City of Las Cruces ("City"). This Agreement is effective as of the date of the last party to sign it on the signature page below.

#### RECITALS

**Whereas**, the Department is authorized to implement Intelligent Transportation Systems (ITS) and to integrate its system with that operated by local communities, under Moving Head with Progress in the 21st Century (MAP-21); and,

**Whereas**, ITS applies advanced technologies of electronics, communications, computers, control and sensing and detecting to transmit real-time information to a transportation center. This information is used to improve traffic movement, safety and efficiency; and,

**Whereas**, the Department and the City want to share and integrate their respective ITS infrastructure to promote traffic safety and enhance use of their roadways; and,

**Whereas**, the parties agree to integrate their ITS infrastructure, as identified in Attachment A, and work together in the maintenance and support of ITS infrastructure and operations.

**Now Therefore**, pursuant to NMSA 1978, Section 67-3-28 and MAP-21, the parties agree as follows:

#### **1. The Department Shall:**

- a. Install, operate and maintain the Department's ITS infrastructure and equipment located in the state's Rights-of-Way.
- b. Provide the necessary resources and perform the work needed to keep the individual ITS field and center equipment, ITS subsystem(s) and ITS system(s) operating at their intended purpose and levels.
- c. Comply with the New Mexico One-Call requirements associated with communications line spotting requests, also known as "tickets", for infrastructure the Department owns and share the Department's capacity with the City.

- d. Not interrupt service or disconnect any of the connections the City has on any city-owned or operated ITS equipment.
- e. In the event of planned or unexpected interruption, provide to the City the following:
  - 1. Verbal notice as soon as possible for interruptions caused by unexpected equipment failure, accidental damage and intentional damage, which includes vandalism.
  - 2. Four (4) hours verbal notice for repair work that the Department has identified and which must be performed within the next 24-hours.
  - 3. Thirty (30) days written notice for disconnections associated with routine maintenance.
  - 4. One (1) year written notice for interruptions outside of routine maintenance and emergency repairs.
  - 5. Each notice will include the reason for the interruption and an estimate of when service will be restored.
  - 6. Service restoration will be performed consistent with the priorities and response times identified in Attachment A.
- f. Reimburse the City within 30 days of receipt of invoice for any and all costs the City has to bear for maintenance that the Department is required to perform.

## **2. The City Shall**

- a. Install, operate and maintain the City's ITS infrastructure and equipment located in the City's Rights-of-Way.
- b. Provide the necessary resources and perform the work needed to keep the individual ITS field and center equipment, ITS subsystem(s) and ITS system(s) operating at their intended purpose and levels.
- c. Comply with the New Mexico One-Call requirements associated with communications line spotting requests, also known as "tickets", for infrastructure the City owns and share the City's capacity with the Department.
- d. Not interrupt service or disconnect any of the connections the City has on any city-owned or operated ITS equipment.
- e. In the event of planned or unexpected interruption, provide to the Department the following:
  - 1. Verbal notice as soon as possible for interruptions caused by unexpected equipment failure, accidental damage and intentional damage, which includes vandalism.
  - 2. Four (4) hours verbal notice for repair work that the City has identified and which must be performed within the next 24-hours.
  - 3. Thirty (30) days written notice for disconnections associated with routine maintenance
  - 4. One (1) year written notice for interruptions outside of routine maintenance and emergency repairs.
  - 5. Each notice will include the reason for the interruption and an estimate of when services will be restored.

- 6. Service restoration will be performed consistent with the priorities and response times identified in Attachment A.
- f. Reimburse the Department within 30 days of receipt of invoice for any and all costs the Department has to bear for maintenance the City is required to perform.

### **3. Both Parties Shall:**

- a. Work together to identify where ITS resources could be shared or implemented to benefit the public.
- b. Plan and install fiber sharing locations, as appropriate, which includes but is not limited to reviewing plans, soliciting contracts and managing contractors.
- c. Encourage federal government involvement and commitment.
- d. In the event additional locations are added, Attachment A will be amended to identify the new location.
- e. Use separate splice tray enclosure facilities for any shared fiber cabling shall whether above ground or below ground, one for each party.
- f. If one party should have to perform work on the other party's system, the party performing the work will comply with the other party's specifications.

### **4. 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.

### **5. Third Party Beneficiary Clause**

The parties specifically agree that this Agreement is not intended to create in any way a third party beneficiary in the public or any member thereof or to authorize anyone not a party to the Agreement to maintain a suit for wrongful death, bodily and/or personal injury to a person, damage to property, and/or any other claim(s) whatsoever.

### **6. Assignment**

Neither party shall assign or transfer any interest in this Agreement without prior approval of the other party.

### **7. New Mexico Tort Claims Act**

As between the Department and the City, 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.

### **8. Legal Compliance**

The Parties shall comply with all applicable federal, state and local laws, and Department regulations and policies in the performance of this Agreement, including, but not limited to laws

governing civil rights, equal opportunity compliance, environmental and cultural resources requirements, right-of-way acquisition, workplace safety, employer-employee relations, and all other laws governing operation of the workplace, including laws and regulations hereafter enacted.

### **9. Applicable Law and Venue**

This Agreement and the rights and duties of the parties shall be governed by, and construed in accordance with, the internal laws of the State of New Mexico without regard to principles of conflicts of laws. The parties agree to exclusive jurisdiction of the Courts of the State of New Mexico for the resolution of any disputes arising under or resulting from this Agreement which cannot be resolved informally. Each party waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over that party. It is expressly understood and recognized by the parties that the venue for litigation of issues, claims, or all other judicial matters arising or resulting from this Agreement shall be in the First Judicial District Court, Santa Fe, New Mexico.

### **10. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by City Council, the Legislature of New Mexico, or the Congress of the United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the City, Legislature or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given by one party to the other. The Department and City are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

### **11. Severability**

The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or enforceability of any one provision shall not affect the validity of enforceability of any other provision hereof.

### **12. Jurisdiction**

By reason of the Department's participation in this Agreement, the Department is not relinquishing any portion of its highway system nor incorporating any portion of the City's transportation system where communications infrastructure is being shared along respective rights-of-way.

### **13. Scope of the Agreement**

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

**14. 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.

Charles Remkes  
 Director, ITS Bureau  
 New Mexico Department of Transportation  
 809 Copper NW  
 Albuquerque, NM 87102  
 Office: 505-222-6554  
 Fax: 505-222-6580  
 E-mail: Charles.remkes@state.nm.us  
 ITS Bureau after hours: 505-222-6590

## Name

Steve Lithgow  
 Infrastructure Services Manager  
 Information Technology  
 City of Las Cruces  
 700 N Main  
 Las Cruces, NM 88001  
 575-528-3202  
 Information Technology Department, all hours: 575-528-3202

**15. Amendment.**

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

**Remainder of this page is intentionally left blank.**

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

By: \_\_\_\_\_  
Tom Church, Cabinet Secretary  
or designee

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

**Recommended by:**

By: \_\_\_\_\_  
ITS Manager

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

**Reviewed and approved as to form and legal sufficiency by the New Mexico Department of Transportation  
Office of General Counsel**

By: \_\_\_\_\_  
Assistant General Counsel

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

**City of Las Cruces**

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

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

Print Name: \_\_\_\_\_

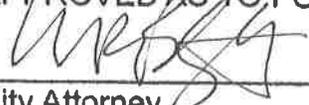
Title: \_\_\_\_\_

**ATTEST**

By: \_\_\_\_\_  
City Clerk

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

**APPROVED AS TO FORM:**

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



# City of Las Cruces<sup>®</sup>

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## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

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

For Meeting of October 5, 2015  
(Adoption Date)

**TITLE:** A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION ALLOWING SHARED USE OF FIBER INFRASTRUCTURE OWNED BY EITHER THE CITY OR NEW MEXICO DEPARTMENT OF TRANSPORTATION.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		528-3056	9-18-15
Department Director		541-2031	9-18-15
Other		541-2028	9/19/15
Assistant City Manager /CAO Management & Budget Manager		541-2106	9/18/15
Assistant City Manager/COO			9/22/15
City Attorney		EXT 2128	23 Sept 2015
City Clerk - Interim		82116	9/25/15