



# City of Las Cruces®

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## Council Action and Executive Summary

Item # 4Ordinance/Resolution# 16-107For Meeting of \_\_\_\_\_  
(Ordinance First Reading Date)For Meeting of November 16, 2015  
(Adoption Date)

Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

**TITLE: A RESOLUTION TO APPROVE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT), TO ACCEPT GRANT FUNDING IN THE AMOUNT OF \$186,695.00 FOR THE PURCHASE REPLACEMENT OF ROADRUNNER TRANSIT VEHICLES, TO OBLIGATE A LOCAL MATCH AMOUNT OF \$46,673.75, AND TO ADJUST THE FY2016 BUDGET.**

### PURPOSE(S) OF ACTION:

Accept funding and adjust the budget.

<b>COUNCIL DISTRICT: ALL</b>		
<b><u>Drafter/Staff Contact:</u></b> Amy Johnson Bassford	<b><u>Department/Section:</u></b> Financial Services / Grants Administration	<b><u>Phone:</u></b> 541-2281
<b><u>City Manager Signature:</u></b>		

### BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The NMDOT requests the City, on behalf of the Transit Section, enter into a Memorandum of Agreement to accept federal grant funding in the amount of \$186,695.00 as approved under the Section 5339 Bus and Bus Facilities Program to be used for the purchase of replacement vehicles for RoadRUNNER Transit. There is a \$46,673.75 local match requirement, making the total for the grant program \$233,368.75.

### SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Memorandum of Agreement.
3. Exhibit "B", Budget Adjustment.

(Continue on additional sheets as required)

**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: <u>5921</u> in the amount of <u>\$186,695.00</u> for FY2016.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

**BUDGET NARRATIVE**

Grant revenue funds will be established in Fund 5921: Transit Grants in the amount of \$186,695.00 under project code 24217. Grant funded expenses will be recorded in Fund 5921: Transit Grants under project code 24217 in the amount of \$186,695.00. Match funded expenses will be recorded in Fund 5920: Transit Operations under project code 24217 in the amount of \$46,673.75. Both grant and match funds will be drawn down as purchases are made.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
Transit Grants	59323150-851100-24217	\$186,695.00*	\$186,695.00*	\$0	None
Transit Operations	59323010-851100-24217	\$46,673.75*	\$46,673.75*	\$0	None

\*Upon approved budget adjustment.

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this will approve the Memorandum of Agreement between the City and NMDOT, accept grant funding, and will adjust the FY2016 budget.
2. Vote "No"; this is not an option as the federal grant funding is awarded to cover the replacement of vehicles for RoadRUNNER Transit.
3. Vote to "Amend"; this is not an option as funding is specific to approved expenditures as stipulated under the NMDOT Section 5339 Bus and Bus Facilities Program.

4. Vote to "Table"; this is not an option as funding is constrained by a specific period of performance.

**REFERENCE INFORMATION:**

N/A

RESOLUTION NO. 16-107

**A RESOLUTION TO APPROVE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT), TO ACCEPT GRANT FUNDING IN THE AMOUNT OF \$186,695.00 FOR THE PURCHASE REPLACEMENT OF ROADRUNNER TRANSIT VEHICLES, TO OBLIGATE A LOCAL MATCH AMOUNT OF \$46,673.75, AND TO ADJUST THE FY2016 BUDGET.**

The City Council is informed that:

**WHEREAS**, the NMDOT, under the Section 5339 Bus and Bus Facilities Program, requests the City, on behalf of the Transit Section, accept the Memorandum of Agreement for federal grant funding in the amount of \$186,695.00 for the purchase of replacement vehicles for RoadRUNNER Transit, as indicated within Exhibit "A", attached hereto and made part of this resolution; and

**WHEREAS**, there is a local match of \$46,673.75 required.

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

(I)

**THAT** the City of Las Cruces is approved to enter into a Memorandum of Agreement, attached hereto as Exhibit "A" and made part of this resolution, with the NMDOT to accept a federal grant award in the amount of \$186,695.00 for the term of October 1, 2015 through September 30, 2016.

(II)

**THAT** the required match of \$46,673.75 is hereby obligated as per grant requirements.

(III)

**THAT** grant funding will be used for the purchase of replacement vehicles for

RoadRUNNER Transit.

(IV)

THAT the FY2016 Budget is hereby 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:

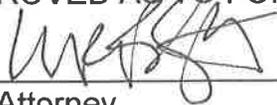
\_\_\_\_\_  
City Clerk

(SEAL)

Moved by: \_\_\_\_\_

Seconded by: \_\_\_\_\_

APPROVED AS TO FORM:

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

VOTE:

Mayor Miyagishima: \_\_\_\_\_  
Councillor Gandara: \_\_\_\_\_  
Councillor Smith: \_\_\_\_\_  
Councillor Pedroza: \_\_\_\_\_  
Councillor Eakman: \_\_\_\_\_  
Councillor Sorg: \_\_\_\_\_  
Councillor Levatino: \_\_\_\_\_

Contract # 110429  
 Vendor # 54342

FISCAL YEAR 2016 (FY 16)

MEMORANDUM OF AGREEMENT

BETWEEN

THE NEW MEXICO DEPARTMENT OF TRANSPORTATION

AND

CITY OF LAS CRUCES

This Agreement is between the STATE OF NEW MEXICO, acting through its DEPARTMENT OF TRANSPORTATION, Transit and Rail Division, (Department), and the CITY OF LAS CRUCES (Subgrantee). This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

Whereas, 49 U.S.C. §5339 provides federal assistance for public transit agencies in small urbanized areas to provide funding for capital projects to replace, rehabilitate, and to purchase buses and bus-related equipment by way of a formula grant program administered by each state; and

Whereas, the State of New Mexico participates in the 49 U.S.C. §5339 Program (Program); and,

Whereas, the Governor of the State of New Mexico designated the Department to administer the Program funds; and,

Whereas, the Subgrantee, as a small urbanized area, will received financial assistance for the purchase of capital equipment, which has been approved by the Department and the Federal Transit Administration (FTA); and

Now, therefore, pursuant to Section 67-3-69 NMSA 1978, the parties agree as follows:

1. Scope of Program.

A. Use of Capital Equipment

The Subgrantee agrees that any capital equipment, purchased under this Agreement, shall be used to provide transportation services to the public within the small urbanized service area. If the equipment is not used in this manner or withdrawn from service, the Subgrantee shall notify the Department verbally and in writing, either hand-delivered or send by U.S. certified mail, five (5) working days of such event, and shall return the Program equipment in accordance with *Section 15. Use of Program Equipment*.

2. Cost of Program.

The Department shall provide partial funding to the Subgrantee to cover capital expenses in the amount not to exceed \$186,695.00, as described below:

Category/Match Ratio FY 16

City of Las Cruces	Total	Federal	Local
Capital to Subgrantee (80/20)	\$233,368.75	\$186,695.00	\$46,673.75
<b>Total</b>	<b>\$233,368.75</b>	<b>\$186,695.00</b>	<b>\$46,673.75</b>

This program is funded with grants provided by the FTA, Catalog of Federal Domestic Assistance number 20.526. The Department's share of Program expenses shall be obtained from the federal government. State funds will not be earmarked or disbursed to fund the Program. The Department shall not be responsible for any other costs incurred by the Subgrantee. The Subgrantee shall take all actions necessary to fund its share of the Program.

**3. Method of Payment.**

The Department shall reimburse the Subgrantee for the Department's share of the Program costs upon receipt of invoices, with sufficient supporting documentation as determined and approved by the Department, indicating that expenses have been paid and/or money is owed.

**4. Eligible Costs.**

Eligible Costs are those costs attributable to and allowed under the Program and the provisions of 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards.

Capital costs incurred by the Subgrantee prior to the effective date of this Agreement or after termination are not eligible for reimbursement.

Subgrantee shall have the twenty percent (20%) match funds encumbered at the time the vehicle order is placed with the vendor and a copy of the Purchase Order must to be sent to the Department under this active Agreement. The Subgrantee's twenty percent (20%) match for capital expenses shall be provided in cash from sources other than federal funds.

**5. State General Appropriation Funds Not Obligated.**

Nothing in this Agreement shall be construed as obligating state general appropriation funds for payment of any debt or liability arising under this Agreement. The parties expressly acknowledge that all payments made under this Agreement are from federal funds appropriated for these purposes.

**6. Term.**

This Agreement becomes effective upon the signature of all parties. The effective date is the date the last party signed the Agreement on the signature page below. Only eligible costs incurred under this agreement from October 1, 2015 to September 30, 2016 may be reimbursed. This Agreement shall expire September 30, 2016 or when Federal funding is expended, whichever occurs first.

**7. Termination for Convenience or Cause.**

The Department may terminate this Agreement for any reason by giving the Subgrantee thirty (30) days written notice.

The Department has the option to terminate this Agreement if the Subgrantee fails to comply with any provision. A written notice of termination shall be given at least thirty (30) days prior to the intended date of termination and shall identify all of the Subgrantees breaches on which the termination is based. The Department may provide the Subgrantee a reasonable opportunity to correct the breach. If within ten (10) days after receipt of a written notice of termination, the Subgrantee has not corrected the breach or, in the case of a breach which cannot be corrected in ten (10) days, the Subgrantee has not begun and proceeded in good faith to correct the breach, the Department may declare the Subgrantee in default and terminate the Agreement. The Department shall retain any and all other remedies available to it under the law. Upon termination of this Agreement, the Subgrantee shall return the Program equipment.

**8. Appropriations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the Congress of the United States. If sufficient appropriations and authorizations are not made, this Agreement shall terminate upon written notice from the Department to the Subgrantee. The Department's decision as to whether sufficient appropriations are available shall be accepted by the Subgrantee and shall be final.

**9. Termination Management, Allowable Costs.**

In the event of termination, neither party may nullify obligations already incurred for performance or failure to perform. The Subgrantee shall be paid for all the allowable costs incurred prior to the date of termination, subject to audit verification by the Department or its duly authorized representative. The Subgrantee shall not be paid for any costs incurred that are inconsistent with, or contrary to, the terms and conditions of this Agreement.

**10. Breach and Dispute Resolution.**

Disputes which cannot be resolved informally by the parties shall be decided in writing by a representative of the Department's Transit and Rail Division. The Subgrantee has ten (10) days from receipt of the decision to file a written appeal with the Transit and Rail Division. Upon appeal, the Subgrantee will be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the Transit and Rail Division on appeal shall be binding.

**11. Procurement Requirements and Buy America.**

The Subgrantee shall purchase Program equipment pursuant to procedures established by the United States Department of Transportation (U.S. DOT), the FTA, applicable New Mexico State Law, and the standards set forth in: Third Party Contracting Guidance, FTA Circular 4220.1F; Americans with Disabilities Act of 1990, Pub. L. No. 101-336; and Pre-Award and Post-Delivery Audits of Rolling Stock Purchases, 49 C.F.R. Part 663.

The Subgrantee agrees to comply with 49 U.S.C. §5323(j) as amended by MAP-21 and FTA regulations, "Buy America Requirements," 49 C.F.R. Part 661 to the extent those regulations are consistent with MAP-21 provisions, and subsequent amendments to those regulations that may be promulgated.

Prior to awarding a bid award or execution of a contract for services or capital equipment in excess of \$2,500, the Subgrantee shall seek concurrence in writing from the Department.

**12. Rolling Stock.**

In acquiring rolling stock, the Subgrantee agrees as follows:

- A. **Method of Acquisition.** In compliance with 49 U.S.C. § 5325(f), the Recipient agrees that any third party contract award it makes for rolling stock will be based on initial capital costs, or on performance, standardization, life cycle costs, and other factors, or on a competitive procurement process.
- B. **Multi-year Options.** In accordance with 49 U.S.C. § 5325(e)(1), a Recipient procuring rolling stock financed with Federal assistance under 49 U.S.C. chapter 53 may not enter into a multiyear contract with options, exceeding five (5) years after the date of the original contract, to purchase additional rolling stock and replacement parts.
- C. **Pre-Award and Post-Delivery Audits.** The Recipient agrees to comply with the requirements of 49 U.S.C. § 5323(m) and FTA regulations, "Pre Award and Post Delivery Audits of Rolling Stock Purchases," 49 C.F.R. Part 663, and any amendments to those regulations that may be promulgated.
- D. **Bus Testing.** To the extent applicable, the Recipient agrees to comply with the requirements of 49 U.S.C. § 5318(e) and FTA regulations, "Bus Testing," 49 C.F.R. Part 665, and any amendments to those regulations that may be promulgated.

**13. Insurance.**

The Subgrantee shall maintain, satisfactory to the Department, liability, comprehensive, collision, and uninsured motorist insurance adequate to protect the Program equipment. The Department is to be named as an additional insured and a loss payee on the Subgrantee's policy for each vehicle on which the Department has a lien. A certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance. The Subgrantee shall provide the Department documentation of subsequent renewals and shall keep on file a copy of the insurance policy, which shall be accessible to the Department.

The Subgrantee shall require contractors hired to perform the services under this Agreement to have a commercial general liability insurance policy. The Department is to be named as an additional insured on the contractor's policy and a certificate of insurance must be provided to the Department and it shall state that coverage provided under the policy is primary over any other valid insurance.

The Subgrantee shall require contractors hired to perform services under this Agreement to indemnify, defend and hold harmless the State of New Mexico, the Department, its officers, agents and employees from and against all suits, actions or claims of any character brought because of any injury, including death or damages arising out of contractors' construction or maintenance activities pursuant to this Agreement, as memorialized herein and subject to any additional permit that may be required of the contractor to perform said activities.

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

As between the Department and the Subgrantee, 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, Section 41-4-1, et seq., NMSA 1978. 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 the common law of the New Mexico Tort Claims Act.

**15. Use of Program Equipment.**

- A. A Program Vehicle Inventory must be completed for each for each vehicle that will be used in the Program. The Program Vehicle Inventory shall be returned with the signed Agreement.
- B. The Program equipment shall be used to provide public transportation service within the small urbanized service area.
- C. Failure to use the equipment as described in *Section 1. Scope of Program* shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Convenience or Cause*.
- D. The Subgrantee shall notify the Department immediately of vehicular accidents, thefts, or vandalism involving Program equipment. Failure to notify the Department shall be considered a material breach of contract subject to the provisions of *Section 7. Termination for Convenience or Cause*.
- E. The Department may require that Program equipment purchased under FTA programs, on which liens are held, be returned to the Department. Such Program equipment shall be returned in good working condition within ten (10) working days or as stipulated by the Department. If the Subgrantee fails to return the equipment, the Department, as the recorded lien holder, shall have the right to immediately repossess the vehicle(s) by whatever means available to it under New Mexico law.
- F. Upon termination of the Agreement under *Section 7. Termination for Convenience or Cause*, the Subgrantee shall not be eligible for reimbursement of any costs associated with the vehicle(s) purchase or be entitled to damages arising from Program operations, except that the Subgrantee shall be reimbursed for its pro-rata share of the Program equipment's depreciated value as determined by the Straight Line Depreciation method.
- G. The Subgrantee agrees that no modifications will be made to Program vehicle(s) with liens held by the Department without prior written approval of the Department. If unapproved modifications are made, the Subgrantee is responsible for the cost of restoring the vehicle(s) to its original condition.
- H. If the Subgrantee wants to remove any Program equipment from service or dispose of such equipment either as a result of planned withdrawal or casualty loss, the Subgrantee shall contact the Department to obtain specific disposition instructions.
- I. The Subgrantee shall follow the equipment manufacturer's minimum standards and recommended preventive maintenance schedules. The Subgrantee shall maintain the equipment in a clean, safe, and mechanically sound condition. The Department or its authorized representative has the right to conduct periodic inspections during normal business hours for the purpose of confirming property maintenance pursuant to this clause. The Subgrantee shall prepare reports describing usage, any modifications, and other related information for such periods of time and frequency as may be prescribed by the Department.

**16. Certificate of Title for Vehicles.**

Any title to capital equipment the Subgrantee purchases will reflect in a lien in favor of the Department. The liens will remain in effect for four years (or 100,000 miles) from the date title is issued for light duty buses, cutaways and modified vans (designed to carry 10 to 22 passengers). The lien on light duty mid-sized buses (designed to carry 16 to 25 passengers) will remain in effect for five years (or 150,000 miles). The Subgrantee shall pay all costs associated with obtaining, securing, and maintaining titles and liens, including the payment of all applicable taxes and fees.

**17. School Bus Requirements.**

Pursuant to 49 U.S.C. §5323(f) and 49 C.F.R. Part 605, recipients and sub recipients of FTA assistance may not engage in school bus operations exclusively for the transportation of students and school personnel in competition with private school bus operators unless qualified under specified exemptions. When operating exclusive school bus service under an allowable exemption, recipients and sub recipients may not use federally funded equipment, vehicles, or facilities.

**18. Charter Bus Requirements.**

The Subgrantee agrees to comply with 49 U.S.C. §5323(d) and 49 C.F.R. Part 604, which provide that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one private charter operator willing and able to provide the service, except under one of the exceptions at 49 C.F.R. Part 604.9. Any charter service provided under one of the exceptions must be "incidental." (For example, it must not interfere with or detract from the provision of mass transportation).

**19. Duration of Lien.**

The Subgrantee shall not pledge or collateralize any vehicles purchased under this Agreement without written authorization from the Department. This restriction is in effect from the date a title certificate is issued to when the Department releases the lien pursuant to *Section 16. Certificate of Title for Vehicles*. For specifics on disposition of vehicles after title lien is released, please refer to the Vehicle Title Release and Disposition sections of the *New Mexico State Management Plan for the Administration of Federal Transit Grants*.

**20. Operation Reporting Requirements.**

The Subgrantee shall keep satisfactory records with regard to the use of the property and shall submit to the Department, as requested, such information as is required to assure compliance with this Agreement and shall immediately notify the Department in all cases where Program equipment is used in a manner substantially different from that described in the Program Description. The reporting period shall extend as long as the Department holds the lien to the vehicle.

A certification that the Program equipment is still being used in accordance with the terms of the Agreement shall be submitted to the Department with the Certifications and Assurances during the application process.

Subgrantee's failure to submit report in a timely manner on the dates specified shall be a material breach of this Agreement and shall be subject to termination as provided in *Section 7. Termination for Convenience or Cause*.

**21. Retention of Records.**

The Subgrantee shall maintain all books, documents, papers, accounting records, reports and other evidence pertaining to costs incurred in the Program for three (3) years after the date of termination or expiration of this Agreement.

**22. Access to Records.**

The Subgrantee shall grant authorized representatives of the Department, the state and the federal government access to books, documents, papers, reports, and records of the Subgrantee or its subcontractors, which are directly pertinent to this Agreement, for the purpose of making audits, examination excerpts, and transcriptions. The Subgrantee agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed. The Subgrantee shall reimburse the Department for any

expenditure for which it received payment or reimbursement, as applicable, which is disallowed by an audit exception by the Department, the state or federal government.

**23. Audit.**

The Subgrantee shall ensure that an annual audit of the Program based on the Subgrantee's fiscal year shall be conducted pursuant to 2 CFR 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirement for Federal Awards. The Subgrantee, prior to initiation of the audit, shall seek written approval from the Department of the auditing firm. The Subgrantee agrees to provide the Department with a copy of the audit report concerning any portion of the Agreement period as soon as it is released, but in no case later than six months following the close of the local fiscal year. Audit costs are an eligible administrative expense. Should the Subgrantee fail to produce the annual audit, the Department may, at its option, commission such an audit payable out of Program funds.

**24. Audit Exceptions.**

If federal or state audit exceptions are made, the Subgrantee shall reimburse all costs incurred by the State and the Department associated with defending against the exceptions, which includes but is not limited to costs of performing a new audit or a follow-up audit, court costs, attorney's fees, travel costs, penalty assessments.

Immediately upon notification from the Department, the Subgrantee shall reimburse the amount of the audit exception and any other related costs directly to the Department. In the notification, the Department may inform the Subgrantee of the Department's election to withhold an amount equal to the payment owed under this Section from any future distribution owed to Subgrantee under this Agreement.

**25. 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.

**26. Contracting and Assignment.**

The Subgrantee shall not contract any portion of this Agreement without prior written approval of the Department. No such contracting shall relieve the Subgrantee from its obligations and liabilities under this Agreement, nor shall any subcontracting obligate payment from the Department.

Except to a successor in kind, the Subgrantee shall not assign or transfer any interest in this Agreement or assign any claim for money due or to become due under this Agreement without the prior written approval of the Department.

Should subcontract(s) or an assignment be authorized by the Department, the subcontractor(s) and assignor(s) shall be subject to all provisions of this Agreement. It shall be the Subgrantee's responsibility to duly inform the subcontractor(s) and assignor(s) by means of a contract or other legally binding document stipulating responsibility to this Agreement.

**27. No Federal Government Obligation to Third Parties.**

- A. The Department and Subgrantee acknowledge and agree that, notwithstanding any concurrence by the federal government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the federal government, the federal government is not a party to this contract and shall not be subject to any obligations or liabilities to the Department, Subgrantee, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.
- B. The Subgrantee agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by FTA. It further agrees that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

**28. Civil Rights Laws and Regulations Compliance.**

The Subgrantee shall comply with all federal, state and local laws and ordinances applicable to the work called for under this Agreement.

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Subgrantee shall not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. The Subgrantee shall comply with applicable Federal implementing regulations and such other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to this Agreement:
  - 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Subgrantee agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable federal statutes, executive orders, regulations, and federal policies that may in the future affect construction activities undertaken in the course of the project. The Subgrantee agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.
  - 2. Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Subgrantee agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Subgrantee shall comply with any implementing requirements FTA may issue.
  - 3. Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, 42 U.S.C. § 12112, the Subgrantee agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the awarded contractor shall comply with any implementing requirements FTA may issue.
- C. The Subgrantee shall include these requirements in each subcontract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.
- D. The Subgrantee also agrees to include these requirements in each contract financed in whole or in part with federal assistance provided by FTA, modified only if necessary to identify the affected parties.

**29. ADA Access.**

The Subgrantee shall comply with 49 U.S.C. § 5301(d), which states the Federal policy that elderly individuals and individuals with disabilities have the same right as other individuals to use public transportation services and facilities, and that special efforts shall be made in planning and designing those services and facilities to implement transportation accessibility rights for elderly individuals and individuals with disabilities. The Subgrantee also agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and

services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities.

**30. Program Fraud and False or Fraudulent Statements or Related Acts.**

- A. The Subgrantee acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. §§3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this program. The Subgrantee certifies or affirms the truthfulness and accuracy of any statement it makes pertaining to the resultant contract or the FTA assisted program for which this work is being performed. The Subgrantee further acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification, the federal government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Subgrantee to the extent the federal government deems appropriate.
- B. The Subgrantee also acknowledges that if it makes, or causes to be made, a false, fictitious or fraudulent claim, statement, submission or certification to the federal government under a contract connected with a program that is financed in whole or in part with federal assistance originally awarded by FTA under the authority of 49 U.S.C. §5307, the federal government reserves the right to impose the penalties of 18 U.S.C. §1001 and 49 U.S.C. §5307(n)(1) on the Subgrantee, to the extent the federal government deems appropriate.
- C. The Subgrantee certifies to abide by these clauses and include the clauses in each subcontract financed in whole or in part with Federal Transit Administration funds. Subgrantee further agrees that these clauses shall not be modified, except to identify the subcontractor subject to its provisions.
- D. All claims for compensation reimbursement and payment of any amounts due pursuant to this Agreement are governed by the Fraud Against Taxpayers Act, §§ 44-9-1 through 44-9-14 NMSA 1978.

**31. Lobbying.**

A Subgrantee receiving \$100,000 or more of 49 U.S.C. §5339 funds shall file the Lobbying Certification required by 49 C.F.R. Part 20, "New Restrictions on Lobbying." The Lobbying Certification is attached as Certification 1. The Subgrantee must certify that it has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of a member of Congress in connection with obtaining any federal contract, grant or any other award covered by 31 U.S.C. §1352.

If the Subgrantee hires a contractor, the contractor must provide the Lobbying Certification to the Subgrantee. Each tier below the contractor shall also provide a Lobbying Certification. Such disclosures are forwarded from tier to tier up to the Subgrantee.

**32. Officials Not to Benefit.**

Neither any member of the New Mexico Legislature nor any member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit that may arise therefrom. The provisions of this clause shall be extended to all public employees, officers, or tribal council members.

**33. Energy Conservation.**

The Subgrantee agrees to comply with mandatory standards and policies relating to energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

**34. Clean Water and Air Requirements.**

- A. The Subgrantee agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, 33U.S.C. §§1251 et seq., and the Clean Air Act, 42 U.S.C. §§7401 et seq. The Subgrantee agrees to report each violation to the Department and understands and agrees that the

Department will, in turn, report each violation as required to assure notification to FTA and the appropriate United States Environmental Protection Agency Regional Office.

- B. The Subgrantee agrees to include these requirements in each subcontract exceeding \$100,000.00 and financed in whole or in part with federal assistance provided by the FTA.

**35. Debarment and Suspension.**

Executive Order 12549, as implemented by 49 C.F.R. Part 29, prohibits FTA Subgrantees from contracting for goods and services from organizations that have been suspended or debarred from receiving federally-assisted contracts. Subgrantees shall include the certification and instruction language contained at 29 C.F.R. Part 29, Appendix B, in all Invitations for Bids and Requests for Proposals (for inclusion by contractors in their bids or proposals) for all contracts expected to equal or exceed \$25,000.00, regardless of the type of contract to be awarded.

The Subgrantee is required to verify that none of the Subgrantee's principals, as defined at 49 C.F.R. Part 29.995, or affiliates, as defined at 49 C.F.R. Part 29.905, are excluded or disqualified as defined at 49 C.F.R. Parts 29.940 and 29.945. By signing and submitting this Agreement, the Subgrantee certifies as follows:

The certification in this clause is a material representation of fact relied upon by the Department. If it is later determined that the bidder/Subgrantee or proposer/Subgrantee knowingly rendered an erroneous certification, in addition to remedies available to the Department, the federal government may pursue available remedies, including but not limited to suspension and/or debarment. The bidder/Subgrantee or proposer/Subgrantee agrees to comply with the requirements of 49 C.F.R. Part 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder/Subgrantee or proposer/Subgrantee further agrees to include a provision requiring such compliance in its lower tier covered transactions.

**36. Central Contractor Registration Requirements.**

Prior to payment of invoices and receipt of vehicles and equipment, Subgrantees must register and maintain current registration in the Central Contractor Registration website, <http://www.sam.gov>. Registration requires having a Dun and Bradstreet Data Universal Number (DUNS), see <http://www.dnb.com>. The Department will not provide vehicles, or make payments, until the Subgrantee demonstrates that it is registered with the System for Award Management (SAM) website.

**37. 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).

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

- Name of Subgrantee receiving the award
- Amount of Award
- Funding Agency
- NAICS code for contracts or the Catalog of Federal Domestic Assistance program number for grants
- Program source
- Award title descriptive of the purpose of the funding action
- Location of the Subgrantee, which includes the Congressional District
- Place of performance of the program or activity, which includes the Congressional District
- Unique identifier—DUNS—of the Subgrantee and its parent organization, if one exists
- 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 Subgrantee's grant application and standard reports. However, the Subgrantee will be required to provide additional information, which includes

the total compensation and names of the Subgrantee's top five executives, if applicable. As specified earlier in *Section 37, "Central Contractor Registration Requirements,"* of this Agreement, the Subgrantee shall register with the SAM and DUNS websites and provide that information to the Department.

**38. 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.

**39. Scope of Agreement.**

This Agreement incorporates all of 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 agreements or understandings, verbal or otherwise, of the parties or their agents shall become valid or enforceable unless embodied in this Agreement.

**40. Applicable Law and Venue; Federal Changes.**

The Subgrantee shall comply with all federal, state and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this Agreement. This includes all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the current year's Master Agreement by FTA. The Subgrantee shall make as part of this Agreement between the Department and the Subgrantee the assurances and warranties which were signed as part of the grant award. Venue shall be proper only in a New Mexico court of competent jurisdiction in accordance with NMSA 1978, Section 38-3-1(G).

**41. Incorporation of FTA Terms.**

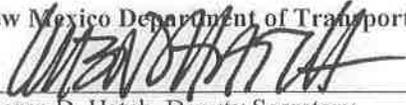
Provisions of this Agreement include, in part, certain Standard Terms and Conditions required by the U.S. DOT. All contractual provisions required by the U.S. DOT, as set forth in FTA Circulars 4220.1F, and 9040.1F, are incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Subgrantee shall not perform any act, fail to perform any act, or refuse to comply with any Department request, which would cause the Department to be in violation of FTA terms and conditions, as referenced in the current Federal Transit Administration Master Agreement shall prevail and be the instrument governing the receipt of Federal assistance from the Federal Transit Administration. The Master Agreement can be viewed on the web at <http://www.fta.dot.gov/grants/15072.html>.

**42. Amendment.**

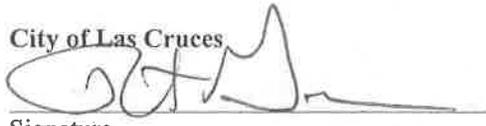
The terms of this Agreement may be altered, modified, or amended by an instrument in writing executed by the parties.

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

New Mexico Department of Transportation

  
Loren D. Hatch, Deputy Secretary

City of Las Cruces

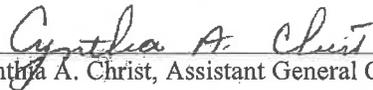
  
Signature

Robert Garza, City Manager  
Name/Title (please print)

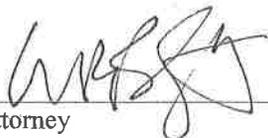
16 Oct 2015  
Date

10-9-15  
Date

Approved as to Form and Legal Sufficiency by the Department's Office of General Counsel.

  
Cynthia A. Christ, Assistant General Counsel

9-21-15  
Date

  
City Attorney

2 OCT 2015  
Date

**LOBBYING CERTIFICATION**

*An Applicant that submits or intends to submit an application to FTA for Federal assistance exceeding \$100,000 is required to provide the following certification. FTA may not award Federal assistance exceeding \$100,000 until the Applicant provides this certification by selecting Category "02."*

- A. As required by 31 U.S.C. 1352 and U.S. DOT regulations, "New Restrictions on Lobbying," at 49 CFR 20.110, the Applicant's authorized representative certifies to the best of his or her knowledge and belief that for each application to FTA for Federal assistance exceeding \$100,000:
  - (1) No Federal appropriated funds have been or will be paid by or on behalf of the Applicant to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress regarding the award of Federal assistance, or the extension, continuation, renewal, amendment, or modification of any Federal assistance agreement; and
  - (2) If any funds other than Federal appropriated funds have been or will be paid to any person to influence or attempt to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any application for Federal assistance, the Applicant assures that it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," including information required by the instructions accompanying the form, which form may be amended to omit such information as authorized by 31 U.S.C. 1352; and
  - (3) The language of this certification shall be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, subagreements, and contracts under grants, loans, and cooperative agreements).
- B. The Applicant understands that this certification is a material representation of fact upon which reliance is placed by the Federal government and that submission of this certification is a prerequisite for providing Federal assistance for a transaction covered by 31 U.S.C. 1352. The Applicant also understands that any person who fails to file a required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

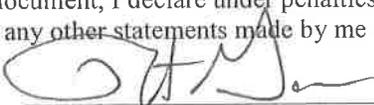
**AFFIRMATION OF APPLICANT**

Name of Applicant: City of Las Cruces

Printed Name of Authorized Representative: Robert Garza

Relationship of Authorized Representative: City Manager

In signing this document, I declare under penalties of perjury that the foregoing certifications and assurances, and any other statements made by me on behalf of the Applicant are true and correct.

Signature:  Date: 10-9-15

Printed Name of Signing Official: Robert Garza

**APPROVED AS TO FORM:**  
  
 City Attorney

**BUDGET ADJUSTMENT REQUEST (BAR)**

<u>Department and Section</u> Transportation/Transit	<u>Permanent or Temporary</u>  Temporary	<b>EXHIBIT "B"</b>	
		<u>Council/Board Resolution No.</u>	

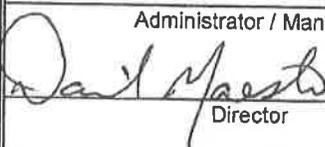
**Justification for Request**

A RESOLUTION TO APPROVE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT), TO ACCEPT GRANT FUNDING IN THE AMOUNT OF \$186,695.00 FOR THE PURCHASE REPLACEMENT OF ROADRUNNER TRANSIT VEHICLES, TO OBLIGATE A LOCAL MATCH AMOUNT OF \$46,673.75.00, AND TO ADJUST THE FY2016 BUDGET.

**MUNIS Comment:** NMDOT Transit Grant Funding

<u>Gabriel Sapien</u>	<u>541-2198</u>	<u>FY2016</u>	<u>10/27/2015</u>
<b>Prepared by</b>	<b>Phone No.</b>	<b>FY to be Adjusted</b>	<b>Date</b>

Fund	Org	Object	Project	Object Name	Increase \$	Decrease \$
4001	4001	965920		TRNFR TO BUS TRANSIT FUND	73,674	
4001	40806060	854340		CONTINGENCY MATCH CAPITAL		73,674
5920	5920	914001		TRANSFER FROM CAPITAL IMP RES	73,674	
5920	59323050	851100	24217	ROLLING EQUIP INCL TRAILERS	46,674	
5921	59323150	851100	24217	ROLLING EQUIP INCL TRAILERS	186,695	
5921	59320050	552007	24217	NM DEPT OF TRANSPORTATION	186,695	
<b>Totals</b>					<b>\$567,412</b>	<b>\$73,674</b>

<i>By signing, I verify balances and accounts are available in MUNIS.</i>			<i>For use by Administration and Office of Mgmt &amp; Budget</i>		
<u>Administrator / Manager</u>	<u>Date</u>		<u>Mark A. Winson, ACM / CAO</u>	<u>Date</u>	
	<u>10-30-15</u>		<u>Daniel Avila, ACM / COO</u>	<u>Date</u>	
	<u>Director</u>				
<i>For use by Office of Mgmt &amp; Budget</i>			<i>Revised 5/05/2015</i>		
			<u>Robert L. Garza, City Manager</u>	<u>Date</u>	
<u>Budget Adjustment Number</u>	<u>Posted By</u>	<u>Date</u>			
<u>Period:</u>	<u>JE#</u>		<u>Budget and Grant Manager</u>	<u>Date</u>	

# CITY OF LAS CRUCES

## Fund Summary

### EXHIBIT "B" CONTINUED

**Fund:** 4001  
**DFA:** 300

**Fund Name:** FACILITIES GENERAL FUND  
**DFA Name:** Capital Project Funds

	2015-16 Budget			%
	Adopted	Adjustment	Amended	Inc. / Dec.
<b>Beginning Balance</b>	\$ 2,178,077	(216,724)	1,961,353	-9.95%
<b>Resources</b>				
Revenue	\$ 80,000	0	80,000	0.00%
Transfers In	117,500	0	117,500	0.00%
<b>Total Resources</b>	\$ 197,500	0	197,500	0.00%
<b>Expenditures</b>				
Operating Costs	63,454	0	63,454	0.00%
Capital Outlay	1,213,210	(73,674)	1,139,536	-6.07%
Grant / Projects	450,356	0	450,356	0.00%
Transfers Out	13,290	73,674	86,964	554.36%
<b>Total Expenditures</b>	\$ 1,740,310	0	1,740,310	0.00%
<b>Ending Balance</b>	\$ 635,267	(216,724)	418,543	-34.12%

**Fund:** 5920  
**DFA:** 500

**Fund Name:** TRANSIT  
**DFA Name:** Transit

	2015-16 Budget			%
	Adopted	Adjustment	Amended	Inc. / Dec.
<b>Beginning Balance</b>	\$ 181,903	0	181,903	0.00%
<b>Resources</b>				
Revenue	\$ 365,350	0	365,350	0.00%
Transfers In	1,772,000	73,674	1,845,674	4.16%
<b>Total Resources</b>	\$ 2,137,350	73,674	2,211,024	3.45%
<b>Expenditures</b>				
Operating Costs	49,609	0	49,609	0.00%
Grant / Projects	2,296,473	46,674	2,343,147	2.03%
Transfers Out	0	0	0	0.00%
<b>Total Expenditures</b>	\$ 2,346,082	46,674	2,392,756	1.99%
<b>Ending Balance</b>	\$ (26,829)	27,000	171	-100.64%

Fund: 5921  
DFA: 500

Fund Name: TRANSIT INTERMODAL CENTER  
DFA Name: Transit  
101

	2015-16 Budget			%
	Adopted	Adjustment	Amended	Inc. / Dec.
<b>Beginning Balance</b>	\$ 3,257	0	3,257	0.00%
<b>Resources</b>				
Revenue	\$ 3,917,435	186,695	4,104,130	4.77%
Transfers In	0	0	0	0.00%
<b>Total Resources</b>	\$ 3,917,435	186,695	4,104,130	4.77%
<b>Expenditures</b>				
Grant / Projects	3,914,181	186,695	4,100,876	4.77%
Transfers Out	0	0	0	0.00%
<b>Total Expenditures</b>	\$ 3,914,181	186,695	4,100,876	4.77%
<b>Ending Balance</b>	\$ 6,511	0	6,511	0.00%



# City of Las Cruces®

PEOPLE HELPING PEOPLE

(5)

## COUNCIL ACTION AND EXECUTIVE SUMMARY PACKET ROUTING SLIP

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

For Meeting of November 16, 2015  
(Adoption Date)

TITLE:

A RESOLUTION TO APPROVE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT), TO ACCEPT GRANT FUNDING IN THE AMOUNT OF \$186,695.00 FOR THE PURCHASE REPLACEMENT OF ROADRUNNER TRANSIT VEHICLES, TO OBLIGATE A LOCAL MATCH AMOUNT OF \$46,673.75, AND TO ADJUST THE FY2016 BUDGET.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact Amy Johnson Bassford		541-2281	10/27/15
Finance Department Victoria Fredrick		541-2080	10/27/15
Transportation Director David Maestas		541-2559	10-28-15
Budget Office Robert Lundien		541-2106	10-30-15
Assistant City Manager /CAO Mark Winson		541-2100	11/2/15
Assistant City Manager/COO Daniel Avilla		541-2271	11/3/15
City Attorney Wm. "Rusty" Babington		541-2128	6 NOV 2015
Interim City Clerk Linda Lewis		541-2115	11-6-15