



57  
**City of Las Cruces**<sup>®</sup>  
 PEOPLE HELPING PEOPLE

**Council Action and Executive Summary**

Item # 5      Ordinance/Resolution# 16-243

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

For Meeting of July 5, 2016  
 (Adoption Date)

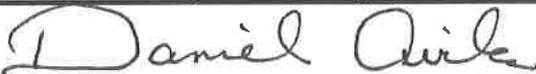
Please check box that applies to this item:

QUASI JUDICIAL       LEGISLATIVE       ADMINISTRATIVE

**TITLE: A RESOLUTION APPROVING A ROADWAY LIGHTING MAINTENANCE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR THE MAINTENANCE OF ROADWAY LIGHTING ON INTERSTATE 10 AT EXIT 135, PICACHO AVE., NMDOT CONTROL NO. 9900362.**

**PURPOSE(S) OF ACTION:**

Approve agreement.

<b>COUNCIL DISTRICT: 2</b>		
<b><u>Drafter/Staff Contact:</u></b> SooGyu Lee, P.E.	<b><u>Department/Section:</u></b> Transportation/Street and Traffic Operations	<b><u>Phone:</u></b> 541-2566
<b><u>City Manager Signature:</u></b>		

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

The New Mexico Department of Transportation (NMDOT) constructed a project (Control No.9900362) that includes the installation of roadway lighting on Interstate 10 at Exit 135, Picacho Ave. The lighting bid was \$274,966.00, excluding NMGRT and the project was substantially completed in December 2015.

Pursuant to the Roadway Lighting Maintenance Agreement, attached hereto as Exhibit "A", NMDOT provided the design and construction of the roadway lighting at the aforementioned location. This agreement is for the maintenance of those street lights by City of Las Cruces (City) forces to include routine maintenance, replacement of material and power costs. The estimated annual maintenance and power cost will be in the range of \$5,500.00 which would be approximately 25% power costs and 75% material costs.

No prior written maintenance agreement between the City and the NMDOT was in place for the maintenance of the lighting under NMDOT jurisdiction at this location; therefore, the NMDOT requests that the City enter into the attached maintenance agreement to facilitate the future upkeep of the roadway lighting system upon final acceptance of the project.

(Continue on additional sheets as required)

**SUPPORT INFORMATION:**

1. Resolution.
2. Exhibit "A", Roadway Lighting Maintenance Agreement.
3. Attachment "A", Location Map.

**SOURCE OF FUNDING:**

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

**BUDGET NARRATIVE**

Estimated annual maintenance and power cost for the lighting systems is approximately \$5,500 and will be taken from the General Fund street lighting operating budget.

**FUND EXPENDITURE SUMMARY:**

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
General	10323120-726200	\$1,375.00	\$1,125,000.00	\$1,123,625.00	Electricity for street lighting
General	10323120-730110	\$4,125.00	\$189,000.00	\$184,875.00	Street lighting operational expenditures

**OPTIONS / ALTERNATIVES:**

1. Vote "Yes"; this action approves the resolution and authorizes the City to accept maintenance responsibilities of the roadway lighting systems, as specified in the Roadway Lighting Maintenance Agreement, once it is accepted by both NMDOT and City entities.
2. Vote "No"; this action denies the resolution and will not authorize the City to accept maintenance responsibilities of the roadway lighting systems, which will place

(Continue on additional sheets as required)

maintenance responsibilities back upon the NMDOT office headquartered out of Santa Fe, NM for the roadway lighting systems under NMDOT jurisdiction. Local traffic conditions may be adversely affected by the longer response time by NMDOT crews to any issues related to the roadway lighting systems under NMDOT jurisdiction.

3. Vote to "Amend"; this action could approve the agreement with adjustments to conditions or other changes as requested by City Council.
4. Vote to "Table"; this would allow City Council to postpone consideration of the resolution to approve the agreement and direct staff accordingly.

**REFERENCE INFORMATION:**

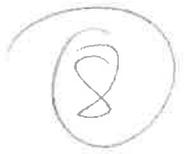
The resolution(s) and/or ordinance(s) listed below are only for reference and are not included as attachments or exhibits.

N/A



# 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 July 5, 2016  
(Adoption Date)

**TITLE:** A RESOLUTION APPROVING A ROADWAY LIGHTING MAINTENANCE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR THE MAINTENANCE OF ROADWAY LIGHTING ON INTERSTATE 10 AT EXIT 135, PICACHO AVE., NMDOT CONTROL NO. 9900362.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact	<i>[Signature]</i>	541-2566	06/01/16
Department Director	<i>[Signature]</i>	541-2048	06-2-16
Other			
Assistant City Manager /CAO Management & Budget Manager	<i>[Signature]</i>	541-2078 541-2300	6-3-2016 6-3-2016
Assistant City Manager/COO	<i>[Signature]</i>	541-2107	6-6-16
City Attorney	<i>[Signature]</i>	541-2128	7 JUNE 2016
City Clerk	<i>[Signature]</i>	541-2115	

RESOLUTION NO. 16-243**A RESOLUTION APPROVING A ROADWAY LIGHTING MAINTENANCE AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION TO PROVIDE FOR THE MAINTENANCE OF ROADWAY LIGHTING ON INTERSTATE 10 AT EXIT 135, PICACHO AVE., NMDOT CONTROL NO. 9900362.**

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

**WHEREAS**, the New Mexico Department of Transportation (NMDOT) constructed a project (Control No. 9900362) that included the installation of roadway lighting systems on Interstate 10 at Exit 135, Picacho Ave.; and

**WHEREAS**, this entailed the installation of all equipment and materials for fully operational roadway lighting systems on Interstate 10 at Exit 135, Picacho Ave.; and

**WHEREAS**, the estimated annual maintenance costs will be in the range of \$5,500.00 which would be approximately 25% power costs and 75% materials costs; and

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

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

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

**(I)**

**THAT** the City Manager is hereby authorized to enter into a roadway lighting maintenance agreement to maintain the roadway lighting systems along Interstate 10 at Exit 135, Picacho Ave., with the NMDOT, attached hereto as Exhibit "A" and made a part of this resolution.

**(II)**

**THAT** City staff is hereby authorized to do all deeds necessary in the

accomplishment of the herein above.

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

APPROVED:

\_\_\_\_\_  
Mayor

ATTEST:

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

(SEAL)

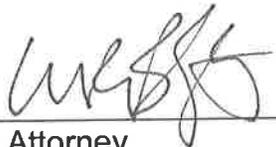
VOTE:

Mayor Miyagishima:	_____
Councillor Gandara:	_____
Councillor Smith:	_____
Councillor Pedroza:	_____
Councillor Eakman:	_____
Councillor Sorg:	_____
Councillor Levatino:	_____

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

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

APPROVED AS TO FORM:

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

**DRAFT ONLY**

Contract No.: \_\_\_\_\_

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

**MAINTENANCE AGREEMENT****ROADWAY LIGHTING**

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

**RECITALS**

**Whereas**, the Department contemplates the construction of a highway project within the boundaries of the Public Entity, identified as I-10 EXIT 135 Interchange Lighting PN: 9900362 CN: 9900362 ("Project"); and,

**Whereas**, the Department and Public Entity agree with the need for installation of roadway lighting at the following location(s): I-10 Westbound off-ramp, I-10 Westbound On-ramp, I-10 Eastbound Off-ramp, I-10 Eastbound On-ramp; and,

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

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

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

**1. The Department Shall:**

- a. Provide the necessary plans, designs and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
- b. Determine the design, provide and install new roadway lighting equipment with cabinet, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway lighting.
- c. Provide and install approximately 22, Luminaire Type LED, with full cutoff fixtures, on type V standards on I-10 EXIT 135 Interchange , for a fully operational lighting system.
- d. After construction is completed, provide the Public Entity as built drawings of the repairs to the roadway lights and a complete list of all parts and components, used including the brands and specifications.
- e. After completion of the Project, allow the Public Entity to enter into the Department's right of way to perform maintenance as detailed in Section 2 below.

**2. The Public Entity Shall:**

After the roadway lighting system has been constructed:

- a. Provide at its sole cost and expense all electrical energy.
- b. Perform at its sole cost and expense any and all maintenance to keep the system operating, which includes luminaire replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
- c. Perform maintenance as detailed in this Section 2, to all parts and components, which includes and is not limited to poles or fixtures, conduits and wiring, and as provided by as-built drawings.
- d. Replace all parts and components with in kind or approved equal for continued satisfactory operation of said roadway lighting system.
- e. Procure and maintain insurance or a performance bond to ensure that all maintenance requirements as listed in this Section 2 are performed. Proof of insurance or bonding must be provided prior to signing this Agreement. Proof of continued insurance and bonding must be provided to the Department annually at the end of Calendar year.
- f. Reimburse the Department within 30 days of receipt of invoice for any and all costs the Department has to bear for any maintenance that and the Department is required to perform on the roadway light system.

### **3. Term.**

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

### **4. Third Party Beneficiaries.**

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

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

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

### **6. Scope of Agreement.**

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

### **7. Terms of this Agreement.**

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

**8. Equal Opportunity Compliance.**

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

**9. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, 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 Public Entity, 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 Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**10. Severability.**

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

**11. Public Entity Sole Jurisdiction.**

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

**12. Project Responsibility.**

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

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

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

**14. Applicable Law.**

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

**15. 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.

Andrew Gallegos  
Traffic Operations Engineer  
New Mexico Department of Transportation  
1120 Cerrillos Rd  
Santa Fe, NM 87504  
Office: (505) 827-5578  
E-mail: Andrew.Gallegos@state.nm.us

Willie Roman  
Administrator Street & Traffic Operations  
City of Las Cruces  
700 North Main  
Las cruces, NM 88001  
Office: 575-541-2508  
Fax: 575-541-2594  
E-mail: wroman@las-cruces.org

**16. Amendment**

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

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

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

Recommended by:

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

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

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

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

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

By: Cynthia A. Chait  
Assistant General Counsel

Date: 12-8-15

**City of Las Cruces**

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

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

Title: City Manager

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

APPROVED AS TO FORM:

[Signature]  
City Attorney



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

**MAINTENANCE AGREEMENT**

**ROADWAY LIGHTING**

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

**RECITALS**

**Whereas**, the Department contemplates the construction of a highway project within the boundaries of the Public Entity, identified as I-10 EXIT 135 Interchange Lighting PN: 9900362 CN: 9900362 (“Project”); and,

**Whereas**, the Department and Public Entity agree with the need for installation of roadway lighting at the following location(s): I-10 Westbound off-ramp, I-10 Westbound On-ramp, I-10 Eastbound Off-ramp, I-10 Eastbound On-ramp; and,

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

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

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

**1. The Department Shall:**

- a. Provide the necessary plans, designs and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
- b. Determine the design, provide and install new roadway lighting equipment with cabinet, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway lighting.
- c. Provide and install approximately 22, Luminaire Type LED, with full cutoff fixtures, on type V standards on I-10 EXIT 135 Interchange , for a fully operational lighting system.
- d. After construction is completed, provide the Public Entity as built drawings of the repairs to the roadway lights and a complete list of all parts and components, used including the brands and specifications.
- e. After completion of the Project, allow the Public Entity to enter into the Department’s right of way to perform maintenance as detailed in Section 2 below.

**2. The Public Entity Shall:**

After the roadway lighting system has been constructed:

- a. Provide at its sole cost and expense all electrical energy.
- b. Perform at its sole cost and expense any and all maintenance to keep the system operating, which includes luminaire replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
- c. Perform maintenance as detailed in this Section 2, to all parts and components, which includes and is not limited to poles or fixtures, conduits and wiring, and as provided by as-built drawings.
- d. Replace all parts and components with in kind or approved equal for continued satisfactory operation of said roadway lighting system.
- e. Procure and maintain insurance or a performance bond to ensure that all maintenance requirements as listed in this Section 2 are performed. Proof of insurance or bonding must be provided prior to signing this Agreement. Proof of continued insurance and bonding must be provided to the Department annually at the end of Calendar year.
- f. Reimburse the Department within 30 days of receipt of invoice for any and all costs the Department has to bear for any maintenance that and the Department is required to perform on the roadway light system.

### **3. Term.**

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

### **4. Third Party Beneficiaries.**

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

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

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

### **6. Scope of Agreement.**

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

### **7. Terms of this Agreement.**

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

#### **8. Equal Opportunity Compliance.**

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

#### **9. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, 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 Public Entity, 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 Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

#### **10. Severability.**

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

#### **11. Public Entity Sole Jurisdiction.**

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

#### **12. Project Responsibility.**

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

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

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

#### **14. Applicable Law.**

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

**15. 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.

Andrew Gallegos  
Traffic Operations Engineer  
New Mexico Department of Transportation  
1120 Cerrillos Rd  
Santa Fe, NM 87504  
Office: (505) 827-5578  
E-mail: Andrew.Gallegos@state.nm.us

Willie Roman  
Administrator Street & Traffic Operations  
City of Las Cruces  
700 North Main  
Las cruces, NM 88001  
Office: 575-541-2508  
Fax: 575-541-2594  
E-mail: wroman@las-cruces.org

**16. Amendment**

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

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

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

Recommended by:

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

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

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

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

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

By: Cynthia A. Christ  
Assistant General Counsel

Date: 12-8-15

**City of Las Cruces**

By: Daniel Ojeda

Date: 6/10/16

Title: City Manager

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

APPROVED AS TO FORM:

[Signature]  
City Attorney

Contract No.: \_\_\_\_\_

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

## MAINTENANCE AGREEMENT

### ROADWAY LIGHTING

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

#### RECITALS

**Whereas**, the Department contemplates the construction of a highway project within the boundaries of the Public Entity, identified as I-10 EXIT 135 Interchange Lighting PN: 9900362 CN: 9900362 (“Project”); and,

**Whereas**, the Department and Public Entity agree with the need for installation of roadway lighting at the following location(s): I-10 Westbound off-ramp, I-10 Westbound On-ramp, I-10 Eastbound Off-ramp, I-10 Eastbound On-ramp; and,

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

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

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

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

- a. Provide the necessary plans, designs and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
- b. Determine the design, provide and install new roadway lighting equipment with cabinet, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway lighting.
- c. Provide and install approximately 22, Luminaire Type LED, with full cutoff fixtures, on type V standards on I-10 EXIT 135 Interchange , for a fully operational lighting system.
- d. After construction is completed, provide the Public Entity as built drawings of the repairs to the roadway lights and a complete list of all parts and components, used including the brands and specifications.
- e. After completion of the Project, allow the Public Entity to enter into the Department’s right of way to perform maintenance as detailed in Section 2 below.

#### **2. The Public Entity Shall:**

After the roadway lighting system has been constructed:

- a. Provide at its sole cost and expense all electrical energy.
- b. Perform at its sole cost and expense any and all maintenance to keep the system operating, which includes luminaire replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
- c. Perform maintenance as detailed in this Section 2, to all parts and components, which includes and is not limited to poles or fixtures, conduits and wiring, and as provided by as-built drawings.
- d. Replace all parts and components with in kind or approved equal for continued satisfactory operation of said roadway lighting system.
- e. Procure and maintain insurance or a performance bond to ensure that all maintenance requirements as listed in this Section 2 are performed. Proof of insurance or bonding must be provided prior to signing this Agreement. Proof of continued insurance and bonding must be provided to the Department annually at the end of Calendar year.
- f. Reimburse the Department within 30 days of receipt of invoice for any and all costs the Department has to bear for any maintenance that and the Department is required to perform on the roadway light system.

### **3. Term.**

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

### **4. Third Party Beneficiaries.**

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

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

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

### **6. Scope of Agreement.**

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

### **7. Terms of this Agreement.**

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

#### **8. Equal Opportunity Compliance.**

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

#### **9. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, 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 Public Entity, 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 Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

#### **10. Severability.**

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

#### **11. Public Entity Sole Jurisdiction.**

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

#### **12. Project Responsibility.**

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

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

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

#### **14. Applicable Law.**

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

**15. 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.

Andrew Gallegos  
Traffic Operations Engineer  
New Mexico Department of Transportation  
1120 Cerrillos Rd  
Santa Fe, NM 87504  
Office: (505) 827-5578  
E-mail: Andrew.Gallegos@state.nm.us

Willie Roman  
Administrator Street & Traffic Operations  
City of Las Cruces  
700 North Main  
Las cruces, NM 88001  
Office: 575-541-2508  
Fax: 575-541-2594  
E-mail: wroman@las-cruces.org

**16. Amendment**

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

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

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

Recommended by:

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

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

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

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

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

By: Cynthia A. Chis  
Assistant General Counsel

Date: 12-8-15

**City of Las Cruces**

By: Daniel Avila

Date: 6/10/16

Title: City Manager

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

APPROVED AS TO FORM:  
[Signature]  
City Attorney

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

## MAINTENANCE AGREEMENT

### ROADWAY LIGHTING

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

### RECITALS

**Whereas**, the Department contemplates the construction of a highway project within the boundaries of the Public Entity, identified as I-10 EXIT 135 Interchange Lighting PN: 9900362 CN: 9900362 (“Project”); and,

**Whereas**, the Department and Public Entity agree with the need for installation of roadway lighting at the following location(s): I-10 Westbound off-ramp, I-10 Westbound On-ramp, I-10 Eastbound Off-ramp, I-10 Eastbound On-ramp; and,

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

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

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

#### 1. The Department Shall:

- a. Provide the necessary plans, designs and estimates and other documents required for the construction of the Project and cause the Project to be constructed in the manner provided by law.
- b. Determine the design, provide and install new roadway lighting equipment with cabinet, concrete foundations, poles, luminaires, underground conduit, and conductor for complete roadway lighting.
- c. Provide and install approximately 22, Luminaire Type LED, with full cutoff fixtures, on type V standards on I-10 EXIT 135 Interchange , for a fully operational lighting system.
- d. After construction is completed, provide the Public Entity as built drawings of the repairs to the roadway lights and a complete list of all parts and components, used including the brands and specifications.
- e. After completion of the Project, allow the Public Entity to enter into the Department’s right of way to perform maintenance as detailed in Section 2 below.

#### 2. The Public Entity Shall:

After the roadway lighting system has been constructed:

- a. Provide at its sole cost and expense all electrical energy.
- b. Perform at its sole cost and expense any and all maintenance to keep the system operating, which includes luminaire replacement as well as replacement of all parts and components as a result of equipment failure, accidental damage and intentional damage, which includes vandalism.
- c. Perform maintenance as detailed in this Section 2, to all parts and components, which includes and is not limited to poles or fixtures, conduits and wiring, and as provided by as-built drawings.
- d. Replace all parts and components with in kind or approved equal for continued satisfactory operation of said roadway lighting system.
- e. Procure and maintain insurance or a performance bond to ensure that all maintenance requirements as listed in this Section 2 are performed. Proof of insurance or bonding must be provided prior to signing this Agreement. Proof of continued insurance and bonding must be provided to the Department annually at the end of Calendar year.
- f. Reimburse the Department within 30 days of receipt of invoice for any and all costs the Department has to bear for any maintenance that and the Department is required to perform on the roadway light system.

### **3. Term.**

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

### **4. Third Party Beneficiaries.**

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

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

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

### **6. Scope of Agreement.**

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

### **7. Terms of this Agreement.**

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

**8. Equal Opportunity Compliance.**

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

**9. Appropriations and Authorizations.**

The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, 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 Public Entity, 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 Public Entity are expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

**10. Severability.**

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

**11. Public Entity Sole Jurisdiction.**

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

**12. Project Responsibility.**

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

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

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

**14. Applicable Law.**

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

**15. 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.

Andrew Gallegos  
Traffic Operations Engineer  
New Mexico Department of Transportation  
1120 Cerrillos Rd  
Santa Fe, NM 87504  
Office: (505) 827-5578  
E-mail: Andrew.Gallegos@state.nm.us

Willie Roman  
Administrator Street & Traffic Operations  
City of Las Cruces  
700 North Main  
Las cruces, NM 88001  
Office: 575-541-2508  
Fax: 575-541-2594  
E-mail: wroman@las-cruces.org

**16. Amendment**

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

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

**NEW MEXICO DEPARTMENT OF TRANSPORTATION**

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

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

Recommended by:

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

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

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

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

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

By: Cynthia A. Clark  
Assistant General Counsel

Date: 12-8-15

**City of Las Cruces**

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

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

Title: City Manager

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

APPROVED AS TO FORM:

[Signature]  
City Attorney