



City of Las Cruces®

PEOPLE HELPING PEOPLE

Council Action and Executive Summary

Item # 15Ordinance/Resolution# 17-094For Meeting of _____
(Ordinance First Reading Date)For Meeting of November 7, 2016
(Adoption Date)

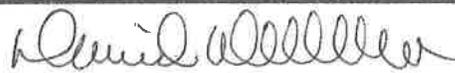
Please check box that applies to this item:

 QUASI JUDICIAL LEGISLATIVE ADMINISTRATIVE

TITLE: A RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) AND AUTHORIZE THE CITY MANAGER TO EXECUTE A ROAD TRANSFER AGREEMENT ACCEPTING JURISDICTION OF VALLEY DRIVE FROM AVENIDA DE MESILLA TO THE NORTHERN CITY LIMITS.

PURPOSE(S) OF ACTION:

Approve a MOA between the City and NMDOT.

COUNCIL DISTRICT: 4		
Drafter/Staff Contact: Louis Grijalva, P.E.	Department/Section: Public Works / Project Development	Phone: 528-3479
City Manager Signature:		

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

In 1992, the NMDOT Highway Commission directed highway districts to work toward a comprehensive state-wide movement, transferring ownership of state routes within the boundaries of local governments to those agencies for operation and maintenance.

The NMDOT approached the Public Works Department with a proposal in which the City accept jurisdiction, ownership, operation and maintenance responsibilities of Valley Drive from Avenida de Mesilla to the northern City limits in the form of a road transfer agreement. The NMDOT has completed roadway and drainage improvements to Valley Drive from Picacho Avenue (US 70) to the northern City limits, and is currently working on the preliminary design of Valley Drive from Avenida de Mesilla to Picacho Avenue.

On September 21, 2015, the City Council approved Resolution No. 16-078 authorizing the Public Works Director to negotiate a road transfer agreement between the City and NMDOT. City staff has met with the NMDOT on various occasions to review proposed improvements to Valley Drive and Avenida de Mesilla.

The NMDOT has agreed to oversize the storm drain system within Valley Drive allowing the City to connect drainage systems from surrounding neighborhoods to pipe storm water into Valley Drive, as well as include the intent of the street infrastructure elements proposed as part of the Amador Proximo Community blueprint adjacent and within the right of way of Valley Drive from Amador Avenue to Hadley Avenue. The improvements will offset future maintenance costs of the roadway for the next twenty (20) years. The additions of the proposed improvements increased the project cost estimate to \$14 million; however, the NMDOT has agreed to fully fund the project.

Typically, a road transfer agreement is not executed until all improvements have been completed and accepted. The NMDOT is requesting the City approve the MOA to solidify the final project scope to provide direction to their consultant on design, and as the means to ensure a road transfer agreement be executed as the final action of this process. The road transfer agreement will mirror all requirements listed on the MOA to guarantee the City receive all agreed upon elements.

Should the MOA not be approved, the NMDOT will proceed with their original project scope for Valley Drive and Avenida de Mesilla without the Amador Proximo elements and oversized drainage infrastructure.

This resolution will also grant the City Manager authorization to execute a road transfer agreement for Valley Drive from Avenida de Mesilla to the northern City limits once all improvements have been completed and accepted by the City.

SUPPORT INFORMATION:

1. Resolution.
2. Exhibit "A", Memorandum of Agreement.
3. Attachment "A", Vicinity Map.

SOURCE OF FUNDING:

<p>Is this action already budgeted?</p> <p>N/A</p>	Yes	<input type="checkbox"/>	See fund summary below	
	No	<input type="checkbox"/>	If No, then check one below:	
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from: _____	
	<input type="checkbox"/>	<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.
<p>Does this action create any revenue?</p>	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

N/A

FUND EXPENDITURE SUMMARY:

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

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution to enter into a MOA between the City and NMDOT and authorize the City Manager to enter into a road transfer agreement to accept jurisdiction over Valley Drive from Avenida de Mesilla to the northern City limits.
2. Vote "No"; this will reject the resolution in its entirety.
3. Vote to "Amend"; this could modify the resolution to reflect changes on the MOA between the City and NMDOT.
4. Vote to "Table"; this could impact the way Valley Drive is designed and constructed.

REFERENCE INFORMATION:

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

1. Resolution No. 16-078.



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 November 7, 2016
 (Adoption Date)

TITLE: A RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) AND AUTHORIZE THE CITY MANAGER TO EXECUTE A ROAD TRANSFER AGREEMENT ACCEPTING JURISDICTION OF VALLEY DRIVE FROM AVENIDA DE MESILLA TO THE NORTHERN CITY LIMITS.

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

DEPARTMENT	SIGNATURE	PHONE NO.	DATE
Drafter/Staff Contact		528-3479	10-19-16
Department Director		528-3135	10-19-16
Other			
Assistant City Manager /CAO Management & Budget Manager		541-2042 541-2085	10/19/16 10/19/16
Assistant City Manager/COO		541-2271	10/21/16
City Attorney		EXT 2128	21 October 2016
City Clerk		X2115	10-21-16

RESOLUTION NO. 17-094

A RESOLUTION APPROVING THE MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) AND AUTHORIZE THE CITY MANAGER TO EXECUTE A ROAD TRANSFER AGREEMENT ACCEPTING JURISDICTION OF VALLEY DRIVE FROM AVENIDA DE MESILLA TO THE NORTHERN CITY LIMITS.

The City Council is informed that:

WHEREAS, in 1992, the NMDOT Highway Commission directed highway districts to work toward a comprehensive state-wide movement, transferring ownership of state routes within the boundaries of local governments to those agencies for operation and maintenance; and

WHEREAS, the NMDOT approached the Public Works Department with a proposal in which the City accept jurisdiction, ownership, operation and maintenance responsibilities of Valley Drive from Avenida de Mesilla to the northern City limits in the form of a road transfer agreement; and

WHEREAS, on September 21, 2015, the City Council approved Resolution No. 16-078 authorizing the Public Works Director to negotiate a road transfer agreement between the City and NMDOT; and

WHEREAS, the NMDOT has agreed to oversize the storm drain system within Valley Drive allowing the City to connect drainage systems from surrounding neighborhoods to pipe storm water into Valley Drive, as well as include the intent of the street infrastructure elements proposed as part of the Amador Proximo Community blueprint adjacent and within the right of way of Valley Drive from Amador Avenue to Hadley Avenue. The improvements will offset future maintenance costs of the roadway for the next twenty (20) years; and

WHEREAS, the NMDOT is requesting the City approve the MOA to solidify the final project scope to provide direction to their consultant on design, and as the means to ensure a road transfer agreement be executed as the final action of this process. The road transfer agreement will mirror all requirements listed on the MOA to guarantee the City receive all agreed upon elements.

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

(I)

THAT the MOA, attached hereto as Exhibit "A, between the City and NMDOT for the design and construction of Valley Drive from Avenida de Mesilla to Picacho Avenue and Avenida de Mesilla from Valley Drive to Hickory Drive Reconstruction Project Control No. LC00160 is hereby approved and made part of this Resolution.

(II)

THAT once all improvements as outlined in the MOA are verified as complete and are accepted by the City, the City Manager is authorized to execute a road transfer agreement between the City and NMDOT transferring Valley Drive from Avenida de Mesilla to the northern city limits to the City for its operation and maintenance.

(III)

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 Ekman: _____

Councillor Sorg: _____

Councillor Levatino: _____

Contract Number	_____
Vendor Number	_____
Control Number	_____

MEMORANDUM OF AGREEMENT

Between The

NEW MEXICO DEPARTMENT OF TRANSPORTATION

And The

CITY OF LAS CRUCES

**VALLEY DRIVE FROM AVENIDA DE MESILLA TO PICACHO AVENUE
AND
AVENIDA DE MESILLA FROM VALLEY DRIVE TO HICKORY DRIVE
RECONSTRUCTION PROJECT**

PROJECT/CONTROL NO. LC00160

This MEMORANDUM OF AGREEMENT ("MOA" or "Agreement") is made and entered into as of the date of the last signature affixed below by and between the NEW MEXICO DEPARTMENT OF TRANSPORTATION, hereinafter referred to as "NMDOT" or "DEPARTMENT" acting through its Secretary, and the CITY OF LAS CRUCES, herein the "CITY", pursuant to the NMSA 1978, Section 67-3-28, as amended, and all entities are collectively hereinafter referred to as the "PARTIES".

RECITALS

Whereas, the DEPARTMENT and the CITY agree to negotiate a Road Transfer Agreement that will grant ownership of NM 188 (Valley Drive) from Avenida de Mesilla to US 70 (Picacho Avenue and NM 185 (Valley Drive) from US 70 (Picacho Avenue) to the northern city limits to the CITY. The Road Transfer Agreement will not include the right-of-way of US 70 (Picacho Avenue) at the intersection of NM 188 (Valley Drive) and NM 185 (Valley Drive) nor the signal system. Reference is made to Figure 1 – LC00160 – Valley Drive /US 70 (Picacho Ave. Limits of Road Jurisdiction. Final limits will be defined in a subsequent Road Transfer Agreement which will reference this document.

Whereas, the DEPARTMENT and the CITY agree that there is reoccurring congestion along NM

188 (Valley Dr.), no driveway access control, deteriorating pavement, and no drainage accommodations.

Whereas, the DEPARTMENT agrees to fund the construction of the project, and that the funded project limits are on NM 188 (Valley Drive) from mile marker 1.4 to Mile marker 3.0 (From Avenida de Mesilla to US 70 (Picacho Ave.)) and on Avenida de Mesilla from NM 188 (Valley Drive) to Hickory Drive.

Whereas, the DEPARTMENT and the CITY agree that the proposed drainage improvements will benefit the NMDOT's drainage improvements and benefit the CITY'S long range drainage system as it would allow the CITY to connect drainage from surrounding streets to the proposed storm drain along Valley Dr.

Whereas, the NMDOT and the CITY agree that utilizing existing CITY drainage facilities will be a mutual benefit to both parties, in lieu of on-site ponding.

Whereas, the NMDOT and the CITY will incorporate the intent of the Amador Proximo into the design and construction of Valley Drive from Hadley Avenue to Amador Avenue.

Whereas, the DEPARTMENT and the CITY, have already begun coordinating on the final design base alternative for Valley Drive and Avenida de Mesilla from Valley Drive to Hickory Drive.

NOW THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES AND REPRESENTATIONS IN THIS MOA, THE PARTIES AGREE AS FOLLOWS:

SECTION ONE – PURPOSE OF MOA:

The purpose of this MOA is to negotiate a Road Transfer Agreement for LC00160 NM 185 and 188 (Valley Drive) within the City Limits of Las Cruces from Avenida de Mesilla to US 70 (Picacho Avenue) and NM 185 (Valley Drive) from US 70 (Picacho Avenue) to the northern city limits to the CITY. The Road Transfer will not include the right-of-way of US 70 (Picacho Avenue) at the intersection of NM 188 (Valley Drive) and NM 185 (Valley Drive) including the signal system. The negotiation will include agreement with the base alternative, design of plans, written specifications, final estimate, responsible funding agencies, final bid package, construction operations, and final acceptance of the final completion of LC00160.

SECTION TWO – DEPARTMENT SHALL:

- 1) Program the PROJECT funding within the Las Cruces Metropolitan Planning Organization's (LCMPO) Transportation Improvement Program (TIP) and Statewide Transportation Improvement Program (STIP).
- 2) Be the lead agency for the design and construction phases of the PROJECT.
- 3) Provide PROJECT funding for the project.

- 4) Appoint a Project Development Engineer that will oversee the development of the PROJECT.
- 5) Appoint a construction project manager to oversee the construction of the PROJECT.
- 6) Obtain the environmental clearance for the PROJECT.
- 7) Obtain the required right-of-way (R/W) and easements for the PROJECT.
- 8) Obtain all other necessary certifications required to for the PROJECT to be eligible for federal funding
- 9) Prepare the plans, project specification, project estimate, and final bid documents for the PROJECT.
- 10) Ensure that the PROJECT is designed and constructed to DEPARTMENT and CITY Standards and Specifications.
- 11) Advertise, award, act as fiscal agent, and provide the construction management for the PROJECT.
- 12) Provide the CITY with a copy of the final as-built plans and right of way maps for the PROJECT.
- 13) Develop a road transfer agreement.
- 14) Include the CITY in any and all value engineering meetings as this project progresses toward a final design of the PROJECT.
- 15) Include the CITY in any and all Construction field notices and change orders that modify the original (final) design of the PROJECT.
- 16) Allow the CITY to make routine inspections to verify that the PROJECT is constructed to specifications.
- 17) Allow the City to review all testing reports when requested.

SECTION THREE – CITY SHALL:

- 1) Designate and acknowledge the DEPARTMENT as the lead agency for the PROJECT,
- 2) Provide a representative that will act as the liaison for the CITY on the PROJECT during the design and construction phases of the PROJECT.
- 3) Review any and all design changes and change orders, etc., developed for the PROJECT.
- 4) Review, approve, and comment and meet to agree on the scope of work and any and all plan design submittal documentation at all design milestones.
- 5) Provide a Project Manager and an Inspector for City utility installations on the PROJECT.

- 6) Provide funding for the design and construction of City owned utilities which include water, natural gas, and sanitary sewer.

SECTION FOUR – STATE GENERAL APPROPRIATION FUNDS NOT TO BE OBLIGATED:

Nothing herein shall be construed as obligating State or City general appropriation funds for payment of any debt or liability of any nature arising under this MOA. The PARTIES expressly recognize that each Party shall make a good faith effort to put in place appropriate arrangements for any necessary funding that may be necessary for the maintenance responsibilities undertaken by the respective PARTIES.

SECTION FIVE – APPROPRIATIONS AND AUTHORIZATIONS:

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

SECTION SIX – ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS:

All PARTIES shall strictly account for all receipts and disbursements relating to this MOA. Each Party shall maintain all records and documents relative to the expenditures incurred pursuant to this MOA for a minimum of six (6) years after incurring such expenses. The PARTIES shall furnish the State Auditor or City Auditor, upon request, all records relevant to this MOA and allow them the right to audit all records related to this MOA.

SECTION SEVEN – RECORDS AND AUDIT:

The PARTIES agree to maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and to make such materials available at their respective offices at all reasonable times during the MOA period and for six (6) years from the date of incurring such expenses under the MOA for inspection by the PARTIES.

SECTION EIGHT – PRINCIPAL CONTACTS:

The principal contacts for this MOA are:

CITY of LAS CRUCES: Loretta M. Reyes, P.E.
NMDOT: Trent Doolittle, P.E.

SECTION NINE – COMPLIANCE WITH LAWS, RULES AND REGULATIONS:

The PARTIES shall comply with all applicable Federal, State and local laws, ordinances, rules, warranties, assurances, and regulations applicable to the performance of this MOA and the work hereunder.

SECTION TEN – CONSENT TO JURISDICTION AND VENUE:

The PARTIES hereby consent to and agree to exclusive jurisdiction of the Courts of the State of New Mexico for resolution of any disputes arising under or resulting from this MOA that cannot be resolved informally and each Party waives any objection to the personal jurisdiction of the Courts of the State of New Mexico over the Party. It is expressly understood and recognized by the PARTIES hereto that venue for litigation of issue, claims, or all other judicial matters arising or resulting from this MOA shall be in the Santa Fe County District Court.

SECTION ELEVEN – EQUAL OPPORTUNITY COMPLIANCE:

The PARTIES agree to abide by the federal, state, and local laws, rules and regulations and executive orders of the Governor of the State of New Mexico, pertaining to equal opportunity. In accordance therewith, the PARTIES agree to assure that no person in the United States shall, on the grounds of race, color, religion, national origin, sex, sexual preference, age or handicap, be excluded from employment with or participation in, be denied benefits of or be otherwise subjected to discrimination under, any program or activity performed under this MOA. If the Party is found to be non-compliant with these requirements during the terms of this MOA, the PARTIES agree to take appropriate steps to correct these deficiencies.

SECTION TWELVE – CIVIL RIGHTS LAWS AND REGULATIONS COMPLIANCE:

The PARTIES shall comply with all federal, state, and local laws and ordinances applicable to the work called for herein. The PARTIES further agree to operate under and be controlled by Title VI and Title VII of the Civil Rights Act of 1964, the Age Discrimination Employment Act, the Americans with Disabilities Act of 1990, the Environmental Justice Act of 1994, the Civil Rights Restoration Act of 1987, the New Mexico Human Rights Act, and Executive Order No. 11375, and as supplemented by the Department of Labor Regulations (41 CFR Part 60). Accordingly, 49 Code of Federal Regulations (CFR) Part 21 is applicable to this MOA and incorporated herein by reference.

SECTION THIRTEEN – DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM AND POLICY:

In accordance with Title 49 CFR Part 26 (49 CFR 26) or as it may be amended, the PARTIES agree to abide by and to take all necessary and reasonable steps to comply with the following:

- (A) **DBE Policy:** It is the policy of the DEPARTMENT to implement the provisions of 49 CFR 26, other pertinent regulations, and source legislation. The objectives are:

1. To ensure nondiscrimination in the award and administration of United States Department of Transportation (DOT) assisted contracts in the DOT's highway, transit, and airport financial assistant program;
2. To create a level playing field on which DBEs can fairly compete for DOT assisted contracts;
3. To ensure that DOT's DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet the eligibility standards specified in 49 CFR 26 are permitted to participate as DBEs;
5. To help remove barriers to participation of DBE's in DOT-assisted contracts; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

(B) DBE Obligations: The DEPARTMENT will establish the state DBE goal on an annual basis. The approved FY2012 state DBE goal is established at 9.69% for all federally assisted projects.

1. **Means of Attaining the State Goal:** The DEPARTMENT will meet the state DBE goal on federally assisted projects through race neutral measures. There will be no individual project goals on federally assisted projects unless an analysis of DBE utilization indicates that the goal falls substantially short of the annual goal and that good faith efforts have not been fulfilled. In the event that the DEPARTMENT adopts race conscious measures to attain the state DBE goal; NMGSD shall be required to implement the individual project goal established by the DEPARTMENT.
2. **Record Keeping Responsibilities:** the PARTIES are responsible to assure that its DBE Program to the DEPARTMENT's project manager or to the DEPARTMENT's Office of Equal Opportunity Program Bureau (OEOPB) at the following address:

New Mexico Department of Transportation
 OEOPB
 Aspen Plaza, Suite 107
 1596 Pacheco Street
 Santa Fe, New Mexico 87505
 505-827-1774

(C) DEPARTMENT's DBE Program: The DEPARTMENT's DBE Program, 18 NMAC 28.2 as required by 49 CFR 26 and as approved by the NMDOT, is incorporated herein by reference and made part of this MOA. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this MOA. Upon notification to PCD/GSD of its failure to carry out the terms and conditions of the DBE Program, the DEPARTMENT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

(D) **Recipient/Contractor Assurances:** Each subcontract which a party enters into with a construction contractor, design consultant, other consultant or recipient on a DOT-assisted project shall ensure that such subcontract includes the following assurance:

1. Recipient shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any DOT-assisted contract or administration of its DBE Program or the requirements of 49 CFR 26. The DEPARTMENT shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and the administration of DOT-assisted. The DEPARTMENT's DBE Program, as required by 49 CFR 26 and as approved by DOT, incorporated herein by reference and made part of this MOA. Failure to implement this program is a violation of this MOA. Upon notification to the recipient of its failure to carry out its approved program, the DOT may impose sanctions as provided for under 49 CFR 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).
2. Each Party shall not discriminate on the basis of race, color, religion, national origin or sex in the award and performance of this contract. The recipient shall carry out applicable requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts. Failure by the recipient to carry out these requirements is a material breach of this MOA, which may result in the termination of this MOA or such other remedy, as the DEPARTMENT deems appropriate.

SECTION FOURTEEN – NEW MEXICO TORT CLAIMS ACT:

No provision of this MOA establishes any waiver of immunity for alleged tortious conduct of any employee of any Party arising from the performance of this MOA apart from that set forth in the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1, et seq.

SECTION FIFTEEN – THIRD PARTY BENEFICIARY CLAUSE:

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

SECTION SIXTEEN - APPLICABLE LAW:

The Laws of the State of New Mexico shall govern this MOA.

SECTION SEVENTEEN - SEVERABILITY:

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

SECTION EIGHTEEN – SCOPE OF THE MOA:

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

SECTION NINETEEN – EFFECTIVE DATE AND TERM:

This MOA shall be effective on the date of the last signature of the PARTIES and shall terminate upon the completion and acceptance of the PROJECT by the PARTIES, unless and until the parties mutually terminate this Agreement.

Either Party may terminate the MOA for cause based upon any material breach of this MOA by the other Party, provided that the non-breaching Party shall give the breaching Party written notice specifying the breach and shall afford the breaching party a reasonable opportunity to correct the breach. If within thirty (30) days after receipt of a written notice, the breaching Party has not corrected the breach or, in the case of breach which cannot be corrected in thirty (30) days, the breaching Party has not begun and proceeded in good faith to correct the breach, the non-breaching Party may declare the breaching Party in default and terminate the MOA effectively immediately. The non-breaching Party shall retain any and all other remedies available to it under law.

SECTION TWENTY – AMENDMENT:

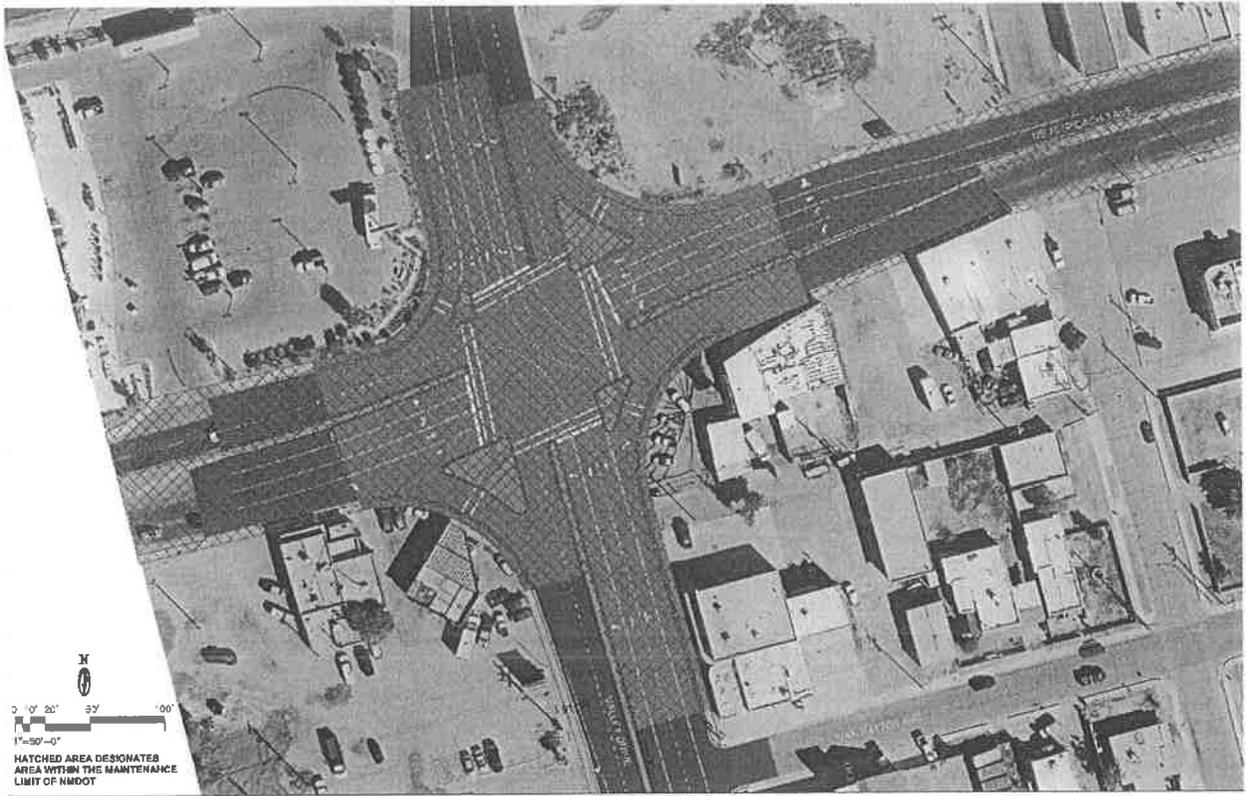
This MOA shall not be altered, changed or amended except by an instrument in writing and executed by the PARTIES hereto.

SECTION TWENTY-ONE — FORCE MAJEURE:

Notwithstanding anything contained in this MOA to the contrary, the Agreement may be terminated without liability to any Party if substantial performance of a Party's obligations is prevented by any cause reasonably beyond the control of the terminating party. Such causes include, but are not limited to: acts of God; acts, regulations, or orders of Congressional Authorities of the United States, acts of war declared or undeclared; acts of terrorism or other violence, or other emergency making it impossible, illegal, or otherwise inadvisable to hold either party to this Agreement. In the event of termination of this Agreement, the DEPARTMENT and the CITY shall renegotiate within ten (10) days of the termination notice.

Figure 1. – LC00160 – Valley Drive/US 70 (Picacho Ave.) Limits of Road Jurisdiction

LC00160 Valley Dr. from Avenida de Mesilla to Picacho Negotiation of Road Transfer Agreement.



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IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the dates indicated below:

NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT)

By: _____ Date: _____
Tom Church, Cabinet Secretary

APPROVED FOR LEGAL FORM AND SUFFICIENCY:

By: _____ Date: _____
Assistant General Counsel

CITY OF LAS CRUCES

Recommended By:

By: _____ Date: _____
City Manager
City of Las Cruces

By: _____ Date: _____
Public Works Director
City of Las Cruces

APPROVED FOR LEGAL FORM AND SUFFICIENCY:

By: _____ Date: _____
City Attorney

Project Limits

- Valley Dr from Avenida de Mesilla to Picacho Avenue
- Avenida de Mesilla from Hickory to Valley Drive

