

CITY COUNCIL AGENDA

Mayor
Eric Enriquez

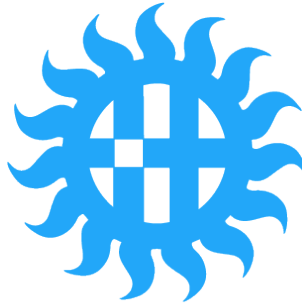
Monday, February 5, 2024 at 1:00 PM

Council Chambers

**CITY HALL
P.O. BOX 20000
LAS CRUCES, NM 88004**

Mayor Pro Tem
Johana Bencomo

Councilors
Cassie McClure
William Mattiace
Becki Graham
Becky Corran
Yvonne Flores



CITY OF LAS CRUCES

**700 N. Main St.
PHONE (575) 541-2067**

If you need an accommodation for a disability to enable you to fully participate in this event please contact us 72 hours before this event at [541-2115/V](tel:541-2115).

CONSENT AGENDA

Minutes and Items on the Consent Agenda Are Considered Routine Items and Will Be Voted on with One Motion Unless a Councilor Requests That a Specific Item Be Removed. There Will Be No Discussion.

Page

1. OPENING CEREMONIES

- 1.1. Pledge of Allegiance - Councilor Mattiace.
- 1.2. Presentation of Certificates of Appreciation/Proclamations - Councilor Mattiace.
- 1.3. Pets of the Week.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

3. PUBLIC PARTICIPATION

4. READ CLOSED MEETING STATEMENT

- 4.1. Read January 22, 2024 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

- 6.1. Regular City Council Meeting of January 2, 2024.

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7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

7.1.	<u>RESOLUTION NO. 24-078: A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM AGREEMENT BETWEEN THE CITY AND MESILLA VALLEY HABITAT FOR HUMANITY FOR THE CONSTRUCTION OF THREE SINGLE-FAMILY AFFORDABLE HOUSING UNITS IN THE METRO CENTRAL PHASE 1 SUBDIVISION.</u> Resolution No. 24-078 - Pdf	19 - 60
7.2.	<u>RESOLUTION NO. 24-079: A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF \$150,000.00 FOR GILLIG BUS PARTS WITH GILLIG, LLC OF LIVERMORE, CALIFORNIA, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.</u> Resolution No. 24-079 - Pdf	61 - 97
7.3.	<u>COUNCIL BILL NO. 24-017; ORDINANCE NO. 3059: AN ORDINANCE APPROVING ZONE CHANGES FOR LAND WITHIN THE HEATHER HILLS MASTER PLAN BOUNDARY LOCATED AT 5150 STERN DRIVE. SUBMITTED BY ZACHARY LIBBIN, LIBBIN UNDERWOOD ENGINEERING AND SURVEYING.</u> Ordinance No. 3059 - Pdf	98 - 162
7.4.	<u>COUNCIL BILL NO. 24-018; ORDINANCE NO. 3060: AN ORDINANCE REPEALING SECS. 7.8-110—7.8-199, ARTICLE III. - WAGE PLUS AND SECS. 7.8-200—7.8-299 ARTICLE IV. - FILM, FROM CHAPTER 7.8 OF THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED.</u> Ordinance No. 3060 - Pdf	163 - 167
8.	<u>OLD BUSINESS</u>	
8.1.	<u>RESOLUTION NO. 24-050: A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 643 EAST PICHACO AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED AND AMEND THE CITY'S ADOPTED FY2023-24 BUDGET THROUGH A BUDGET ADJUSTMENT OF \$28,000.</u> Resolution No. 24-050 - Pdf	168 - 180
9.	<u>RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION</u>	
9.1.	<u>RESOLUTION NO. 24-080: A RESOLUTION ADOPTING THE NORTHRISE BLUEPRINT PLAN.</u> Resolution No. 24-080 - Pdf	181 - 246
9.2.	<u>RESOLUTION NO. 24-081: A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 19-20-077A POLICE AUDITOR SERVICES, WITH MICHAEL J. GENNACO DBA OIR GROUP, LLC, OF PLAYA DEL REY, CALIFORNIA, ADDING UP TO FOUR (4) COMMUNITY OUTREACH MEETINGS PER FISCAL YEAR (PROCUREMENT NO. 19-20-077A).</u> Resolution No. 24-081 - Pdf	247 - 264

- 9.3. RESOLUTION NO. 24-082: A RESOLUTION TO AWARD A PROFESSIONAL SERVICE AGREEMENT FOR METROPOLITAN REDEVELOPMENT AREA PLAN DEVELOPMENT SERVICES TO PLACES SOUTHWEST INC. DBA SITES SOUTHWEST LTC CO., OF ALBUQUERQUE, NEW MEXICO IN AN AMOUNT NOT TO EXCEED \$220,482.00, PLUS GROSS RECEIPTS TAX AS APPLICABLE (PROCUREMENT NO. 22-23-015). 265 - 280

[Resolution No. 24-082 - Pdf](#)

- 9.4. COUNCIL BILL NO. 24-019; ORDINANCE NO. 3061: AN ORDINANCE AMENDING CHAPTER 27, TRAFFIC, ARTICLE I AND ARTICLE VI OF THE LAS CRUCES MUNICIPAL CODE (LCMC) 1997 BY ADDING NEW DEFINITIONS AND REGULATION OF ELECTRIC VEHICLE CHARGING PARKING SPACES 281 - 351

[Ordinance No. 3061 - Pdf](#)

10. BOARD APPOINTMENTS

11. NOTICE OF PROPOSED ORDINANCE(S)

- 1) There will be no public discussion.
2) A Councilor may ask staff for clarification on the proposed ordinance(s).

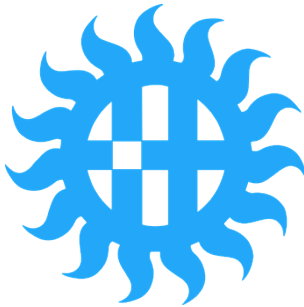
- 11.1. COUNCIL BILL NO. 24-020; ORDINANCE NO. 3062: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS CRUCES, NEW MEXICO, TAXABLE GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$6,000,000, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, CERTAIN TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF AND SECURITY FOR PAYMENT THEREOF; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A PUBLIC COMPETITIVE SALE; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN AN AWARD CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS. 352 - 367

[Ordinance No. 3062 - Pdf](#)

12. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

13. CITY MANAGER REPORT

14. ADJOURNMENT



MINUTES

City Council

Tuesday, January 2, 2024 @ 1:00 PM

City Council Chambers, City Hall

PRESENT: Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace

ABSENT: Councilor Yvonne Flores

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - MAYOR ENRIQUEZ.

1.2 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - MAYOR ENRIQUEZ.

None.

1.3 JOBS OF THE WEEK.

Sarah Raney, New Mexico Workforce Connections presented Jobs of the Week.

1.4 PETS OF THE WEEK.

Amy Defelix, Animal Services Center of the Mesilla Valley presented Pets of the Week.

2. CONFLICT OF INTEREST INQUIRY BY MAYOR AS REQUIRED BY LCMC SECTION 2-27 (E)(2)

2.1

None.

3. ORGANIZATIONAL CEREMONY

3.1 SELECTION OF MAYOR PRO TEM.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to nominate Councilor Bencomo as Mayor Pro Tem.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

4. PUBLIC PARTICIPATION

4.1

Paul Borunda, Member of the Public said I have been a resident of Las Cruces for 79 years. I have had the displeasure of approaching the City Council for many years with many of my colleagues who are no longer living to try to make changes for the betterment of Las Cruces and its people but this city is so political entwined in protecting its own behinds that nothing is ever done. I remember when Mattiace was mayor and he belittled me because I was having conflict with my family members over property that my parents left me when they died. He belittled me by saying that my issue was like the Hatfield and McCoy’s war. You may not remember that I do and I am sorry to see that you won reelection for this position as City Councilman because you were nothing then and you are nothing now.

Mayor Enriquez said Mr. Borunda I will have to interrupt you if you are not going to be respectful. You don’t need to point fingers and call anybody out. Sir I am just going to ask you to just be respectful. You have your time, just be respectful with it.

Paul Borunda said the reason I came was to let you know that Sunday I called the Las Cruces Police Department to report that someone had broken into my home and removed the window completely from the structure of the home. I called 911, it took them a while to answer. Then when they did, I told them what was going on. They said they were going to dispatch a police officer and go and investigate. No police officer ever showed up. At best I was hoping to get a police report so that I can file with my insurance company. All of these things have been happening just like what happened on August 28th of this past year when I came and approached here on issues that involved the IOS Police Report. At that time Mayor Pro Tem Kasandra Gandara violated the City Charter and ordering two police detectives to escort me out of the building, off the property. The City Manager never opened one word on that issue, and he has not been admonished on any of it. This is what is happening to our community is that we elect you and you become dictators and you are only concerned on protecting yourselves and the Police Departments and the whole city staff.

Anthony Ray Danes, Member of the Public said I am affiliated with the area churches. I am doing an outreach, and I am trying to help with the homeless situation. As well with a lot of the drug problems in our area through creating a Celebrate Recovery Program. What I am asking in return with the oppressions that I have seen in the last month or so from other states, I don’t know if any of the panel are church people? But I am asking in return respectfully I want to help the community the better so that we don’t have situations like our past speaker. At the same time, I want to reach out and

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try to help this community. I am affiliated with the Community of Christ Church on 1210 Montana as well as Dona Ana County Cowboy Church at 1600 South Valley. I am reaching out to many of the other churches. I want to create a program of outreach. Several of the states, Minnesota being one of them has kind of put a thumb on churches doing anything outside their church building. Well, if you know anything about scripture our purpose in life is to go out amongst the Gentile and spread the word to every living creature and if we are oppressed in that manner, we won't be able to help those people who are in need of help. We ask them and invite them in all the time. Our last few community socials that we have had we have fed many no bigger than we are. Again, I want to say that I am here to help with the community not just me, it's all him but these churches are all trying to step out into this community and be a part it. We are asking you just to allow us to do so without oppression, without ordinances that restrict us from doing this. We are not going to beat people over the head like Jesus Freaks and demand that they change their ways, but they have to willingly come to us. If they will we are there to help. Basically, that is all I have to say but you will see more of me from now on and I hope it is in good sense.

Mayor Enriquez said thank you and if you will leave your information with the Clerk. We truly embrace and would support any kind of outreach in the community so we will definitely look at that and get back to you with some of the ways that we can organize that properly.

Jorge Aguirre, Member of the Public said like many immigrants I am a resident of the city. I have been an immigrant I am a small business owner and employer. Like many of my neighbors I am concerned about the migrant and homeless population in the city. As you probably know migrants are less likely to commit crimes than native-born Americans but are more likely to start a business and create jobs, though they are demonized for political reasons. As you also may know crime is an effect of poverty and in order to deal with crime effectively, we have to reduce or eliminate poverty and not criminalize poor people. We have seen it happen before. A desperate person may break through \$3,000 worth of property to access a \$2,000 object and maybe get a couple of hundred dollars from it. Everybody loses, especially the insurance company. It is not just the money loss though. It is the trust in our community. In our ability to feel safe and to go to work and run daily errands in our daily life. I gave a \$20 bill to someone the other day you should have seen the million dollar smile they gave me back. But I cannot help every single person. I don't have a \$20 bill for every person that needs it. No organization, nobody on their own can do it, only collective action can. And the thing is, we have done this the wrong way. We have brought more cops. In order to deal with this problem, we send two or three, multiple \$60,000 cops with their \$100,000 vehicles, \$20,000 in equipment. Best case scenario they end up in prison costing us an additional \$50,000 a year to house, to feed. To be cruel to the vulnerable is a sign of weakness. What we need is strength. Someone with the courage to protect our most vulnerable citizens just because they are part of this drive even if there is nothing to gain for them or from them other than the credit of building a strong community.

Dolores Lucero, Member of the Public said I was here in July when some of you were not at the dais, and I asked for some help on getting a project finished that was designed twenty years ago and that is the street from Telshor to Sonoma Ranch

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Lohman Avenue. The reason that those medians are so large and unfinished is because twenty years ago they were developed, and we bought the land to pay for three lanes each way. The backup on that street right now is not tolerable for all times of the day not just at 8 or 4 in the afternoon. The bigger problem is when ambulances are going to MountainView Hospital, and it is slowing down traffic. It is not a safe section of road and I know that this is not a walking community especially from that part of the city. We need to complete what was designed twenty years ago which was approved by the Metropolitan Planning Organization and now all it needs is the funding to add the additional lanes, finish the landscaping or actually put in the landscaping that is not there and relieve some of the pressure. The reason it was not done twenty years ago is because the growth in the community was not there yet. The growth is there now and has been for several years. When I presented in July, I heard from none of you. No one responded and I know you can't respond here but afterwards. Not even my own Councilor and we are struggling in that area for traffic flow. When the high school lets out at Centennial they are coming north and onto Lohman, it's a bottleneck. It's dangerous and I pulled over for an ambulance the other day but no one else did. And I am sorry we cannot wait any longer on this part of the road. Just the additional planning at today's standards is another 6 months to finish planning it and probably a year to actually build it. A year and half from now we will be able to alleviate that traffic problem. If we wait any longer now, we are waiting two years or two and half years. So, I really implore the City Manager and this council to give direction to city staff to start reviewing how this roadway can be finished and completed with the taxpayer dollars that were used to purchase that land in the first place.

William Gilman, Member of the Public said I have been a resident of Las Cruces for three years. My wife and I just had our first baby, and we are going to raising her here. I have been self-employed for the past two years and just this month I am going to be beginning renting some office space on Main Street. So, I am pretty invested in the future of our community. As we all know Las Cruces is facing a lot of challenges and we are not the only city that is facing those problems. We have high numbers of homeless people in our community where there is an increase of property crime, vandalism, and substance abuse and overdose and it is really sad to see. These issues are often interrelated and there are no easy answers. Historically at city council meetings and county meetings there is a lot of voices demanding that politicians hurry up and arrest more people and incarcerate them for longer and have stronger penalties but these as understandable as that might be these issues have been going on for decades and in our country and we have compassion fatigue. This is just a band aid, and we just can't afford to keep band aiding the situation and kicking the can down the road. There are real solutions out there and Las Cruces has already made progress on some of them and so rather than kicking the can down the road we should investing these tax dollars in supporting people to get back on their feet and get rehabilitated. We can look at evidence from other cities. We can look at evidence from the Veteran's Administration on what they are doing about homelessness. There are lots and lots of resources out there that this body should be drawing on and pursuing those solutions. As I said Las Cruces has already made a lot of progress in this regard. The effort to revitalize the Main Street corridor and have events there is an evidence based solution to get more people there and have the community feel like they own that space more it makes it safer, makes it more inviting and it works

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well for businesses. We need to double down and invest more on that. If we merely arrest and incarcerate a person, they are going to be just as homeless as they were whether they were released in two days or two years or five years. The point is that we can't really afford to keep band aiding the situation. We really need real solutions and real solutions take time, they take money, and they don't always work perfectly. So, they are not easy to implement. It takes real leadership to implement real solutions and that is what I expect to see from this body that is assembled here.

Juan Garcia, Member of the Public said the following are concerns shared by citizens from 2024 that affect this community. "Two Saturdays ago, on December 9th a homeless man entered our property via the Burn Lake Park and got up on our roof. He had come in on the unmaintained city fence at the east end of the park midday. He attempted entry to the house via the upper story window. I confronted him on the roof and had the trigger half pulled but stopped and had my wife call the police. When the officer arrived, he let the intruder escape." This is a 70-year-old confronting a vagrant that could have ended tragically for him, his family, or the vagrant. Going forward the citizen will resort to "interactive security" to safeguard his family with a liability risk. I receive almost daily reports of this illegal activities in the Klein Park area. Maybe Councilor McClure will focus on this area and help clean it up. In the meantime, Petco, Dollar General, Dollar Store, and others are now displaying their "Las Cruces Badge of Honor" boarded windows. This morning Albuquerque Journal headlines, "Law makers and Governor eye gun control in 2024", not a surprise. And I quote, "It seems odd that a measure that is supposed to fight gun crime appears to affect the very people who are the least likely to commit such acts, that it is law abiding citizens that are conceal and carry holders". This is referring to the push by the Governor's Health Mandate or more appropriately the crime epidemic which she help create by pushing her obedient followers, representatives, and senators to enact legislation to turn law abiding citizens into criminals. A large number of bills were proposed in 2023 that could have impacted criminals but most were left and never left committee. Dona Ana County politicians didn't lift a finger to support this anti-crime. The irony and political hypocrisy from CNN, "abortion providers in recent months have closed up their clinics in order for their states and move to New Mexico", whereas the Governor and Senator Heinrich weep for the kids killed by the tools used by criminals, she pushes full steam ahead with increasing capacity in New Mexico for houses of pain or abortion clinics.

Julia Ruiz, Member of the Public said my day started out no different than everyone else's getting ready to celebrate the new year with family and friends. I had to pick up a few things from the grocery store, so I stopped by Albertsons on Telshor where I was immediately approached by a multi-masked male knocking on my window before I even turn off the ignition. Typically, one is approached by an unknown person asking for money at the outskirts of the parking lots where they are somewhat hidden from others' views. However, this time I parked right in front of the store and as I got ready to get in the store I turned to grab my purse and heard someone knocking right at my front door window in the middle of the day in front of security and other shoppers. I couldn't see his face. He was completely covered up in masks, hats, and gloves and several layers of jackets with the last layer put on backwards. There was no way for me to tell what this person looked like and no way to give a description to the police. As I exited my vehicle I dropped my phone and my wallet went flying. I immediately

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picked it up and so did he. I grabbed my wallet and he reached for my phone at the same time. I did have a choice to not turn off the ignition and not to exit my vehicle and to leave to another store as this masked male continued to block my door. I decided to continue on my path and to enter the store even though I was frightened. The following questions have come up. Why is it necessary for me to tailor or anybody to tailor our actions and choices around individuals that have chosen this path? What will the council do to empower law enforcement officers against panhandlers coming up and scaring unsuspecting people? How long before something is done before someone is accosted and seriously hurt by one of these individuals that may be mentally ill and/or on drugs? How long will businesses continue to be vandalized and patrons made to feel unsafe when parking or parking and entering their storefront? What will my liability be to protect myself? Until now I have not had to concern myself with the criminal suing me for protecting or defending myself or my loved ones or my property. Will I need council to defend me defending myself? These questions don't typically occupy one's mind but now they do. A man in Albuquerque is now behind bars after allegedly taking matters into his own hands. He is in jail while the alleged male who stole his vehicle was released.

Sarah Smith, Member of the Public said I am from the New Mexico Freedoms Alliance. At your last meeting you approved a list of legislative priorities for the upcoming session in Santa Fe. I was glad to see that you were asking for funds to expand behavioral health services in Southern New Mexico. Hopefully this will help with the increased drug abuse and mental health problems that we are all seeing. However, I was surprised to see that there was no item requesting that the legislature help with the crime situation. All across the city we are seeing signs that more needs to be done to stop the crime. We are seeing businesses and homes being vandalized, windows being broken, people's property being taken, and vehicles being stolen, including my neighbor. We are seeing more homeless people camping out at businesses and homes. Approaching people asking for money, scaring children, threatening people and leaving trash and feces all around. We are seeing drugged out people wandering the streets, harassing people and leaving dangerous needles lying around where children can find them. We are seeing people being harmed while trying to live peacefully and responsibly such as Patricia from the Little Shop on Main who has been stalked and sexually harassed by homeless men. Another example is Carlos who asked you for help after suffering repeated attacks at his business and being threatened with physical harm by a homeless man trying to hit him with a belt buckle. There is also Rosa Ortega who was brutally attacked by a homeless person in broad daylight while trying to walk to the grocery store. In last year's legislative session there were several bills proposed that were aimed at reducing crime and yet they all failed. Will you please ask the legislature to help us with this issue this session, this year? Additionally, I continue to be concerned about the huge amount of funding going towards housing first initiatives in Las Cruces. Such as the \$7 million line item for Community of Hope. We have already seen what the Desert Hope Homeless Housing Project that giving homeless people housing with no requirements for sobriety or accountability creates many problems. The Desert Hope Housing Project devastated the nearby neighborhood with increased crime and drugs. At least two drug dealers have been housed there. Housing first doesn't meet the needs of the homeless who are trying to actually reform their lives and change their live paths either. Will you invest in other approaches instead of putting all of our resources

towards housing first? One example is the work first model being used in Boulder Bridge House in Colorado. They utilize a drug and alcohol-free shelter combined with job readiness training. After one year people graduate from their program ready for employment and permanent housing. This program has a 74% success rate in having people maintain employment and independence. We should be aiming for improved rehabilitated lives for the homeless people so that they can become responsible members of our community. Will you please take a more balanced approach instead of investing only in housing first. Our community is counting on you to make Las Cruces a safe place to live, work, and thrive.

Jeffrey Field, Member of the Public said I am here again to speak about Gaza but before I start, I would like to say that you folks have your work cut out for you and I sympathize with everyone here. Our inclination to extend a helping hand to others is a testament to our inherent goodness. This is a fundamental truth about human nature. It is also important to recognize our cognitive limitations in truly perceiving the vast tapestry of humanity that surrounds us. Restricted by nature our mental scope often limits our ability to see more than a select few as fully human beings. Centuries ago, Hillel the Elder, a revered Jewish scholar tackled this very issue. He succinctly captured the essence of moral conduct in this noteworthy maxim, that which is hateful to you do not do unto your fellow. That is the whole Torah, the rest is explanation, go and learn. In a similar vein Jesus offered a compelling perspective to his followers. His message was clear and profound. Truly as you treat the least amount you, so you treat me. In essence Jesus was challenging his followers to expand their circle of empathy. He urged them to understand that every person regardless of status or proximity to us is as human as those we hold dear. To truly grasp the reality that every individual is a person just like ourselves requires a powerful imagination. It is through this imaginative empathy that we can begin to understand the lessons imparted by Hillel and Jesus. As we reflect on the events in Gaza it is imperative that we challenge ourselves to see beyond our cognitive limitations. Let us strive to recognize that humanity in every person regardless of the distance or differences that separate us. Only by doing so can we hope to foster a world where peace and understanding prevail over conflict and division. I again urge our city council to pass a resolution in support of a general ceasefire in the ongoing hostilities between Israel, Palestine, and the Palestinian people.

5. **ACCEPTANCE OF AGENDA**

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to accept the agenda as presented.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

6. **CITY COUNCIL MINUTES**

6.1 SPECIAL WORK SESSION OF DECEMBER 4, 2023.

6.2 REGULAR CITY COUNCIL MEETING OF DECEMBER 4, 2023.

6.3 WORK SESSION OF DECEMBER 11, 2023.

7. RESOLUTION(S) AND/OR ORDINANCE(S) FOR CONSENT AGENDA

7.1 RESOLUTION NO. 24-071: A RESOLUTION APPROVING THE PURCHASE OF 211 SQUARE FEET PORTION OF LAND OWNED BY ROGER CISNEROS AT 1108 W. PICACHO AVENUE IN THE AMOUNT OF THREE THOUSAND NINE HUNDRED DOLLARS (\$3,900.00). AS PART OF 4TH STREET/US 70 (PICACHO AVENUE) PEDESTRIAN CROSSING H.A.W.K SIGNAL CONTROL NO. HW2L100518 PROJECT.

8. RESOLUTION(S) AND/OR ORDINANCE(S) FOR DISCUSSION

8.1 RESOLUTION NO. 24-072: A RESOLUTION COMMITTING THE LAS CRUCES UTILITIES DEPARTMENT TO THE DEVELOPMENT AND IMPLEMENTATION OF AN ASSET MANAGEMENT PLAN FOR WATER AND WASTEWATER INFRASTRUCTURE.

Abner Gomez, Rate and Economic Analysis Manager gave the overhead presentation.

Councilor Corran asked does this include abstract assets, assets that are kind of influx and to me I think about the bigger climate plan and our access to water and the water that exists in our aquifers and I wondered if part of this assessment or if this is more physical assets that we have in place?

Abner Gomez said this specific asset management plan is specific to a type of asset. So, the Water Trust Board most of their projects are for storage and conveyance so a water tank is one of those perfect examples. So, this asset management plan will look only at water storage tanks that we have right now. It looks at certain things such as level of service, financing it, providing budget for maintenance for the current and future. It looks at very specific key roles but it will only be for water storage tanks at this time.

Councilor Corran asked you also mentioned conveyance, does that include the infrastructure, all of that infrastructure as well?

Abner Gomez said yes it does, it can include but we are not requesting any for conveyance at this time being that most of the water storage tanks are the ones because of cost we do require some assistance when possible so for now we are only focusing on storage tanks.

Councilor Corran asked with this also be used for potential other types of capital planning that we might do that Utilities might be doing and could that be integrated into a bigger conversation about bonds and capital improvement projects related to Utilities?

Abner Gomez said yes and that is part of the reason we have broadened the scope to

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include all storage tanks. We could have just one tank but we do see a benefit. Regardless if we move forward with their loan terms we do see a big benefit by looking at all of our storage tanks, what their life is and their condition is and whether it is through our regular CIP process or bonds or other loans we do see a great benefit by having this in place already or at least committing to develop one.

Councilor McClure asked what is the timeline that you are aiming to get this done?

Abner Gomez said the timeline for this will be a couple of months. We are not quite sure. It will be the first one that we develop so it is a bit of uncharted territory. We are hoping that depending on the consultants and how many consultants are available within for sure this next fiscal year we will already have some money budgeted for this plan and so rough ballpark maybe three to six months from start to finish once we get this going.

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 24-072.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
AYES:	Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

8.2 COUNCIL BILL NO. 24-013; ORDINANCE NO. 3055: AN ORDINANCE APPROVING A ZONE CHANGE FROM EE (EQUESTRIAN ESTATE AND AGRICULTURE) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR PROPERTY LOCATED AT 780 STERN DRIVE. SUBMITTED BY TED SCANLON, BORDERLAND ENGINEERS AND SURVEYORS.

Adam Ochoa, Senior Urban Planner gave the overhead presentation.

Councilor Mattiace asked as of today there has not been one complaint?

Adam Ochoa said no Sir, as of today we have not received any phone calls, mail, anything from the public in the area Sir.

George Pearson, Member of the Public said this is near the intersection of Boutz and Stern which currently is a two way stop and they made kind of mess there after they put in that development. What should have been done probably is a roundabout. I was wondering if there was any consideration of the impact of this zone change on that intersection and how we can make sure that we keep that intersection safe for a large number of bicyclists that use the intersection.

Councilor Corran asked I would assume that a traffic impact study would have to be done if there is going to be something built there?

Adam Ochoa said that is correct. Essentially what it is when a development does

come to the property it does go for review throughout staff including a traffic engineering section and Transportation Department. So, we will take a look at that and take a look at the impact the property might bring into that area and if any improvements are required to the right-of-way they are required to do so at the time during development essentially.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Approve Ordinance No. 3055.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

8.3 COUNCIL BILL NO. 24-014; ORDINANCE NO. 3056: AN ORDINANCE APPROVING A ZONE CHANGE FROM R-2/C-2 (MULTI-DWELLING LOW DENSITY/COMMERCIAL MEDIUM INTENSITY) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR PROPERTY LOCATED AT 806 EAST BOWMAN AVENUE. SUBMITTED BY NICOLE E. AND PHILIP EHRGOTT, PROPERTY OWNER.

Adam Ochoa, Senior Urban Planner gave the overhead presentation.

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to Approve Ordinance No. 3056.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Becky Corran
AYES:	Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

8.4 COUNCIL BILL NO. 24-015; ORDINANCE NO. 3057: AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1 (COMMERCIAL LOW INTENSITY) AND R-3 (MULTI-DWELLING MEDIUM DENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) ON A PROPERTY ENCOMPASSING 1.436 ± ACRES. THE ZONE CHANGE REQUEST SEEKS TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 2001 LAS CRUCES MUNICIPAL CODE, AS AMENDED, ALLOWING FOR THE CURRENT BUSINESS EXPANSION AS WELL AS ENCOURAGING FUTURE DEVELOPMENT ON THE PROPERTY. THE SUBJECT PROPERTY IS LOCATED AT 2460 MISSOURI AVENUE.

Adam Ochoa, Senior Urban Planner gave the overhead presentation.

Councilor Corran asked how is our Realize process going and is this the type of thing that will be fixed because when I hear about nonconforming, I wince and will it be fixed when we pass Realize and when can we look forward to that?

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Adam Ochoa said this will essentially because it will take into effect not only use, it's not only more of an euclidean, a change of our original zoning code. So, the uses would be allowed and then there would just be additional development standards and designs standards would be required. It is still under staff review I believe as of now. We are reviewing the zoning section which is what we are talking about today as well as some of the design standards which include streets and so forth like that.

Larry Nichols, Community Development Director said the Realize Las Cruces update from 2001 we realize that is some twenty years old and very much in need of an update. The consultant Freese and Nichols and the TAC Committee have completed the review of all sections, it has been sent back to the consultant comprise the draft for review. It will be coming forward to the TAC Committee for one more review of all the changes that were adopted and then we will begin to start our public outreach notification for the public and for all agencies in the city. Timeline, I am thinking early to mid-spring when we begin to bring it back to you for your consideration for adoption.

Councilor Becky Corran moved, seconded by Councilor Johana Bencomo, to Approve Ordinance No. 3057.

RESULT:	Carried
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Johana Bencomo
AYES:	Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

9. BOARD APPOINTMENTS

9.1 THE FOLLOWING CITY COUNCIL APPOINTMENTS MADE BY THE MAYOR:

- MVEDA- Mayor Enriquez
- MPO Policy Board- Mayor Enriquez and Councilor McClure
- SCSWA- Mayor Enriquez as ex-officio and Councilor Bencomo
- Juvenile Justice- Mayor Enriquez and Councilor Graham
- Oversight Committee- Councilor Mattiace and Councilor Bencomo as the Mayor's designee
- ASCMV- Councilor Graham
- University District Committee- Councilor Mattiace
- LCU- Councilor McClure
- MVRDA- Councilor McClure and Councilor Corran as alternate

10. NOTICE OF PROPOSED ORDINANCE(S)

- 1) There will be no public discussion.
- 2) A Councilor may ask staff for clarification on the proposed ordinance(s).

10.1 COUNCIL BILL NO. 24-016; ORDINANCE NO. 3058: AN ORDINANCE APPROVING A ZONE CHANGE FROM M-1/M-2 (INDUSTRIAL STANDARD) TO C-3 (COMMERCIAL HIGH INTENSITY) FOR A PROPERTY ENCOMPASSING 8.25 + ACRES AND LOCATED AT 4201 DEL REY

**BOULEVARD. SUBMITTED BY NEW REPUBLIC DESIGN CO.,
REPRESENTATIVE. (23ZO0500140).**

Council agreed to bring it forward.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 COUNCILOR CORRAN

I missed the last meeting so I would like to give a quick thank you to Chief and congratulations to Chief and for your appointment and for inviting us to the graduation for the new academy graduates. It was a great experience, and I definitely took your words to heart as a former valedictorian and now I am getting to talk more I can't believe you signed up for that. Other than that, I am really excited to work with you all in the new year and thank you for a great meeting.

11.2 COUNCILOR GRAHAM

Welcome new colleagues. I am really excited to be serving on this body and looking forward to what 2024 has in store for all of us.

11.3 COUNCILOR MATTIACE

I would like to tell everyone that I am glad to be here, and I am happy to serve with the present council and the new councilors. I would like to thank all the constituents that voted in District 2 but my concerns are about District 2 so I would like to ask the Mayor a timeframe when we could address the issues that are very important to the District 2 voters and that is the public safety issues.

11.4 COUNCILOR MCCLURE

I am going to echo the sentiments of the Mayor and hope that we do good work in the next four years and I am really honored and humbled to be here and look forward to serving as the voice for District 1. In that affect for those who voted for me thank you and for those who didn't I will work to earn your trust over the next four years. I really want you to reach out and contact me. I look forward to talking to more people because that is the only way that I will be able to do the will of the people.

11.5 COUNCILOR BENCOMO

I am very happy to be here. I first want to thank my colleagues for your trust in me in this position as Mayor Pro Tem. I really appreciate it and I promise to do well. I of course want to welcome Mayor Enriquez. It is an exciting time for Las Cruces. I think we have had one Mayor for a really long time and this just feels like a door opener of opportunity so welcome and I am really excited and welcome to our two new councilors as well, looking forward to working with both of you on the important issues facing Las Cruces.

I do have a couple of things on my list that I wanted to address really quickly. There is a need for a water conservation plan improvement and update. I don't know if you would allow Adrienne, Mayor Enriquez to come up and briefly give an update on that.

Adrienne Widmer, Utilities Director said we have a 40-year Water Development Plan and so that is getting close to needing updating which we will be working on shortly. We also have our Water Conservation Plan. That one is still in a draft format that we need to kind of go back and take a look at. We are waiting for a couple of things to

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occur first which seems kind of counterintuitive but based on what could potentially be happening hopefully, possibly in April with Texas v. New Mexico and the potential for a decent decree will have a lot to do with how we move forward with the planning and moving forward with water and we work very closely with our Utility Board and really appreciate all of their comments coming in. At this point everything is fine. We are using those documents that we currently have. They are still applicable at this moment.

Councilor Bencomo said I do want to say that I feel very confident in our water management expertise. I think Adrienne, that is her whole background as our Utility Director I think we are really lucky to have her and then our Chair for our Utilities Committee is Commissioner Archuleta, and he is also has a depth of experience in water management. So, I think we are in really good hands.

I did want to say for transparency I was invited to a meeting last month with now Municipal Judge Filosa, Chief Story was there, Natalie Green was there, Brad from Legal was there as we were talking about building out an outreach court as an extension of Municipal Court. I am really excited about that process. Obviously, I think we need to give Judge Filosa an opportunity to settle in and create that transition for him and his team there but I am excited for the conversation that we had a few weeks ago about this. We really have to begin addressing a lot of the concerns raised by the community. Certainly, a lot of concerns that we have heard in District 4 around folks who keep getting stuck in the criminal justice system with low level misdemeanors and don't have a way to interrupt it. The outreach court I have talked about it many times to you all but I do just want to say that as soon as Judge Filosa is ready that we invite him to Work Session with us. I think that would be really important to hear from him, his thoughts and ideas and while I am on this topic I know that in the past Christine and Mayor that the Mayor gets to appoint a second Judge to Municipal Court. I did however want to ask if you would be open to a conversation to creating a different process for appointing that person. I think given the last year and given some of the conflicts that we had in that area with some appointments and it's not just any appointment it is a paid salary position, right? It's a big position that perhaps there should be an interview committee or something like that. Not just a flat-out appointment and I was wondering if you were open to that process and how to come up with that and I think with Judge Filosa's input in addition to that.

I did want to address the traffic management concerns brought up here today. I think we have David since you are up here, I don't know how we could begin having this conversation and our Budget Retreat is coming up but I would love to talk about I think there is a couple of intersections currently in discussion. The one that was brought up today, Elks, Hoagland. There is a couple of big intersections that the people have talked about traffic management, and I am wondering if we are able to do that in a Work Session or some way to get a conversation started about budgetary needs, a list of priorities. How are we prioritizing those kinds of projects and again our budgetary needs? I would love to see that conversation move forward.

Lastly on homelessness, given that it is the new year and there were several folks speaking on this issue I just want to say that if it was easy we would be doing it

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already and the reality is that it takes an incredible amount of political will, an incredible amount of investment and time in order to address these issues and I think there is a lot of moving pieces that will come into fruition here. There is not just one magic solution to this. It is multiple and I think we have the expertise in our community and I am excited to work with our new Mayor and our new colleagues and community advocates to find even more solutions and figure out how to invest in them.

11.6 MAYOR ENRIQUEZ

I would like to say Happy New Year to everyone. I did get a chance to attend the Chile Drop, it was green. Congratulations to Chief Story. The public comments, the input, I do take to heart. Especially when the gentleman said you all have your work cut out for you. He is absolutely right but that is what we signed up for. I am very proud and honored to be the Mayor of the City of Las Cruces. Mayor Ken Miyagishima was here for 16 years. It is not going to be an overnight change, but it is a lot of work and I look forward to it. I thank all of those who elected me to be here and as Councilor McClure mentioned those who didn't I hope that I earn your trust and move forward. When I campaigned it was team Eric Enriquez for Mayor and now, I can say as Mayor with my colleagues here and the organization and the community it is now Team Las Cruces that I look forward to. I look forward to a very productive, hard-working council that we can get things done and address the petty crime, the homelessness, the traffic, everything that we have to do for our community to make it safe and to help it thrive.

12. CITY MANAGER REPORT

12.1 IFO PILI

I want to welcome our newly elected officials. We are here for you. We look forward to tours that you want to take and anything else that you need from staff but I think that we have with Community Engagement and Barbara Bencomo had planned some good onboarding for you all if you are interested in that but welcome and I look forward to working with you as well.

Our Citizens Academy, we are accepting applications. Maybe I can turn some time over to Chief to give a little plug for that.

Jeremy Story, Police Chief said we have a Citizens Academy scheduled for here next month. It will start of February 20th and end on March 14th. It is Tuesdays and Thursdays from 6 to 9 p.m. and we are taking applications right now. So, applications will close on Friday, January 19th. Those applications can be dropped off at the East Mesa Complex which is 550 North Sonoma Ranch. If you go to our Facebook there is a link there but on the Police Department website for the city website there is a link to the application and more information about it.

Ifo Pili said I want to mention our Neighborhood Leadership Academy from our Community Engagement. It begins on January 10th. The Neighborhood Leadership Academy aims to develop community leaders, provide an understanding of the city services, engage constituents in city decisions, projects, future of the city, and increase community pride. Neighborhood Leadership Academy classes will be two hour, once a week for ten weeks mostly on Wednesdays. Graduation for those

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completing seven of the ten classes would be April 1, 2024. Participants will meet in various locations throughout the city to receive firsthand information directly from city departments. The academy is free, bilingual, and has a maximum of 35 participants and is currently being held once a year. The application process closed on December 29th.

Just a reminder, I know we sent out press releases about our minimum wage increase as of January 1st in accordance with an ordinance enacted in 2014 to align our minimum wage with the CPI index as of 2020. It goes from \$12 to \$12.36, and I believe tip wages go from \$4.78 to \$4.95.

Just an FYI coming from our Utilities, kudos to our Utility, Victor for bill collection. He is up to \$2.1 million for year to date for fiscal year 24. He is really good at his job and his team. I just wanted to mention that.

13. ADJOURNMENT

13.1

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Adjourned at 2:33 p.m.

RESULT:	Carried
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Johana Bencomo
AYES:	Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, Councilor Cassie McClure, Mayor Eric Enriquez, and Councilor William Mattiace
ABSENT:	Councilor Yvonne Flores

Mayor

City Clerk



24-078

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5 ☐ 6 ☐ N/A		
1st Reading:		Adopted:	February 5, 2024
Drafter:	Jan Lauterbach	Department:	City Manager's Office
Program:	Housing & Neighborhood Services	Line of Business:	Housing & Neighborhood Services
Title:	A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM AGREEMENT BETWEEN THE CITY AND MESILLA VALLEY HABITAT FOR HUMANITY FOR THE CONSTRUCTION OF THREE SINGLE-FAMILY AFFORDABLE HOUSING UNITS IN THE METRO CENTRAL PHASE 1 SUBDIVISION.		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
Approve HOME Agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The Cranston Gonzalez National Affordable Housing Act (NAHA) of 1990 created the HOME program. The HOME program provides the City the opportunity to administer a federally-funded grant from the U.S. Department of Housing & Urban Development (HUD) in accordance with the goals of the City's 2021-2025 Consolidated Plan, a document that outlines affordable housing and community development needs.

Annual Action Plans presented to and adopted by the City Council outline how HOME funds for each program year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan. On May 3, 2021, the City Council approved the 2021 Action Plan under Resolution 21-162 allocating \$180,000 in HOME funds, and on May 2, 2022, the City Council approved the 2022 Action Plan under Resolution 22-131 allocating \$270,000 in HOME funds to Mesilla Valley Habitat for Humanity (Habitat) for single-family development.

Habitat, a Community Housing Development Organization (CHDO), is proposing to use HOME funds up to \$225,000 (HOME entitlement + HOME CHDO) for construction on 3 parcels in the Metro Central Phase 1 Subdivision. The homes to be constructed will be located at 3806 and 3972 Caspian Rd. and 6100 Kaleidoscope Rd. and will be sold to qualified income-eligible households utilizing Habitat's homeownership program. The HOME funds will provide for a direct reduction in the sales price of the homes, offering a more affordable mortgage to individual households. The City will file a Deed Restriction and Restrictive Covenants Agreement on each parcel to maintain the property's affordability and use as owner-occupied residential housing.

To comply with HOME program regulations, a HOME program Recoverable Grant Agreement as shown in Exhibit "A" must be executed with City Council approval, as indicated under the proposed Resolution.

SUPPORT INFORMATION:

Agenda Item #7.1.

[Exhibit "A" HOME Agreement](#)

PLAN(S):

City Council Strategic Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: \$340,500 **AVAILABLE AMOUNT:** \$340,500 **EXPENDITURE AMOUNT:** \$225,000

Funding Source(s):

20430203-721080-10278 \$131,100

20430213-721080-10278 \$18,900

20430213-721080-10245 \$75,000

Overall Budget Impact:

Neutral impact, expense has matching revenue source (HUD funding).

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and HOME agreement providing funding to Habitat for affordable housing development.
2. Vote "No"; this will not approve the Resolution nor the HOME agreement to provide funding to Habitat for affordable housing development.
3. Vote to "Amend"; this would delay the Resolution and require further direction from City Council.
4. Vote to "Table"; this would delay the Resolution and require further direction from City Council.

REFERENCE INFORMATION:

1. Resolution 21-162
2. Resolution 22-131

RESOLUTION 24-078

A RESOLUTION APPROVING A HOME INVESTMENT PARTNERSHIPS (HOME) PROGRAM AGREEMENT BETWEEN THE CITY AND MESILLA VALLEY HABITAT FOR HUMANITY FOR THE CONSTRUCTION OF THREE SINGLE-FAMILY AFFORDABLE HOUSING UNITS IN THE METRO CENTRAL PHASE 1 SUBDIVISION.

The City Council is informed that:

WHEREAS, the City has received funds from the Department of Housing and Urban Development (HUD) under the Cranston-Gonzalez National Affordable Housing Act (NAHA) of 1990 providing the City the opportunity to administer the federal funding program in accordance with the goals of the City's Consolidated Plan; and

WHEREAS, annual Action Plans resented to and adopted by City Council outline how HOME funds for each program year (PY) will be spent in accordance with the strategic goals as outlined in the Consolidated Plan; and

WHEREAS, on May 3, 2021, City Council approved the 2021 Action Plan under Resolution 21-162, allocating \$180,000 in HOME funds and on May 2, 2022, City Council approved the 2022 Action Plan under Resolution 22-131, allocating 270,000 in HOME funds to Mesilla Valley Habitat for Humanity (Habitat) for single-family development; and

WHEREAS, Habitat desires to use up to \$225,000 in funding for the construction of 3 homes in the Metro Central Phase 1 Subdivision for affordable housing development; and

WHEREAS, upon completion of construction, the amount of HOME funds granted will provide for a direct reduction in the sales price of the homes to qualified low-income households utilizing Habitat's homeownership program; and

WHEREAS, in order to comply with HOME regulations, a HOME Program Recoverable Grant Agreement between the City and Habitat is required to be executed.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the HOME Program Recoverable Grant Agreement between the City and Habitat as shown in Exhibit "A" attached hereto and made a part hereof is hereby approved.

(II)

THAT the Assistant City Manager as the official representative of the City, in accordance with Resolution 21-147, is hereby authorized to execute the HOME Program Grant Agreement with Habitat on the City's behalf.

(III)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

Agenda Item #7.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

**HOME PROGRAM RECOVERABLE GRANT
AGREEMENT BETWEEN
THE CITY OF LAS CRUCES
AND
MESILLA VALLEY HABITAT FOR HUMANITY**

This **HOME PROGRAM RECOVERABLE GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of 700 N Main St., Las Cruces, New Mexico 88001 (hereinafter referred to as "City") and Mesilla Valley Habitat for Humanity, a non-profit agency, and Community Housing Development Organization (CHDO), whose UEI is QFR8L6MEFT51 and whose address is 720 Santa Fe St., Las Cruces, New Mexico 88001 (hereinafter referred to as "Developer").

WITNESSETH:

WHEREAS, the City is an entitlement recipient of the federal HOME Investment Partnerships Program (hereinafter referred to as "HOME") in furtherance of its goal of encouraging the production of decent, safe, sanitary affordable housing for the citizens of Las Cruces;

WHEREAS, the recipient has submitted a proposal to utilize Two Hundred Twenty-Five Dollars and No Cents (\$225,000) in HOME funds (\$150,000 Entitlement and \$75,000 CHDO Set Aside) for new construction on 3 lots in the Metro Central Phase 1 Subdivision, located more specifically as described on the attached **Attachment "A"** (hereinafter referred to as "Property");

WHEREAS, new construction of single-family owner-occupied affordable housing units are eligible activities under the HOME Program; and

WHEREAS, the parties desire to enter into this Agreement in order to ensure compliance with the requirements of the HOME Program and to secure other covenants and promises from the Developer regarding the use of funds to benefit low-income persons, as defined under the standards of eligibility established by the United States Department of Housing and Urban Development (hereinafter referred to as "HUD"), a copy of which document for the current year is attached hereto as **Attachment "B"** and is incorporated herein by this reference.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency and receipt whereof being hereby acknowledged, the City and the Developer agree as follows:

SECTION 1. DEFINITIONS

As used herein, the following words and terms, whether capitalized or not, shall have the following meanings, unless the context demands otherwise:

1. Adjusted for Family Size – adjusted in manner which results in an income eligibility level that is lower for households having fewer than four people, or higher for households having more than four people, than the base income eligibility based upon a formula established by HUD for the Las Cruces Metropolitan Statistical Area (MSA).
2. Affordable or Affordability – as defined in Section 3, Paragraph 2 of this Agreement is 15 years per Lot.
3. Affordability Period – if the subsidy per lot is \$1 to \$14,999, then the Affordability Period is five (5) years; if the subsidy per lot is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years; or if the subsidy per lot is greater than \$40,000, then the Affordability Period is fifteen (15) years; if the subsidy is provided on lots which are also receiving other assistance with HOME funds for acquisition, then the affordability period will be added to the Affordability Period from the initial HOME assistance for a combined period not to exceed 25 years. The Affordability Period will begin at the point of time for each individual unit contemplated under this agreement has been closed out in HUD's Integrated Disbursement and Information System (IDIS) as authorized in 24 CFR Part 92.502(d)(1).
4. Annual Gross Income – the annual anticipated income for a household, or more specifically, the gross amount of wages, income from assets, regular cash or non-cash contributions, and any other resources and benefits determined to be income by HUD, as defined in 24 CFR §5.609.
5. Displaced Person – a person (family or individual, business, nonprofit organization, or farm) that moves from real property, or moves personal property from real property permanently, as a direct result of acquisition, rehabilitation, or demolition for a project assisted with HOME funds, and as further defined in 24 CFR Part 92.
6. Eligible Person or Eligible Household – one or more natural persons or a family who are determined by the City to be of Extremely Low, Very Low, or Low Income according to the income limits Adjusted to Family Size published annually by HUD based upon the Annual Gross Income of the household. All homebuyers receiving HOME assistance or purchasing units developed with HOME funds are required to receive housing counseling by a HUD approved housing counseling agency.

7. Extremely Low Income Person or Extremely Low Income Household – one or more natural persons who has a total Annual Gross Income for the household that does not exceed thirty percent (30%) of the median annual income adjusted for family size for households with the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.
8. HUD – the United States Department of Housing and Urban Development, its successors or assigns.
9. IDIS – HUD's Integrated Disbursement and Information System
10. Recoverable Grant Documents – this Agreement, the Deed Restrictions and Covenants Agreement and all agreements, certificates, schedules, notes, statements and opinions, and exhibits or attachments to each of the foregoing, referenced therein or executed or delivered pursuant hereto or in connection with or arising under the grant contemplated hereby.
11. Low Income Housing – housing that is Affordable to Low Income Persons.
12. Low Income Person or Low Income Household – one or more natural persons or a family who has a total Annual Gross Income for the household that does not exceed eighty percent (80%) of the median annual income adjusted for family size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.
13. Owner-Occupied – Upon completion of construction and during the Affordability Period, the Developer/Subrecipient is required to annually confirm all units remain owner-occupied and provide supporting documentation annually to City staff. During the affordability period, the Developer/Subrecipient/Owner agree that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. If, at any time during the term of the Affordability Period, the Property ceases to be principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for purchase only to a buyer whose family qualifies as a low-income family earning between 31-80% of Area Median Income (AMI) and will use the property as their principal residence. The Owner and/or Subrecipient further represents and warrants that the owner(s) met income eligibility requirements at the time the Contract(s) to build the unit(s) was executed.

14. Project – the new construction of three owner occupied, single-family units within the Property, in which all units shall be exclusively occupied by Extremely Low, Very Low- or Low-Income Persons.
15. Project Completion – that the necessary title transfer requirements and construction work have been performed; the project complies with the requirement of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered into HUD's IDIS system. All units contemplated under this agreement must be completed within 4 years from the effective date of this agreement or IDIS set-up date.
16. Sale of Homebuyer Units – All units contemplated under this agreement must be sold within 6 months of completion date of the project(s) individual HOME-assisted units. Sold units are defined as units that:
 - 1) have a "ratified sales contract" or
 - 2) actual "permanent closing" that includes completion of title transfer and execution of warranty deed to an income qualified household that will occupy the unit as their primary residence.
 - 3) Maximum sales price of the individual units cannot exceed the HUD HOME ownership value limits as defined by HUD at the time of sale. Proceeds from the sale may be retained by the developer for activities that benefit low-income families.
17. Property - All that certain real property located in the county of Dona Ana, State of New Mexico, described as Lots 56, 58, and 84, Metro Central Phase 1 Subdivision. See attached **Attachment "A"** for full legal description.
18. Very Low Income Person or Very Low Income Household – one or more natural persons or a family whose has a total Annual Gross Income for the household that does not exceed fifty percent (50%) of the median annual income Adjusted for Family Size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

Other terms herein which have not been defined shall have the definition, meaning, and intent given them in the HOME regulations, or 24 CFR Part 92, or as cross-referenced therein, or their ordinary dictionary meaning as the context so requires.

SECTION 2. RECOVERABLE GRANT AMOUNT AND USE OF FUNDS

1. Recitals: The recitals set forth are true and correct and are incorporated herein and made a part of this Agreement.
2. The Recoverable Grant: The City has applied for and received funds from the United States Government under the Cranston-Gonzales National Affordable Housing Act (NAHA) of 1990, Title 24 CFR 92, and Catalog of Federal Domestic Assistance (CFDA) No. 14.239.

Under the terms and conditions of this Agreement, the City agrees to grant the Developer a total of Two Hundred Twenty-Five Thousand Dollars and No Cents (\$225,000.00) for new construction of the Property. The grant funds to the Developer shall be in the form of a recoverable grant on the terms set forth in this Agreement and the owners' Deed Restriction and Covenants Agreement, as required by the City. The Owners' shall secure a Deed Restrictions and Covenants Agreement on the Property (the "Deed Restrictions") substantially in the form attached hereto and incorporated herein by reference as **Attachment "C"**.

3. Disbursement: The initial disbursement of funds must occur within 12 months of the date of agreement. Subsequent disbursements may take place monthly with the final disbursement to be taken no sooner than 40 days prior to project completion.

The City shall disburse the grant proceeds for eligible expenses only after approval by the City of invoices submitted and verified in accordance with this Agreement and applicable HOME regulations. Notwithstanding anything to the contrary in this Agreement, the City also reserves the right to request and approve documentation supporting any requests for disbursement to verify reasonableness and validity of such costs and said Budget may be modified by the City accordingly.

4. Use of Grant Money: The Developer shall use the grant proceeds for eligible new construction expenses permitted under applicable HOME regulations and as set forth in 24 CFR §92.206, as the same may from time to time be amended and in accordance with the Scope of Work, Project Schedule, and Budget attached hereto as **Attachment "D"** and incorporated herein by this reference. The Developer shall not use any HOME funds for prohibited purposes as set forth in 24 CFR §92.214 or other HOME regulations, as the same may from time to time be amended. The Developer acknowledges and agrees that any funds not used in accordance with permitted HOME regulations must be repaid to the City. The Developer acknowledges and agrees if this Project is terminated before completion, either voluntary or otherwise, the Developer must repay any HOME funds invested in the Project to the City. The Developer shall keep all financial records for the Project, including source documentation to support how HOME funds were expended, which

includes, but is not limited to, cancelled checks, paid bills, payrolls, time and attendance records, invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the City to support the expenditures for this Project.

5. Layering Review: As applicable, it is the City's responsibility under HOME regulations, and more specifically 24 CFR §92.250, to evaluate the use of other local, state, or federal assistance in HOME-assisted projects to ensure that it does not invest any more HOME funds than are necessary to provide Low Income Housing. The Developer must submit revised Sources and Uses Statements and Pro-forma if any of the original funding sources, amounts or financial conditions change from the time this application was submitted.
6. Program Income: Any program income generated from the proceeds of the HOME grant shall be returned to the City in accordance with 24 CFR §92.503(a) and 24 CFR §92.504(c)(2)(ii).
7. Term: The term of this Agreement shall commence on the effective date of this Agreement which is the date of the last party to sign this Agreement (the "Effective Date") and shall continue through the end of the fifteen (15) year Affordability Period. Notwithstanding any of the foregoing, all record-keeping requirements, audit, and use and maintenance of the Property requirements set forth in this Agreement or any record-keeping or use requirements mandated by HOME regulations shall survive termination of this Agreement.
8. Payment: It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$225,000. Payment requests are due by the fifteenth (15th) day of each month. If no payment request is needed for a particular month, the Developer must submit in writing that no payment request is required for that particular month. The Developer agrees to use the Payment Request form as referenced in **Attachment "E."** Payments may be contingent upon certification of the Developer's financial management system in accordance with the standards specified in 2 CFR Part 200, Subpart D, "Financial and Program Management."
9. HOME Match Requirement: The Grantee and the Developer are currently exempt from HUD's Match Requirements in 24 CFR §92.220. The Developer will be notified if the requirement becomes effective. Upon notice of a required HOME match the Developer and/or the City would be required to make a contribution up to 25% of the HOME funds granted to the developer and expended during the applicable federal fiscal year.

Possible Maximum Match Liability: \$225,000 x 25% = \$56,250

10. Deadline for Sale of Homebuyer Units: for each unit contemplated under this agreement, the unit(s) must be sold to an eligible household within 6 months of project completion. Any unit not sold to an eligible homebuyer within 6 months of project completion must be converted to a HOME rental units or repay the HOME investment. If unit is converted to a rental unit, the unit would remain a rental unit through the affordability period, unless sold to the existing tenant during the affordability period and is subject to HOME monitoring requirement throughout the term of the affordability period.

SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Developer shall comply with all applicable federal and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Developer agrees to comply with all of the HOME Program regulations, HUD regulations, 42 U.S.C. §§12701-12839, 24 CFR Part 92 as amended from time to time, whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance therewith. The Developer, as a CHDO, shall comply with the Uniform Administrative Requirements at 2 CFR part 200. The Developer shall follow procedures as outlined in their Procurement Manual for construction activities. The Developer also shall comply with all other applicable federal, state, and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Municipal, Building, and Zoning Codes.
2. Period of Affordability/Restrictive Covenant: All HOME-assisted units shall be maintained as affordable housing for the 15-year Affordability Period. To be classified as affordable housing, it is required that the owner shall maintain the Property as Owner Occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the HOME assistance/subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the project completion date; if the HOME assistance/subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the project completion date; if the HOME assistance/subsidy is greater than \$40,000, then the Affordability Period is fifteen(15) years from the project completion date; or if the subsidy is for new construction or acquisition of rental housing, then the Affordability Period is twenty (20) years. The Affordability Period will begin on the effective project completion date. In order to ensure compliance with the Affordability Period, the owner(s) of the Property, shall execute a Deed Restriction

and Covenants Agreement, a copy of which is attached hereto as **Attachment "C"** and incorporated herein by this reference, which shall be recorded in the office of the County Clerk of Dona Aña County. The Affordability requirements apply without regard to the term of any loan or mortgage or the transfer of ownership. The Developer acknowledges that failure to meet the Affordability requirements stated herein is a breach of this Agreement and a default under the Mortgage which requires resale of the HOME unit to another eligible person or household, if the Project does not meet the Affordability requirements for the Affordability Period. These resale provisions conform to 24 CFR Part 92.254 (a)(5)(i) and are detailed in the Deed Restrictions and Covenants Agreement as shown in Attachment "C", Restrictive Covenants Section C, executed between the City of Las Cruces and the individual owner(s).

3. Property Standards: The Developer shall comply with the property standards requirements set forth in 24 CFR §92.251. The Developer shall keep records to document compliance with these property standards. At Project Completion, the Property must meet all applicable local codes, ordinances, and zoning ordinances. The Property must also meet the accessibility requirements in 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973, as applicable.
4. Four-Year Project Completion: HOME funds provided for the project and units proposed under this Agreement that have not been completed within four years of the commitment date, as determined by a signature of each party to the written agreement or IDIS set-up date, must be repaid to the City. HUD may grant a one-year extension to the completion deadline upon a request from the City that is submitted to the local HUD Field Office at least 90 days before the project's four-year deadline. The Developer must coordinate the extension request with the City by providing the following: documentation that the project will not be completed by the four-year deadline due to circumstances beyond the City's control, a detailed project completion schedule, with milestones, that will ensure the project is completed within one year or less, proof that adequate financing has been secured to ensure project completion.
5. Household Qualifying: The Developer shall qualify each household purchasing a HOME-assisted unit under the guidance of the HUD Final Rule as may be revised, and in accordance with 24 CFR 5.609 including HUD's Technical Guide for Determining Income and Allowances for the HOME Program with annual income determinations based on HUD's Part 5 definition of annual income. Generally, households shall be qualified at the time of contract, to purchase housing to be constructed, or at the time of purchase in the case of a contract to purchase existing housing. In the case of a lease-purchase agreement for existing housing or for housing to be constructed, the household must be qualified at the time the

agreement is signed. All qualifying documentation shall be provided to City HOME staff for review prior to occupancy and/or permanent closing.

6. Monitoring: The City will monitor both the financial and programmatic performance of the Developer throughout the development and construction process including a one-year period after the sale of the unit(s). The City reserves the right to monitor the project records for a period of no less than five (5) years after the Affordability Period. Substandard performance as determined by the City will constitute non-compliance with this Agreement. If action to correct such substandard performance is not taken by the Developer within 30-days of time after being notified by the City, Agreement suspension or termination procedures will be initiated.
7. Records: The Developer shall comply with 24 CFR §92.508 regarding records that must be maintained for this Project. The Developer shall maintain all records pertaining to the Project at its principal place of business for a period of no less than five (5) years after the Affordability Period. The Developer shall make all records available to the City, HUD, and to their respective representatives during normal business hours. The Developer shall maintain all mortgages and Project financial records, including source documentation to support how HOME funds were expended, which includes, but is not limited to invoices, schedules containing comparisons of budgeted amounts and actual expenditures, construction progress schedules signed by the general contractor, and other documentation as may be required by the City to support the expenditures for this Project. All supporting documents shall be maintained in accordance with the requirements of 2 CFR Part 200. If any litigation, claim, negotiation, audit, monitoring, inspection, or other action has been started before the expiration of this required 5-year period, the Developer must maintain the records until completion of the action and resolution of all issues which arise from it, or until the end of the 5-year period, whichever is later. This section shall survive the termination of this Agreement.
8. Reports: The Developer shall submit monthly reports with such reports due by the 15th of each month. These reports shall include information on status of participants in the /Developer's Program, status of construction progress, and status of identifying land for future affordable housing development.
9. Beneficiary Data: The Developer shall maintain beneficiary data demonstrating beneficiary eligibility for services provided. Such data shall include, but not be limited to, beneficiary name, address, and income level. The Developer will use 24 CFR Part 5 for determining income eligibility. Such information shall be maintained in a beneficiary

file by the Developer and shall be made available to the City's monitors and/or their designees for review upon request.

10. Uniform Administrative Requirements: The Developer and the City shall comply with 24 CFR §92.505 regarding uniform administrative requirements. The Developer shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. The Developer also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.

11. Audits and Inspections: The Developer's records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

One copy of the Developer's reporting package shall be submitted to the City 30 after receipt of an auditor's report or 9 months after the end of the audit period, whichever occurs first. The reporting package shall include:

1. Financial statement,
2. Schedule of prior year audit findings,
3. Auditor's report, and
4. Corrective action plan that addresses each audit finding.

Any deficiencies noted in audit reports must be fully cleared by the Sub-recipient within 30 days after receipt by the Sub-recipient. Failure of the Sub-recipient to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments. The Sub-recipient hereby agrees to have an annual agency audit conducted in accordance with current City policy concerning Sub-recipients audits and 2 CFR 200 subpart F (Audit Requirement for Federal Awards), as applicable.

12. Compliance with Davis-Bacon Act: The Developer, as applicable, shall comply with 24 CFR §92.354 and all applicable provisions of the Davis-Bacon Act (40 U.S.C. §276a, et seq.) and implementing labor regulations contained in 29 CFR Part 5. The Developer shall also comply with the Contract Work and Hours and Safety Standards Act (40 U.S.C. §§327-332), and other federal laws and regulations pertaining to labor standards and HUD Handbook 1344.1, as applicable. The Developer shall maintain records demonstrating compliance with 24 CFR §92.354, including contract provisions and payroll records.

13. Copeland "Anti-Kickback" Act: As applicable, the Developer shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C. §874), as supplemented by the Department of Labor regulations contained in 29 CFR Part 3.
14. Debarment and Suspension: The Developer shall comply with the debarment and suspension requirements set forth in 24 CFR Part 5 and 24 CFR Part 24. The Developer shall not enter into a contract with any person, agency, or entity that is debarred, suspended, or otherwise excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 or 12689, "Debarment and Suspension," which is made a part of this Agreement by reference. In the event that the Developer has entered into a contract or subcontractor with a debarred or suspended party, no HOME funds will be provided as reimbursement for the work done by that debarred or suspended contractor or subcontractor. The Developer shall keep copies of the debarment and suspension certifications required by 24 CFR Parts 24 and 91.
15. Drug-Free Workplace: The Developer shall comply with the Drug Free Workplace Act of 1988 and implementing regulations in 24 CFR Part 24, Subpart F regarding maintenance of a drug-free workplace. The Developer agrees to complete and comply with the "Certification Regarding Drug-Free Workplace Requirements" attached hereto as **Attachment "F"** and incorporated herein by reference. The Developer will complete this certification, and a copy will be kept in the files of each party.
16. Utilization of Minority/Women's Business Enterprises: The Developer shall, to the greatest extent feasible, ensure that Minority/Women's Business Enterprises are included for consideration for participation in all construction, supply or service contracts, if any. The Developer shall comply with Executive Order 11625, as amended by Executive Order 12007 (Minority Business Enterprises); Executive Order 12432 (Minority Business Enterprise Development), and Executive Order 12138, as amended by Executive Order 12608 (Women's Business Enterprise). The Developer shall keep such records necessary to comply with 24 CFR §92.508(a)(7).
17. Section 3 Economic Opportunity: The Developer shall comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. §1701u) and implementing regulations at 24 CFR Part 135 regarding economic development opportunities for Low and Very Low-Income Persons. The Developer shall comply with the "Section 3" requirements attached hereto as **Attachment "G"** and incorporated herein by this

reference. In essence, Section 3 provides that opportunities for training and employment arising from the use of HOME funds shall be provided to Very Low- and Low-Income Persons residing in the Project Area. Contracts for all types of work to be performed in connection with the Project shall be awarded to business concerns that are located in or owned by persons residing in the area. The Developer shall keep records documenting compliance with these requirements as required by 24 CFR §92.508 (a)(7).

18. Equal Employment Opportunity: The Developer shall comply with Executive Order 11246, as amended by Executive Orders 11375, 11478, 12086, and 12107 (Equal Employment Opportunity Programs) and implementing regulations at 41 CFR Part 60, and the Equal Employment Opportunity Clause attached hereto as **Attachment "H"** and incorporated herein by this reference. Any contracts entered into by the Developer shall include a provision requiring compliance with these regulations. The Developer shall keep records and documentation demonstrating compliance with these regulations.
19. Conflict of Interest: The Developer shall comply with the conflict of interest provisions in 24 CFR §92.356. No person who is any employee, agent, consultant, officer, or elected official or appointed official of the City or of the Developer who exercises or has exercised any functions or responsibilities with respect to activities assisted with HOME funds or who is in a position to participate in a decision making process or gain inside information with regard to these activities, may obtain a financial interest or benefit from a HOME-assisted activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter. The Developer shall also keep records supporting requests for waivers of conflicts prohibited in 24 CFR §92.356.
20. Anti-Lobbying Provision: The Developer shall comply with the disclosure requirements and prohibitions of 31 U.S.C. §1352 and implementing regulations at 24 CFR Part 87 and shall so certify to the City. The Developer shall complete and comply with the "Certification Regarding Lobbying," attached hereto as **Attachment "I"** and made a part hereof by this reference. A copy of this document will be kept in each of the party's files. The Developer shall also comply with the requirements for funding competition established by 42 U.S.C. §3531 et seq.
21. Displacement and Relocation: The Developer shall comply with the provisions of 24 CFR §92.353, "Displacement, relocation, and acquisition." It is anticipated that no displacement and relocation will occur as the result of new construction.

22. Lead-Based Paint Prohibited: The Developer shall not use lead-based paint in the Project or anywhere on the Property and shall comply with 24 CFR §92.355, an the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. §§4851-4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, J, K, M, and R. The Developer shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).
23. Non-Discrimination and Equal Opportunity: The Developer shall not exclude any person from participation in, deny any person the benefits of, or subject any person to discrimination, with respect to the rehabilitation, rental, or operation of the Project, on the grounds of race, color, national origin, religion, ancestry, sex, sexual orientation, gender identity, spousal affiliation, or physical or mental handicap, provided that the physical or mental handicap is unrelated to a person's ability to acquire or rent and maintain particular real property or housing accommodation. The Developer shall fully comply with the requirements of 24 CFR §92.350, including the federal requirements set forth in 24 CFR Part 5, Subpart A, the nondiscrimination requirements at Section 282 of the HOME Investment Developers Act, and the unlawful discriminatory practice set forth in NMSA 1978 Section 28-1-7 (2003) of the New Mexico Human Rights Act and keep record of its compliance. The Developer shall at all times comply with the Title VI of the Civil Rights Act of 1964 (42 U.S.C. §2000d, et seq.) and implementing regulations contained in 24 CFR Part 1. The Developer shall also not discriminate on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. §6101, et seq.) and implementing regulations in 24 CFR Part 146, or on the basis of disability as provided in Section 504 of the Rehabilitation Act of 1973 and implementing regulations contained in 24 CFR Part 8. The Developer shall also comply with Title II of the Americans with Disabilities Act (42 U.S.C. §12101, et seq.). Any contracts entered into by the Developer shall include a provision requiring compliance with these regulations. The Developer shall keep records demonstrating compliance with these requirements including compliance with 24 CFR §92.508(a)(7).
24. Fair Housing Act: The Developer shall comply with the Fair Housing Act (42 U.S.C. §§3601-3620) and implementing regulations at 24 CFR Part 100, et seq., Executive Order 11063, as amended by Executive Order 12259 (Equal Opportunity in Housing Programs) and implementing regulations in 24 CFR Part 107, the City's Municipal Code 13-62, et. seq., and shall keep all records demonstrating compliance.
25. Affirmative Marketing: As applicable the Developer and the City shall exercise affirmative fair housing marketing and shall comply with the

provisions of 24 CFR §92.351. The Developer and the City shall keep records necessary to comply with 24 CFR §92.508(a)(7).

26. Miscellaneous Federal Requirements: The Developer shall comply with the federal requirements set forth in 24 CFR Part 5 as applicable.
27. Religious Organizations: The Developer shall comply with 24 CFR §92.257 regarding religious organizations. The Program must be used exclusively for secular purposes, available to all persons regardless of religion, and there must be no religious or membership criteria for participants in the Program.
28. Financial Accountability: The Developer agrees to comply with the standards specified in 2 CFR Part 200, Subpart D, Financial Program Management, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Developer shall administer its program in conformance with 2 CFR part 200 "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards".
29. Environmental Review: This agreement is a conditional commitment of funding pending the completion of an acceptable environmental assessment of the project properties. No draws can be submitted and not funds disbursed until the project has received environmental clearance. The Project will be assessed and comply in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. §4321) and implementing regulations contained in 24 CFR Parts 50-58.
30. Environmental Conditions
 - A. Air and Water
The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
 - Clean Air Act, 42 U.S.C., 7401, et seq.;
 - Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
 - Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.
31. Reversion of Assets: Upon the Agreement's expiration, the Developer shall transfer to the City any HOME funds on hand and any accounts receivable attributable to the use of HOME funds.

32. Clean Air Act and Federal Water Pollution Control Act: As applicable, the developer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 125101387). Violations must be reported to the Federal Awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

SECTION 4. DEFAULTS AND REMEDIES

1. Events of Default: The following shall constitute an Event of Default under this Agreement:
 - a) If the Developer fails to comply with any regulations governing HOME Program awards, including, but not limited to, 42 U.S.C. §§12701-12839, 24 CFR Part 92, or fails to comply with any of the terms contained in this Agreement and such failure continues for a period of thirty (30) days following written notice thereof given by the City to the Developer;
 - b) If the Developer is deemed in default under the terms of other financing or mortgages used for the Project and said defaults extends beyond the applicable cure period provided in said documents;
 - c) If at any time any material representation made by the Developer in any written certification or communication submitted by the Developer to the City in an effort to induce the making of this grant or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;
 - d) If the Developer does not disclose to the City, upon demand, the names of all persons with whom the Developer has contracted or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor; and
 - e) If any default shall occur under the Mortgage and Restrictive Covenants, or any Grant Documents executed in connection with this grant by the City (herein in the "Grant Documents") which is not elsewhere specifically addressed herein and such default is not cured within the applicable cure period set forth in the Grant Documents, or if there is no cure period set forth, then within thirty (30) days following the date of written notice to the Developer thereof.

Notwithstanding any of the foregoing provisions to the contrary, if the Developer has failed to cure any default within five (5) days prior to the expiration of any applicable cure period, the City may, at its sole option, cure such default, provided, however, that the City shall be under no duty or obligation to do so.

2. No Waiver: Failure of the City to declare a default shall not constitute a waiver of any rights by the City. Furthermore, the waiver of any default by the City shall in no event be construed as a waiver of rights with respect to any other default, past or present.
3. Remedies: Upon the occurrence of any uncured Event of Default or any other breach of this Agreement, the City shall be free to terminate this Agreement, withhold all funding and/or exercise all rights and remedies available to it under the terms of this Agreement, or other Grant Documents, statutory law, equity, or under common law. The City may also exercise any one or more of the actions contained in 2 CFR Part 200 Subpart D. All remedies shall be deemed cumulative and, to the extent permitted by law, the election of one or more remedies shall not be construed as a waiver of any other remedy the City may have available to it.

SECTION 5. INDEMNIFICATION

1. Environmental Indemnification: The Developer shall indemnify and hold the City harmless from any claim arising from, or in any way related to, the environmental condition of the Property, including, but not limited to, the cost of investigating, defending, and/or negotiating to a satisfactory conclusion claims made by environmental regulatory agencies, as well as all cleanup and property maintenance requirements imposed by any agency with lawful jurisdiction over the Property. This indemnification shall run from the time of initial discovery of any such adverse environmental condition and shall not be construed to commence only upon realization by the City of an actual pecuniary loss as a result of such adverse environmental condition. The existence of this indemnification agreement shall not be construed as an indicia of ownership, management or control of the Property by the City, and the Developer hereby recognizes and acknowledges that the City is not an owner or manager of the Property and does not exert any control thereupon. Notwithstanding anything herein, or in the Deed Restrictions and Covenants, or other Grant Documents to the contrary, this indemnification provision shall survive closing.

SECTION 6. INSURANCE

1. Insurance: Without limiting the Developer's indemnification, the Developer shall maintain in force at all times during the performance of this Agreement all appropriate policies of insurance hereinafter described concerning its operations. Certificates valid and authorized endorsements evidencing the maintenance and renewal of such insurance coverage shall be delivered to the City thirty (30) days prior to commencement of construction. The City shall be given notice in writing at least thirty (30) calendar days in advance of cancellation or modification of any policy of insurance. The City, its officers and employees, shall be named as an additional named insured on all policies of liability insurance.
 - a) All policies of insurance shall be in a company or companies authorized by law to transact insurance business in the State of New Mexico. In addition, such policy shall provide that the coverage shall be primary for losses arising out of the Developer's performance of the Agreement. Neither the City nor any of its insurers shall be required to contribute to any such loss. The required certificate shall be furnished by the Participation prior to execution of this Agreement.
 - b) At least thirty (30) calendar days prior to the expiration of any of the above-referenced policies, the Developer shall provide the City with evidence of the renewal of said insurance policies in a form satisfactory to the City.
 - c) The Policies of Insurance which must be secured are:
 - i. Commercial General Liability Insurance: The Developer must secure commercial property liability insurance to included, but not be limited to, bodily injury and property damage coverage. The policy's limit liability shall not be less than One Million Dollars (\$1,000,000) per person/per occurrence for bodily injury, or death to one or more than one person and not less than One Hundred Thousand Dollars (\$100,000) per occurrence for property damage.
 - ii. Worker's Compensation Coverage: All employees of the Developer must be included under such policy and with coverage to meet all requirements of the State of New Mexico.
 - iii. Flood Insurance: The Developer shall provide Flood Insurance as required under applicable HUD regulations and where applicable.

SECTION 7. MISCELLANEOUS PROVISIONS

1. Assignment: This Agreement may not be assigned to any other entity without the prior written consent of the City.
2. No Developer or agency: The City shall not in any way or for any purpose be considered to be or to have become a partner of the Developer with respect to the Program. The Developer is not, and shall not be, the agent of the City for any purpose, nor shall the City be the agent of the Developer for any purpose.
3. Severability: If any court of competent jurisdiction finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement. If the rights and obligation of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be affected, this Agreement is declared severable.
4. Entire Agreement/Modification: This Agreement, together with **Attachments "A" through "I"** attached hereto, constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, representations, and agreements as to the items herein contained. The City or the Developer may amend this Agreement at any time provided that such amendments make specific reference to this Agreement, are executed in writing, signed by a duly authorized representative of both organizations, and approved by the City's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the City or the Developer from its obligations under this Agreement. The City may, in its discretion, amend this Agreement to conform with Federal, state, or local governmental guidelines, policies and available funding amounts, or for other reasons. If such amendments result in a change in the funding, scope of services, or schedule of activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by both the City and the Developer.
5. Notices: Whenever by the terms of this Agreement, notice shall be given to either party, such notice shall be in writing and shall be hand delivered, sent by regular mail, or sent electronically to:
 - A. Housing Development Coordinator (HOME)
Community Development Department
City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004
(575) 528-3134

B. Executive Director
 April Estrada
 Mesilla Valley Habitat for Humanity
 Las Cruces, New Mexico 88001
 (575) 525-0475

- 6. Compliance With All Laws: Notwithstanding anything to the contrary, the Program shall be operated consistent with all applicable federal, state, and local laws and regulations.
- 7. Governing Law: This Agreement shall be construed in accordance with the laws of the State of New Mexico.

IN WITNESS WHEREOF the parties have executed this Agreement, each upon the date set forth next to his/her name.

Mesilla Valley Habitat for Humanity

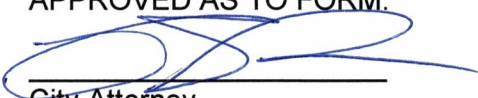
April Estrada, Executive Director

Date

CITY OF LAS CRUCES

Ikani Taumoepeau, Assistant City Manager)

Date

APPROVED AS TO FORM:  1/22/24

City Attorney

ATTACHMENT "A"

LEGAL DESCRIPTION

All that certain real property located in the County of Dona Aña, State of New Mexico, described as follows:

Lots numbered 56, 58 and 84 of Metro Central Phase 1, as the same is shown and designated on the plat of said Subdivision, filed in the office of the County Clerk of Dona Ana County, New Mexico on March 24, 2021, Plat book 24 and Page 660.

ATTACHMENT "B"

STANDARDS OF ELIGIBILITY - 2023 INCOME LIMITS

**PERSONS ELIGIBLE AND QUALIFIED TO RECEIVE SAID SERVICES AS
ESTABLISHED BY THE U.S. DEPARTMENT OF HOUSING AND URBAN
DEVELOPMENT (HUD)**

HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size HOME INCOME AND RENT LIMITS EFFECTIVE DATE, June 15, 2023					
MEDIAN FAMILY INCOME (MFI): \$59,600					
FAMILY SIZE * # OF PERSONS	EXTREMELY LOW INCOME (30% of Median)	VERY LOW INCOME (50% of Median)	LOW INCOME (80% of Median)	MODERATE INCOME (100% of Median)	
1	\$13,600	\$22,650	\$36,200	\$41,700	
2	\$15,550	\$25,850	\$41,350	\$47,700	
3	\$17,500	\$29,100	\$46,500	\$53,650	
4	\$19,400	\$32,300	\$51,650	\$59,600	
5	\$21,000	\$34,900	\$55,800	\$64,350	
6	\$22,550	\$37,500	\$59,950	\$69,150	
7	\$24,100	\$40,100	\$64,050	\$73,900	
8	\$25,650	\$42,650	\$68,200	\$78,650	

ATTACHMENT "C"

CITY OF LAS CRUCES
HOME PROGRAM
DEED RESTRICTIONS AND COVENANTS AGREEMENT

Date: , 20__

_____, a unmarried/married man/woman, ("Owner") for consideration paid, grants to the City of Las Cruces, a New Mexico municipal corporation, having a mailing address of P.O. Box 20000, Las Cruces, NM, 88004 ("Lender"), the following described real estate in Dona Ana County, New Mexico ("Property"), which has an address of _____, Las Cruces, NM 88001, and which is more particularly described as follows in Exhibit "A" attached hereto and made a part hereof. If there is a conflict between the legal description and the Property address, the legal description shall control.

Deed Restrictions

This Deed Restrictions and Covenants Agreement ("Agreement") secures; (1) the performance of all of Owner's obligations and agreements are contained within this agreement; (2) the conditions and obligations imposed upon the use of the Property are contained herein; and (3) the performance of the following obligations and is upon the statutory Deed Restrictions condition for the breach of which it is subject to foreclosure as provided by law;

- (a) This instrument and these restrictions are subordinate to the rights and liens, if any, under any valid outstanding Mortgage/Deed of Trust, currently of record. Foreclosure of such prior recorded lien or transfer in lieu of foreclosure shall extinguish this instrument and these restrictions; However, if any time following foreclosure by a lender or other transfer in lieu of foreclosure, but still during the term of the Affordability Period, the owner of record prior to the foreclosure or deed-in-lieu of foreclosure, or any newly formed entity that includes the former owner, or those with whom the former owner has family or business ties, in the Property the Affordability Period shall be revived according to its original terms.
- (b) In the event of a refinancing during the Affordability Period, the Property must continue to be subject to these deed restrictions; however, the initial date hereof will continue as the baseline for the Affordability Period.

- (c) The provisions of this instrument are hereby declared covenants running with the land and are fully binding on any successors, heirs, and assigns of Owner who may acquire any rights, title, or interest in or to the Property, or any part of it. Owner, its successors, heirs, and assigns hereby agree and covenant to abide by and fully perform the provisions of this instrument.

This Agreement secures all future advances of funds to Owner by Lender in connection with this Agreement, and the lien of each such advance will relate back to the date of recordation of this Agreement.

Restrictive Covenants

This Agreement restricts the use of the Property, and is in consideration of a subsidy from Lender to Owner, through the Agent, Mesilla Valley Habitat for Humanity in the amount of Seventy-Five Thousand Dollars and No Cents (\$75,000.00) ("Grant and/or Loan") for development and construction costs. The Grant and/or Loan will be made to the Owner through the Lender's HOME Investment Partnerships Program pursuant to Title 24 of the Code of Federal Regulations Part 92, as amended from time to time, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

In consideration of the Grant and of the mutual covenants and understandings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Lender and Owner agree as follows:

- A. Affordability Period. Owner shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period of 15 years. The Affordability Period will begin on the date of the execution of this Deed Restrictions and Covenants Agreement.
- B. Owner Occupied. Annually during the Affordability Period, upon request from their agent Mesilla Valley Habitat for Humanity, the owner(s) is required to provide documentation to their agent confirming the owner is occupying the unit as their principal residence. If, at any time during the term of the Affordability Period, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for subsequent purchase only to a buyer whose household qualifies as a low-income family, earning between 31-80% of area median income (AMI) as will use the property as their principal residence. The Owner further represents and warrants that his/her family, if any, and the Owner met income eligibility requirements at the time the Contract to build

the unit was executed with the Agent, Mesilla Valley Habitat for Humanity.

- C. Resale Provisions. If during the affordability period, the Lender provided the Owner consent to sell the property to another qualified low-income buyer as outlined in Section D, Transfer of Property, of this Agreement, the Lender and Owner agree to the resale provisions as follows:

1. Ensuring Affordability to Subsequent Buyers: If during the affordability period the property is sold to a subsequent buyer, the price at resale must ensure the original HOME-assisted Owner a fair return on investment (ie., the homebuyer's downpayment plus capital improvements made to the house), while also ensuring that the property is sold at a price that is affordable to a reasonable range of low-income buyers. The Fair Return on Investment will be measured by the Consumer Price Index (CPI) for shelter over the period of ownership, for similarly sized cities, not seasonally adjusted. For purposes of calculating the fair return on investment, the types of capital improvements that the City will include in its basis for calculating fair return are limited to value added improvements such as kitchen remodel, bath remodel, new windows, new siding and the addition of living space. The homeowner must document the improvements with receipts for the improvement. The purchase price at subsequent sale during the Affordability Period is required to be at a price that is affordable to a family earning between 31-80% AMI that will not pay more than 30% of their gross income for principal, interest, taxes and insurance and that shall not exceed 95% of median purchase price limits as established by the Department of Housing and Urban Development (HUD). The percentage of AMI is based on income levels adjusted for family size established by the HUD, for the Las Cruces Metropolitan Statistical Area at the time of the proposed sale.

It is important to note that in certain circumstances, such as a declining housing market where home values are depreciating, the original homebuyer may not receive a return on his or her investment because the home sold for less or the same price as the original purchase price.

2. Resale Provisions related to Net Proceeds- Provided that #1 immediately above is complied with, Net Proceeds due to the seller and HOME Funds prorations credited to the new buyer are applicable in the following scenarios:
 - i. Net Proceeds of new Sales Price in excess of 10% of the Original Sales Prices: If during the affordability period the

property is sold to a subsequent buyer at a sales price that is an increase of more than 10% of the original HOME-assisted Owner's sales price, the Owner/Seller shall provide a credit to the new buyer for the full amount of the HOME funds grant provided and must also provide a credit to the new buyer on the net proceeds in excess of 10% based on a prorated amount of the net proceeds due less the homeowner's investment and any capital improvements. Net proceeds defined is the amount of money received by the seller from the sales transaction after deducting the costs involved in making the transaction.

- ii. Net Proceeds of new Sales Price between 1% and 10% above the Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is an increase of 10% or less than the original HOME-assisted Owners sales price, the Owner/Seller shall provide a credit to the new Homeowner for the full amount of the HOME funds grant provided and Owner/Seller may retain all other net proceeds from the sale.
- iii. New Sales Price that is equal to Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is equal to the Owner's original sales price, the Owner/Seller shall provide a credit to the new buyer in an amount equal to the prorated amount of HOME funds provided over the affordability period and must also provide a credit to the new buyer based on a prorated amount of the net proceeds due.
- iv. New Sales Price that is less than the Original Sales Price: If during the affordability period the property is sold to a subsequent buyer at a sales price that is less than the Owner's original sales price, the Owner/Seller shall provide a credit to the new buyer in an amount equal to the prorated amount of HOME funds provided over the affordability period that is based upon the percentage of decrease between the original sales price and the sales price to the subsequent owner. The original owner is entitled to any remaining net proceeds.
- v. Net Proceeds – Pro-rata Calculations Defined: Net Proceeds and HOME Funds credits will be prorated to the subsequent buyer based on the term of the affordability period and the year during the affordability period that the property is being sold. For example, if the affordability period is five years, the proration is based on 20% per year. Likewise, if the affordability period is 10 years, the proration is based on 10% per year, and if the affordability period is 15 years, the proration is 6.67% per year. The time period for

prorated amounts is calculated on the earliest whole year period from the sales date. For example, if the home is sold at 4 years and 6 months, year 4 will be considered the sale year. The chart below is provided to outline the seller/buyer proration percentages for net proceeds and HOME funds due to seller and the subsequent buyer during the term of the affordability period:

Subsequent Sale Year	Affordability Period (years)		
	5	10	15
	Owner/Subsequent Buyer Proration (%)		
1	20/80	10/90	7/93
2	40/60	20/80	13/87
3	60/40	30/70	20/80
4	80/20	40/60	27/73
5	100/0	50/50	34/66
6		60/40	40/60
7		70/30	47/53
8		80/20	54/46
9		90/10	60/40
10		100/0	67/33
11			74/26
12			80/20
13			87/13
14			94/6
15			100/0

Transfer of the Property. Owner agrees that the Property may not be sold, transferred or title to the Property conveyed without Lender's prior written consent, and Lender is under no obligation to provide such consent. Lenders consent shall be granted only if new/subsequent owner meets the obligations specified within Section B above.

Exception to Transfer Restriction. Notwithstanding any other provision of this Agreement, the Grant will not be due on transfer of the Property if (1) a transfer of the Property is the result of the death of Owner and the transfer is by devise or operation of law, (2) the transfer is to a member of Owner's immediate family ("Heir") and for purposes of this Agreement the term "immediate family" means parents, siblings or children only, (3) the Heir qualifies for assistance under the federal regulations governing income eligibility for the Grant, and (4) the Heir covenants and agrees in writing to maintain the Property as the Heir's principal residence for the remainder of the term of the Grant and to otherwise comply with all the terms and conditions of this Agreement.

Default. Owner agrees that any default under the terms of the Grant, as those terms are set forth in this Agreement and executed contemporaneously herewith, or under the terms of any other mortgage or encumbrance on the Property, whether superior to or junior to this Agreement, will constitute a default under this Agreement and shall cause the full amount or pro-rata share of the Grant to become transferred/sold to another qualified owner as specified within Section B above.

Right of Redemption. If this Agreement is foreclosed, the redemption period after judicial sale shall be one (1) month in lieu of nine (9) months.

Owner(s) acknowledges having read all the provisions of this Deed Restrictions and Covenants Agreement and agrees to its terms.

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF the undersigned Owner(s) have hereunto set their hand(s) this _____ day of _____, 202 .

Owner/Borrower

Owner/Borrower

Acknowledgment

STATE OF NEW MEXICO)
) ss
COUNTY OF DONA ANA)

The foregoing instrument was acknowledged before me this ____ day of _____, 202 by _____.

Notary Public

My commission expires:

ATTACHMENT “D”

(SCOPE OF WORK, PROJECT SCHEDULE, AND BUDGET)

Mesilla Valley Habitat for Humanity will build 3 single-family owner-occupied homes. The homes will be located at 3806 and 3972 Caspian Road and 6100 Kaleidoscope in the Metro Central Phase 1 Subdivision. The homes will be built for clients working through Habitat’s homeownership program who have been income qualified and have completed their commitment requirements along with required sweat equity hours. All households will be income qualified at under 80% or less than area median income as defined by HUD and will have executed a contract for construction with Habitat for Humanity prior to building permit issuance. Construction is anticipated to begin in the last quarter of PY2023 with estimated completion dates in June of 2025.

City of Las Cruces HOME funds of \$75,000 per lot will be used for HOME eligible construction expenses and will ultimately provide a direct reduction in the sales price to the homeowner, thereby reducing the mortgage amount and providing a more affordable payment to the homeowner.

HOME funding is anticipated to pay for rock walls, lumber framing package, shingles and materials for roofing, trusses, stucco, plumbing, HVAC and electrical activities.

ATTACHMENT "F"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

The certification set out below is a material representation upon which reliance is placed by the City of Las Cruces and the U.S. Department of Housing and Urban Development (HUD) in awarding the Grant. If it is later determined that the Developer knowingly rendered a false certification or otherwise violates the requirements of the Drug-Free Workplace Act, the City's Community Development Department and/or HUD, in addition to any other remedies available to the federal government, may take action authorized under the Drug-Free Workplace Act. The Developer will comply with the other provisions of the Act and with other applicable laws.

CERTIFICATION

1. The Developer certifies that it will provide a drug-free workplace by:
 - A. Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Developer's/Developer's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
 - B. Establishing an ongoing drug-free awareness program to inform employees about:
 1. The dangers of drug abuse in the workplace;
 2. The Developer's policy of maintaining a drug-free workplace;
 3. Any available drug counseling, rehabilitation and employee assistance programs; and
 4. The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace.
 - C. Making it a requirement that each employee be engaged in the performance of the grant is given a copy of the statement required by paragraph "A".
 - D. Notifying the employee in the statement required by paragraph "A" that, as a condition of employment under the Grant, the employee would:
 1. Abide by the terms of the statement; and
 2. Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction.

- E. Notify the City's Community Development Department and/or HUD in writing within ten (10) calendar days after receiving notice under subparagraph (D)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant.
 - F. Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (D)(2), with respect to any employee who is so convicted:
 - 1. Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
 - 2. Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement or other appropriate agency.
 - G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A), (B), (C), (D), (E) and (F).
2. The Developer shall insert in the space provided on the attached "Place of Performance" form the site(s) for the performance of work to be carried out with the Grant funds (including street address, city, county, state, zip code and total estimated number of employees). The Developer further certifies that, if it is subsequently determined that additional sites will be used for the performance of work under the Agreement, it shall notify the City's Community Development Department and/or HUD immediately upon the decision to use such additional sites by submitting a revised "Place of Performance" form.

PLACE OF PERFORMANCE
FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE
REQUIREMENTS

Name of Subgrantee: _____

Program Name: _____

Date:

The Developer shall insert in the space provided below the site(s) expected to be used for the performance of work under the Grant covered by the certification:

Place of Performance (includes street address, city, county, state, zip code for each site):

3806 and 3972 Caspian Road

6100 Kaleidoscope

720 N. Santa Fe St

Check ____ if there are work places on file that are not identified here.

MESILLA VALLEY HABITAT FOR
HUMANITY

By:

Date

ATTACHMENT "G"

SECTION 3 CLAUSE

- A. The work to be performed under this contract is on a project providing direct Federal financial assistance from the Department of Housing and Urban Development ("HUD") and is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. §1701. Section 3 requires that, to the greatest extent feasible, opportunities for training and employment be given to lower income residents of the Project area and contracts for work in connection with the Project be awarded to business concerns that are located in or owned in substantial part by persons residing in the area of the Project.
- B. The parties to this contract will comply with the provisions of said Section 3 and the regulations issued pursuant thereto by the Secretary of HUD set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of this contract. The parties to this Agreement certify and agree that they are under no contractual agreement or other disability that would prevent them from complying with these requirements.
- C. The Developer will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or understanding, if any, a notice advising the said labor organization or workers' representative of his commitments under this Section 3 Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment or training. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship, and training positions, the qualifications for each, the name and location of the persons taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Developer will include this Section 3 Clause in every subcontract for work in connection with the Program and will, at the direction of the applicant for or recipient of Federal financial assistance, take appropriate action pursuant to the subcontract upon a finding that the Developer is in violation of the regulations issued by the Secretary of Housing and Urban Development, 24 CFR Part 135. The Developer will not subcontract with any agency where it has notice or knowledge that the latter has been found in violation of regulations under 24 CFR Part 135, and will not let any subcontract unless the agency has first provided it with a preliminary statement of ability to comply with the requirements of these regulations.

- E. Compliance with the provisions of Section 3, the regulations set forth in 24 CFR Part 135, and all applicable rules and orders of the Department issued there under prior to the execution of the contract shall be a condition of the Federal financial assistance provided to the Project, binding upon the applicant or recipient for such assistance, its successors and assigns. Failure to fulfill these requirements shall subject the applicant or recipient, its subrecipients, and its successors, and assigns to those sanctions specified by the HOME Agreement or contract through which Federal assistance is provided, and to such sanctions as are specified by 24 CFR Part 135, which include termination of this Agreement for default and debarment and suspension from future HUD-assisted contracts.

MESILLA VALLEY HABITAT FOR HUMANITY

By: _____

Date

ATTACHMENT “H”

**EQUAL EMPLOYMENT OPPORTUNITY CLAUSE
FOR CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246**

In carrying out this Agreement, the Developer and its contractors and subcontractors shall not discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, sexual orientation, gender identity, physical or mental handicap or serious medical condition, or status with regard to public assistance. The Developer shall take affirmative action to insure that all employment practices are free from such discrimination. Such employment practices shall include, but not be limited to, the following: hiring, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff, termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The Developer shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause. The Developer shall state in all solicitations or advertisements for employees placed by or on behalf of the Developer that it is an Equal Opportunity or Affirmative Action employer.

**MESILLA VALLEY HABITAT FOR
HUMANITY**

By: _____

Date

ATTACHMENT "I"

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grant and contracts under grants, and cooperative agreements) and that the Developer shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file this required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

MESILLA VALLEY HABITAT FOR HUMANITY

By:

_____ Date



24-079

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		Adopted:	February 5, 2024
Drafter:	Virginia Barela	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure-to-Pay
Title:	A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF \$150,000.00 FOR GILLIG BUS PARTS WITH GILLIG, LLC OF LIVERMORE, CALIFORNIA, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

Authorize Gillig bus parts purchases.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) Fleet Services (Fleet) program is responsible for the maintenance and repair of City-owned vehicles and equipment, including Gillig buses utilized by RoadRUNNER Transit. Fleet currently purchases bus parts for these units from Gillig, LLC of Livermore, California.

Las Cruces Municipal Code, Chapter 24, Section 24-3(25) Authorized exemption, authorized the City to utilize contracts from other entities. Utilization of these contracts allows for effective and cost-efficient procurement of goods and services to meet the City's operational needs.

Gillig, LLC provides reduced pricing based on Lee County, Florida Contract No. B200372RJD. Utilizing this contract, the City entered into a purchase agreement (Attachment "A") with Gillig, LLC on October 30, 2023. Fleet estimates yearly purchasing will go beyond the \$100,000.00 threshold which requires City Council Approval; this resolution requests approval from City Council to authorize an annual not-to-exceed purchasing amount of \$150,000.00.

SUPPORT INFORMATION:

[Attachment "A" - Gillig Purchase Agreement](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

Agenda Item #7.2.

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the resolution to authorize the purchase of bus parts with Gillig, LLC of Livermore, CA in an annual not-to-exceed amount of \$150,000.00, subject to approved budget appropriations.
2. Vote "No"; This will deny the purchase of bus parts with Gillig, LLC of Livermore, CA in an annual not-to-exceed-amount of \$150,000.00.
3. Vote to "Amend"; this could modify the resolution and advise staff of necessary adjustments as deemed appropriate.
4. Vote to "Table"; this could delay the authorization to procure bus parts in an annual not-to-exceed amount of \$150,000.00 and may negatively impact fixed route services to the community.

RESOLUTION 24-079

A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF \$150,000.00 FOR GILLIG BUS PARTS WITH GILLIG, LLC OF LIVERMORE, CALIFORNIA, SUBJECT TO APPROVED BUDGET APPROPRIATIONS.

The City Council is informed that:

WHEREAS, The City of Las Cruces (City) purchases bus parts for maintenance and repairs to RoadRUNNER Transit buses from Gillig, LLC; and

WHEREAS, Gillig, LLC provides reduced pricing based on Lee County, Florida Contract No. B200372RJD; and

WHEREAS, the City entered into a purchase agreement with Gillig, LLC on October 30, 2023 utilizing Contract No. B200372RJD; and

WHEREAS, the Fleet Services program estimates yearly purchase totals beyond the \$100,000.00 threshold which requires City Council approval.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the Resolution authorizes the City to purchase bus parts with Gillig, LLC of Livermore, CA in an annual not-to-exceed amount of \$150,000.00, subject to approved budget appropriations.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



CITY OF LAS CRUCES

EXISTING CONTRACT PURCHASE AGREEMENT

LEE COUNTY, FLORIDA
CONTRACT NO. B200372RJD

GILLIG BUS PARTS FOR LEETRAN

Pursuant to terms and conditions of Lee County, Florida Contract No. B200372RJD, dated February 2, 2021, between the Lee County, Florida and Gillig, LLC (CONTRACTOR), as amended and incorporated herein by reference, the City of Las Cruces (CITY) and CONTRACTOR hereby agree on this 30th day of October, 2023, as follows:

1. This Purchase Agreement is intended to be an Existing Contract Purchase Agreement in accordance with LCMC Chapter 24, Article I, Sec. 24-4 (24).
2. In a satisfactory and proper manner, the CONTRACTOR shall deliver products pursuant to Lee County, Florida Contract No. B200372RJD, as set forth in Attachment A, attached hereto and made a part of this Agreement.
3. The effective period of this Agreement shall coexist with Lee County, Florida Contract No. B200372RJD.
4. In consideration for the satisfactory delivery of products, the CONTRACTOR shall be compensated pursuant to the cost terms of Lee County, Florida Contract No. B200372RJD. Cost of delivered product shall be paid by CITY within 30 days upon receipt of undisputed invoice.
5. This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico. Contractor shall abide and be governed by all applicable state law, City of Las Cruces ordinances, and laws regarding the Contractor's services or any work done pursuant to this Agreement.
6. The Contractor shall defend, indemnify, and hold harmless the City, its officers, and employees from and against any and all losses suffered by the City, its officers, and employees, and any special claims, liabilities or penalties asserted against the City, resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor, subcontractor, subgrantee, or other agent of the Contractor. This covenant shall survive the termination of this Agreement.
7. That in the event any of the provisions of this Contract are violated by the Contractor or by any of his Subcontractors, the City may serve written notice upon the Contractor and, if a surety exists, upon the surety of its intention to terminate such Contract, such notices to contain the reasons for such intention to terminate the Contract; and, unless within ten (10) days after and satisfactory arrangement for correction be made, the Contract shall, upon the expiration of said ten (10) days, cease and terminate. On the event of any such termination, if a surety exists, the City

shall immediately serve notice thereof upon the surety who shall have the right to take over and perform the Contract, provided, however, that if the surety does not commence performance thereof within thirty (30) days from the date of the mailing of such surety of notice of termination, the City may take over the work and prosecute the same to completion by the Contract for the account and at the expense of the Contractor, and the Contractor and his surety shall be liable to the City for any excess cost occasioned the City thereby; and in such event, the City may take possession of and utilize in completing the work, such materials, appliances, and plans as may be on the site of the work and necessary therefore. This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the City, for its convenience or because the project has been permanently abandoned, but only upon fifteen (15) calendar days written notice to Contractor.

8. The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the City to Contractor. The City's decisions as to whether sufficient appropriations and authorizations exist shall be accepted by Contractor and shall be final.
9. Contractor will maintain records for five (5) years after the completion of the project, indicating dates, length of time, and services rendered. The City has the right to audit billings both before and after payment and contest any billing or portion thereof. Payment under this Agreement does not foreclose the City's right to recover excessive or illegal payments.
10. Contractor represents and warrants the following:
 - a. No Current or Prior Conflict of Interest. That Contractor has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement.
 - b. Notice of Potential Conflict. If any such actual or potential conflict of interest arises under this Agreement, Contractor shall immediately inform the City in writing of such conflict.
 - c. Termination for Material Conflict. If, in the reasonable judgement of the City, such conflict poses a conflict to and with the performance of Contractor's obligations under this Agreement, or is otherwise a violation of the City's current policy or ordinances, then the City may terminate the Agreement immediately upon written notice to Contractor; such termination of the agreement shall be effective upon the receipt of such notice by Contractor.
11. The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Agenda Item #7.2.

12. In the event that a dispute arises between City and Contractor under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

GILLIG, LLC

BY: 
Name: Chuck O'Brien
Title: Vice President

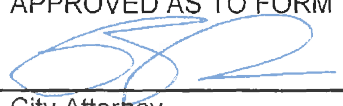
October 24, 2023
Date

CITY OF LAS CRUCES

BY:  On behalf of Alicia Hernandez.
Alicia Hernandez
Purchasing Manager

10/30/2023
Date

APPROVED AS TO FORM

 10/24/23
City Attorney

Attachment A

Agenda Item #7.2.



Kevin Ruane
District One

July 25, 2023

Cecil L. Pendergrass
District Two

Ray Sandelli
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Roger Desjarlais
County Manager

Richard Wesch
County Attorney

Donna Marie Collins
County Hearing Examiner

Mr. Chuck O'Brien
Gillig, LLC
222 N. Lasalle St., Ste 300
Chicago, IL 60601

SUBJECT: Renewal of Annual Contract No. B200372RJD
 Gillig Parts for LeeTran

Dear Mr. O'Brien:

This is to inform you that Lee County agrees to renew the above subject contract for an additional three (3) year period, from 2/2/24 through 2/1/27.

We are hereby extending the annual contract for an additional three-year period under the same terms and conditions as the original award.

If you have any questions regarding this letter, please contact me at (239) 533-8871.

Sincerely,

Kimberly Urban

Kimberly Urban
Contracts Analyst
Procurement Management Division

C: Project File



Lee County
Southeast Florida

Kevin Ruane
District Clerk

June 19, 2023

239-533-8871

Cecil L. Pendergrass
District Three

Ray Sandell
District Three

Brian Hamman
District Four

Mike Greenwell
District Five

Roger Desjarlais
County Manager

Richard Wesch
County Attorney

Donna Marie Collins
County Hearing
Recorder

Mr. Chuck O'Brien
Gillig, LLC
222 N. Lasalle St., Ste 300
Chicago, IL 60601

Subject: Renewal of Annual Contract B200372RJD
Gillig Parts for LeeTran

Dear Mr. O'Brien

The above-referenced annual contract will expire on February 1, 2024, unless renewed. Lee County is requesting that this annual contract be renewed for an additional three-year period (2/2/24 – 2/1/27). Therefore, we are requesting that you choose one of the following options and return this letter to Lee County Procurement Management, Attn: Kimberly Urban, P.O. Box 398, Ft. Myers, FL 33902-0398, (Fax: 239-485-8383 or email kurban@leegov.com), within 15 calendar days from receipt. Failure to return by July 5, 2023, may, at the County's sole discretion, result in contract cancellation and/or rebid of solicitation.

X a. I want to continue performing under this annual contract for an additional three-year period under the same terms and conditions as agreed upon in the above-referenced quotation.

As a condition of this renewal, the vendor agrees to provide Lee County with an updated insurance certificate upon expiration of the original certificate on file with the County.

 b. I am not interested in extending this contract for an additional three-year period. Why? _____

Vendor:


Signature

Chuck O'Brien, Vice President

Title

July 7, 2023

Date

Lee County:


Signature of Authorized Official

Procurement Management Director

Title

Date

7/24/2023

P.O. Box 398, Fort Myers, Florida 33902-0398 Phone: (239) 533-2111

www.leegov.com

AN EQUAL OPPORTUNITY EMPLOYER

B200372RJD
Gillig Bus Parts for LeeTran
Gillig LLC

E1 Contract #N/A
Board Approval Date: 02/02/2021

**AGREEMENT FOR
GILLIG BUS PARTS FOR LEETRAN**

THIS AGREEMENT ("Agreement") is made and entered into by and between Lee County, a political subdivision of the State of Florida, hereinafter referred to as the "County" and Gillig LLC, a California limited liability company authorized to do business in the State of Florida, whose address is 451 Discovery Drive, Livermore, CA 94551, and whose federal tax identification number is 26-3085364, hereinafter referred to as "Vendor."

WITNESSETH

WHEREAS, the County intends to purchase Gillig bus parts from the Vendor in connection with "Gillig Bus Parts for LeeTran" (the "Purchase"); and,

WHEREAS, the County issued Solicitation No. B200372RJD on October 9, 2020 (the "Solicitation"); and,

WHEREAS, the County evaluated the responses received and found the Vendor qualified to provide the necessary products and services; and,

WHEREAS, the County posted a Notice of Intended Decision on December 23, 2020; and,

WHEREAS, the Vendor has reviewed the products and services to be supplied pursuant to this Agreement and is qualified, willing and able to provide all such products and services in accordance with its terms.

NOW, THEREFORE, the County and the Vendor, in consideration of the mutual covenants contained herein, do agree as follows:

I. PRODUCTS AND SERVICES

The Vendor agrees to diligently provide all products and services for the Purchase, a more specific description of the project Scope of Work and Specifications of B200372RJD as modified by its addenda, a photocopy of said sections being attached hereto and incorporated by reference as Exhibit A. Vendor shall comply strictly with all of the terms and conditions of Solicitation No. B200372RJD, as modified by its addenda, copies of which are on file with the County's Department of Procurement Management and are deemed incorporated into this Agreement.

II. TERM AND DELIVERY

- A. This Agreement shall commence immediately upon the effective date and shall continue for a period of three (3) years. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest. The effective date shall be the date the Lee County Board of County Commissioners awarded the Solicitation to the Vendor.
- B. A purchase order must be issued by the County before commencement of any work or purchase of any goods related to this Agreement.

III. COMPENSATION AND PAYMENT

- A. The County shall pay the Vendor in accordance with the terms and conditions of this Agreement for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Vendor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Vendor shall not make any deliveries or perform any services under this Agreement until receipt of written authorization from the County. Vendor acknowledges and agrees that no minimum order or amount of product or service is guaranteed under this Agreement and County may elect to request no products or services. If the County authorizes delivery of products or performance of services, the County reserves the right to amend, reduce, or cancel the authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Vendor on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the County shall not be obligated under this Agreement beyond the date of termination.

IV. METHOD OF PAYMENT

- A. The County shall pay the Vendor in accordance with the Local Government Prompt Payment Act, Section 218.70, Florida Statutes, upon receipt of the Vendor's invoice and written approval of same by the County indicating that the products and services have been provided in conformity with this Agreement.
- B. The Vendor shall submit an invoice for payment to the County on a monthly basis for those specific products and services as described in Exhibit A (and the corresponding fees as described in Exhibit B) that were provided during that invoicing period.
- C. For partial shipments or deliveries, progress payments shall be paid monthly in proportion to the percentage of products and services delivered on those specific line items as approved in writing by the County.

V. ADDITIONAL PURCHASES

- A. No changes to this Agreement or the performance contemplated hereunder shall be made unless the same are in writing and signed by both the Vendor and the County.
- B. If the County requires the Vendor to perform additional services or provide additional product(s) related to this Agreement, then the Vendor shall be entitled to additional compensation based on the Fee Schedule as amended to the extent necessary to accommodate such additional work or product(s). The additional compensation shall be agreed upon before commencement of any additional services or provision of additional product(s) and shall be incorporated into this Agreement by written amendment. The County shall not pay for any additional service, work performed or product provided before a written amendment to this Agreement.

Notwithstanding the preceding, in the event additional services are required as a result of error, omission or negligence of the Vendor, the Vendor shall not be entitled to additional compensation.

VI. LIABILITY OF VENDOR

- A. The Vendor shall save, defend, indemnify and hold harmless the County from and against any and all claims, actions, damages, fees, fines, penalties, defense costs, suits or liabilities which may arise out of any act, neglect, error, omission or default of the Vendor arising out of or in any way connected with the Vendor or subcontractor's performance or failure to perform under the terms of this Agreement.
- B. This section shall survive the termination or expiration of this Agreement.

VII. VENDOR'S INSURANCE

- A. Vendor shall procure and maintain insurance as specified in Exhibit C, Insurance Requirements, attached hereto and made a part of this Agreement.
- B. Vendor shall, on a primary basis and at its sole expense, maintain in full force and effect, at all times during the life of this Agreement, insurance coverage (including endorsements) and limits as described in Exhibit C. These requirements, as well as the County's review or acceptance of insurance maintained by Vendor, are not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by Vendor under this Agreement. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best's Financial Strength Rating of "B or better." No changes are to be made to these specifications without prior written specific approval by County Risk Management. To the extent multiple insurance coverages and/or County's self-insured retention may apply, any and all insurance coverage purchased by Vendor and its subcontractors identifying the County as an additional named insured shall be primary.

VIII. RESPONSIBILITIES OF THE VENDOR

- A. The Vendor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Vendor under this Agreement. The Vendor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Vendor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Vendor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Vendor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Vendor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Vendor specifically acknowledges its obligations to comply with Section 119.0701, Florida Statutes, with regard to public records, and shall:

- 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
- 2) upon request from the County, provide the County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
- 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Vendor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the County in a format that is compatible with the information technology system of the County.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 239-533-2221, 2115 SECOND STREET, FORT MYERS, FL 33901, PRRCustodian@leegov.com; <http://www.leegov.com/publicrecords>.

- E. The Vendor is, and shall be, in the performance of all work, services and activities under this Agreement, an independent contractor. Vendor is not an employee, agent or servant of the County and shall not represent itself as such. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Vendor's sole direction, supervision and control. The Vendor shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the Vendor's relationship and the relationship of its employees to the County shall be that of an independent contractor and not as employees of the County. The Vendor shall be solely responsible for providing benefits and insurance to its employees.
- F. The Vendor shall comply with the Vendor Background Screening Affidavit attached hereto and incorporated herein as Exhibit D.

IX. OWNERSHIP OF PRODUCTS

It is understood and agreed that all products provided under this Agreement shall become the property of the County upon acceptance by the County.

X. TIMELY DELIVERY OF PRODUCTS AND PERFORMANCE OF SERVICES

- A. The Vendor shall ensure that all of its staff, contractors and suppliers involved in the production or delivery of the products are fully qualified and capable to perform their assigned tasks.
- B. The personnel assigned by the Vendor to perform the services pursuant to this Agreement shall comply with the terms set forth in this Agreement. If the services provided require use of specific key personnel, the personnel shall be agreed to by the County and Vendor. If the Vendor's key personnel have been predetermined and approved, through the Solicitation process or otherwise, any subsequent change or substitution to the personnel must receive the County's written approval before said changes or substitution can become effective.
- C. The Vendor specifically agrees that all products shall be delivered within the time limits as set forth in this Agreement, subject only to delays caused by force majeure, or as otherwise defined herein. "Force majeure" shall be deemed to be any unforeseeable and unavoidable cause affecting the performance of this Agreement arising from or attributable to acts, events, omissions or accidents beyond the control of the parties.

XI. COMPLIANCE WITH APPLICABLE LAW

This Agreement shall be governed by the laws of the State of Florida. Vendor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Vendor shall conduct no activity or provide any service that is unlawful or offensive.

XII. TERMINATION

- A. The County shall have the right at any time upon thirty (30) days' written notice to the Vendor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County shall be responsible to Vendor only for fees and compensation earned by the Vendor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Vendor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Vendor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or sub-

contracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all vendors and subcontracts; and settle all outstanding liabilities and claims.

- C. The County reserves the right to require Vendor to repay amounts previously paid by the County to the Vendor due to untimely delivery, inadequate product delivered, or inadequate product performance and the Vendor shall comply with such demand within thirty (30) days.
- D. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Vendor's obligations under this Agreement.

XIII. DISPUTE RESOLUTION

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists, in the United States District Court for the Middle District of Florida. Each party irrevocably submits and waives any objections to the exclusive personal jurisdiction and venue of such courts, including any objection based on forum non conveniens.
- D. This Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Florida without regard to its conflict of laws principles.
- E. Unless otherwise agreed in writing, the Vendor shall be required to continue all obligations under this Agreement during the pendency of a claim or dispute including, but not limited to, actual periods of mediation or judicial proceedings.

XIV. STOP WORK ORDER

The County may, at any time, by written order to the Vendor, require the Vendor to stop all or any part of the work called for by this Agreement. Any order shall be identified specifically as a stop work order issued pursuant to this clause. This order shall be effective as of the date the order is delivered to the Vendor. Upon receipt of such an order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence

of costs allocable to the work covered by the order during the period of work stoppage. The Vendor shall not resume work unless specifically so directed in writing by the County. The County may take one of the following actions:

1. Cancel the stop work order; or
2. Terminate the work covered by the order; or
3. Terminate the Agreement in accordance with provisions contained in Section XI.

In the event the County does not direct the Vendor to resume work, the stop work order may be converted into a notice of termination for convenience pursuant to Section XII. The notice period for such termination shall be deemed to commence on the date of issuance of the stop work order. In the event the County does not direct the Vendor to resume work within ninety (90) days, the Vendor may terminate this Agreement.

XV. VENDOR WARRANTY

- A. All products provided under this Agreement shall be new (unless specifically identified otherwise in Exhibit B) and of the most suitable grade for the purpose intended.
- B. If any product delivered does not meet performance representations or other quality assurance representations as published by manufacturers, producers or distributors of the products or the specifications listed in this Agreement, the Vendor shall pick up the product from the County at no expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Vendor shall refund to the County any money which has been paid for same.
- C. Vendor shall secure from the applicable third party manufacturers, and assign and pass through to the County, at no additional cost to the County, such warranties as may be available with respect to the equipment, parts and systems provided through the Purchase.

XVI. MISCELLANEOUS

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The provisions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assignees of the parties hereto. A party

to this Agreement shall not sell, transfer, assign, license, franchise, restructure, alter, or change its corporate structure or otherwise part with possession or mortgage, charge or encumber any right or obligation under this Agreement without the proposed assignee and/or party restructuring, altering or changing its corporate structure agreeing in writing with the non-assigning party to observe and perform the terms, conditions and restrictions on the part of the assigning party to this Agreement, whether express or implied, as if the proposed assignee and/or party restructuring, altering or changing its corporate structure was an original contracting party to this Agreement. Notwithstanding the foregoing provision, the Vendor may assign its rights if given written authorization by the County and claims for the money due or to become due to the Vendor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.

- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Vendor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.
- H. When any period of time is referred to by days herein, it shall be computed to exclude the first day and include the last day of such period. When the period of time is fewer than three (3) days, it shall mean business days as defined by Lee County. If the period of time is greater than three (3) days, then it shall mean calendar days. For any period of time greater than seven (7) days, where the deadline falls on a Saturday, Sunday, or Lee County recognized holiday, the deadline will then fall to the next Monday or non-Lee County recognized holiday

Agenda Item #7.2.

- I. Any notices of default or termination shall be sufficient if sent by the parties via United States certified mail, postage paid, or via a nationally recognized delivery service, to the addresses listed below:

Vendor's Representative:

Name: Chuck O'Brien
Title: Vice President
Address: 25972 Eden Landing Road
Hayward, CA 94545
Telephone: 800-735-1500
Facsimile: 510-887-0981
E-mail: cobrien@gillig.com

County's Representatives:

Names:	<u>Roger Desjarlais</u>	<u>Mary Tucker</u>
Titles:	<u>County Manager</u>	<u>Director of Procurement Management</u>
Address:	<u>P.O. Box 398</u>	
	<u>Fort Myers, FL 33902</u>	
Telephone:	<u>239-533-2221</u>	<u>239-533-8881</u>
Facsimile:	<u>239-485-2262</u>	<u>239-485-8383</u>
E-Mail:	<u>rdesjarlais@leegov.com</u>	<u>mtucker@leegov.com</u>

- J. Any change in the County's or the Vendor's Representative will be promptly communicated by the party making the change.
- K. Paragraph headings are for the convenience of the parties and for reference purposes only and shall be given no legal effect.
- L. In the event of conflicts or inconsistencies, the documents shall be given precedence in the following order:
1. Agreement
 2. County's Purchase Order
 3. Solicitation
 4. Vendor's Submittal in Response to the Solicitation

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date last below written.

WITNESS:

GILLIG LLC

Signed By: *Eiji Kinoshita*

Signed By: *Chuck O'Brien*

Print Name: Eiji Kinoshita, Director of Sales

Print Name: Chuck O'Brien

Title: Vice President

Date: December 30, 2020

LEE COUNTY

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: *[Signature]*
Vice CHAIR

DATE: 2-11-21

ATTEST:
CLERK OF THE CIRCUIT COURT
Linda Doggett, Clerk

BY: *Melissa Butler*
DEPUTY CLERK

Commissioner Cecil L. Pendergrass
Lee County Board of County Commissioners
District 2



APPROVED AS TO FORM FOR THE
RELIANCE OF LEE COUNTY ONLY:

BY: *Amanda Rich*
OFFICE OF THE COUNTY ATTORNEY

EXHIBIT A SPECIFICATIONS OR SCOPE OF SERVICES

VEN 4-16-2023

SCOPE OF WORK AND SPECIFICATIONS

1. GENERAL SCOPE OF WORK

1.1. The Lee County Board of County Commissioners (County) seeks to contract with a qualified Vendor for the purchase and delivery of Original Equipment Manufacturer (OEM) Gillig bus parts on an annual as-needed basis.

2. PRICING & INVOICING

2.1. The Vendor shall provide for a discount off the Manufacturer Suggested Retail Price (MSRP)/published retail price.

2.2. All invoices shall include, at minimum, the following information: Purchase Order number, manufacturer, manufacturer part number, MSRP/published retail price, discount, and the final cost of the item.

2.3. Delivery shall be included for all parts as no costs to the County.

2.4. The County reserves the right to conduct an audit at any time during the term of this Agreement to assure that pricing is in compliance with the submitted price list.

3. PRODUCT CATALOGS/PRICE GUIDES

3.1. The Vendor shall, at no cost to the County, provide the necessary product catalogs (preferably e-catalogs with on-line access) to identify purchased goods and to verify the MSRP/published retail price of such goods.

4. WARRANTY

4.1. The Vendor shall provide full factory warranty on all products furnished, against defects in materials and/or workmanship. The warranty shall start on the date of delivery and acceptance by the County.

5. PRODUCT DELIVERY

5.1. The Vendor shall deliver, or arrange for delivery, of all parts procured by the County under this Agreement. Parts shall be delivered F.O.B. destination; packaging, shipping, handling, fuel surcharges and delivery included, with inside delivery. Quantities of orders may vary from order to order.

5.2. The delivery location shall be the following:

- LeeTran Headquarters: 3401 Metro Parkway, Fort Myers, FL 33901
- LeeTran will accept deliveries Monday through Friday from 7:00 A.M. to 7:00 P.M.; and Saturday 7:00 A.M. to 3:00 P.M.

5.3. The Vendor shall adhere to the following specifications for delivery of parts to the County under this Agreement:

- a. All parts shall be delivered within five (5) business days after receipt of order.
- b. Should the Vendor not be able to deliver an order at the time specified, or within a reasonable period of time thereafter, as determined by LeeTran at time of notification of delay, or should the Vendor fail to make timely replacement of rejected items when so requested, the County may purchase items of comparable quality in the open market to replace the rejected or undelivered items. The Vendor shall reimburse the County for all costs above the contract price when purchases are made in the open market.
- c. All backorders shall be shipped upon availability. Shipping of any individual backorder shall not be delayed in order to ship item with a group or other items.
- d. No payment shall be made for materials ordered without proper purchase order authorization. Payment cannot be made until materials, goods, or services have been received and accepted by the County in the quantity and quantity ordered.

9/13/4-16-2020

6. RETURN OF PARTS/EXCHANGES

- 6.1. Returns due to the Vendor's error in providing accurate items shall be at the Vendor's expense.
- 6.2. The Vendor shall replace all defective parts without a restocking fee to the County.
- 6.3. All parts returned for credit shall be credited to the order they were originally purchased on. At no time will cash refunds be made. At no time will a part be exchanged for another, without a credit memo and a new invoice being issued containing a notation of the applicable order number.

7. REPLACEMENT PARTS

- 7.1. Genuine OEM Gillig parts are defined in connection with the vehicle's manufacturer, meaning the manufacturer that designed and manufactured the parts, then distributed by authorized divisions, subsidiaries or dealerships.
- 7.2. The Vendor shall use new OEM Gillig parts unless prior approval is granted by the County for used or authorized factory remanufactured parts. New parts shall be the most updated and of the best quality with the highest grade of workmanship, and in the original packaging. The Vendor shall be authorized by Gillig to sell such parts.

8. ACCEPTANCE

- 8.1. The items delivered under this Agreement shall remain the property of the Vendor until physical inspection and acceptance by the County. In the event the material supplied to the County are found to be defective or do not conform to specifications, the County reserves the right to cancel the order upon written notice to the Vendor and return such products to the Vendor at the Vendor's expense.

End of Scope of Work and Specifications Section

VFE 4-16-2020

SPECIAL CONDITIONS

These are conditions that are in relation to this solicitation only and have not been included in the County's standard Terms and Conditions or the Scope of Work.

1. TERM

1.1 The Vendor shall be responsible for furnishing and delivering to the Lee County requesting Department(s) the commodity or services on an "as needed basis" for one (1) three-year (3) period. Upon mutual written agreement of both parties, the parties may renew the Agreement, in whole or in part, for a renewal term or terms not to exceed the initial Agreement term of three (3) years. The increments of renewal shall be at the sole discretion of the County as deemed in its best interest.

2. BASIS OF AWARD

2.1 The basis of award shall be determined by the highest discount percentage off of the Manufacturer Suggested Retail Price (MSRP)/published retail price of the most responsive, responsible, and qualified Vendor meeting all bid specifications.

2.2 The County reserves the right to award to the Vendor whose prices, in its sole judgement, are the most realistic in terms of provision of the best services and in the best interest of the County. Additionally, the County reserves the right to reject any and all bids at any time, unconditionally, and without cause.

3. ESTIMATED ANNUAL EXPENDITURE

3.1 The estimated annual expenditure for Gillig bus parts is approximately \$200,000.00. However, no minimum amount is guaranteed.

End of Special Conditions Section



Procurement Management Department
2115 Second Floor, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.lee.gov.com/procurement

Posted Date: October 22, 2020

Solicitation No.: B200372RJD

Solicitation Name: Gillig Bus Parts for LeeTran

Subject: Addendum Number 1

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. **ARTICLE REVISION:**

1) ARTICLE 2 of the Special Conditions section titled: BASIS OF AWARD shall be deleted and replaced as shown:

- ~~2.1 The basis of award shall be determined by the highest discount percentage off of the Manufacturer Suggested Retail Price (MSRP)/published retail price of the most responsive, responsible, and qualified Vendor meeting all bid specifications.~~
- ~~2.2 The County reserves the right to award to the Vendor whose prices, in its sole judgement, are the most realistic in terms of provision of the best services and in the best interest of the County. Additionally, the County reserves the right to reject any and all bids at any time, unconditionally, and without cause.~~
- 2.1 It is the County's intent to award to a pool of Vendors that are responsive, responsible, and meet the County requirements and specifications. This will allow LeeTran to use the Vendor that has the needed Gillig product that best supports their needs at a reasonable price with competitively bid percentage discounts. The County reserves the right to purchase Gillig products elsewhere in an emergency.
- 2.2 The discount provided shall apply across the entire Gillig product line. The County reserves the right to award to multiple Vendors at their discretion. Vendor MUST bid Blanket Percentage (%) Off of the Manufacturer Suggested Retail Price (MSRP)/published price.
- 2.3 The County reserves the right to award to the Vendor whose prices, in its sole judgement, are the most realistic in terms of provision of the best services and in the best interest of the County. Additionally, the County reserves the right to reject any and all bids at any time, unconditionally, and without cause.

2. **QUESTIONS/ANSWERS**

1.	I downloaded the bid but didn't see a price list with part numbers and quantities? Is there a list for pricing or are you looking for a discount on the manufacturers catalog?
Answer	Please see Article revision listed above.
2.	Prevost is interested in pursuing to quote on the above said annual bid. Unfortunately we do not have the entire catalogue of Gillig parts set up on our system but just the majority. We can cross some parts but not all. Could you please advise if Prevost should continue to quote?

Answer	Lee County encourages all Vendors whom provide Gillig bus parts to submit in response to this solicitation. Please see Article revision listed above. The discount provided in your submission will be applied to the Gillig items the Vendor supplies. The Vendor shall, at no cost to the County, provide the necessary product catalogs to identify purchased goods and to verify the MSRP/published retail price of such goods/items.
--------	---

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.



Robin Dennard
Procurement Analyst Direct Line: 239-533-8837
Lee County Procurement Management



Procurement Management Department
2115 Second Street, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.leegov.com/procurement

Posted Date: October 27, 2020

Solicitation No.: B200372RJD

Solicitation Name: Gillig Bus Parts for LecTran

Subject: Addendum Number 2

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date.

OPEN DATE/BIDS DUE EXTENSION:

FROM: November 6, 2020 at 2:30 PM

TO: November 19, 2020 at 2:30 PM

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Robin Dennard

Robin Dennard

Procurement Analyst Direct Line: 239-533-8837

Lee County Procurement Management



Procurement Management Department
2115 Second Floor, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.lee.gov.com/procurement

Posted Date: November 6, 2020

Solicitation No.: B200372RJD

Solicitation Name: Gillig Bus Parts for LecTran

Subject: Addendum Number 3

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date. Words, phrases or sentences with a strikethrough represent deletions to the original solicitation. Underlined words and bolded, phrases or sentences represent additions to the original solicitation.

1. **BID/PROPOSAL FORM**

The Bid/Proposal Form has been updated and a new Bid/Proposal Form is attached and made part of this addendum.

2. **ARTICLE REVISION:**

1) ARTICLE 2 of the Special Conditions section titled: BASIS OF AWARD shall be deleted and replaced as shown:

~~2.1 The basis of award shall be determined by the highest discount percentage off of the Manufacturer Suggested Retail Price (MSRP) published retail price of the most responsive, responsible, and qualified Vendor meeting all bid specifications.~~

~~2.2 The County reserves the right to award to the Vendor whose prices, in its sole judgement, are the most realistic in terms of provision of the best services and in the best interest of the County. Additionally, the County reserves the right to reject any and all bids at any time, unconditionally, and without cause.~~

2.1 It is the County's intent to award to a pool of Vendors that are responsive, responsible, and meet the County requirements and specifications. This will allow LecTran to use the Vendor that has the needed Gillig product that best supports their needs at a reasonable price with competitively bid percentage discounts. The County reserves the right to purchase Gillig products elsewhere in an emergency.

2.2 The discount provided shall apply across the entire Gillig product line. The County reserves the right to award to multiple Vendors at their discretion. Vendor MUST bid Blanket Percentage (%) Off of the Manufacturer Suggested Retail Price (MSRP) published price.

2.3 The County reserves the right to award to the Vendor whose prices, in its sole judgement, are the most realistic in terms of provision of the best services and in the best interest of the County. Additionally, the County reserves the right to reject any and all bids at any time, unconditionally, and without cause.

2) ARTICLE 2 of the Scope of Work and Specifications section titled: PRICE & INVOICING shall be deleted and replaced as shown:

~~2.1 The Vendor shall provide for a discount off the Manufacturer Suggested Retail Price (MSRP) published retail price.~~

- ~~2.2 All invoices shall include, at minimum, the following information: Purchase Order number, manufacturer, manufacturer part number, MSRP, published retail price, discount, and the final cost of the item.~~
- ~~2.3 Delivery shall be included for all parts at no costs to the County.~~
- ~~2.4 The County reserves the right to conduct an audit at any time during the term of this Agreement to assure that pricing is in compliance with the submitted price list.~~
- 2.1 The Vendor shall provide for a discount off all Gillig Bus Parts offered by the Vendor.
- 2.2 All invoices shall include, at minimum, the following information: Purchase Order number, manufacturer part number, unit price, discount, and final extended cost of item.
- 2.3 All charges are subject to the approval of the Project Ordering Department.
- 2.4 Delivery shall be included for all items at no cost to the County.
- 2.5 When requested by the ordering department, the Vendor shall provide a pro forma invoice/quote that may be utilized for unit price verification. The pro forma invoice/quote shall include at minimum the following information: requested date, manufacturer part number, and unit price.

3. QUESTIONS/ANSWERS

1.	Gillig does not normally maintain a price book. We would like to know if a price list of currently purchased parts by Lee County with prices would be adequate for use on the bid. If this is ok please let me know.
	If it is not OK can you please define what would be needed on the list you require?
Answer	Please see Article revision listed above.

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.



Robin Dennard
Procurement Analyst Direct Line: 239-533-8837
Lee County Procurement Management

Form 1a - Bid/Proposal Form

Lee County Procurement Management
BID/PROPOSAL FORM

ADDENDUM #3

 LEE COUNTY SOUTHWEST FLORIDA		PROCUREMENT MANAGEMENT DEPARTMENT <u>BID/PROPOSAL FORM</u>	
COMPANY NAME: _____			
SOLICITATION: <u>B200372RJD, GILLIG BUS PARTS FOR LEETRAN</u>			
Having carefully examined the Contract Documents, Contractor/Vendor proposes to furnish the following which meeting these specifications. The County will only accept bids submitted on bid forms provided by the County. Bids submitted on other forms, other than those provided by the County, will be deemed non-responsive and ineligible for award.			
OEM GILLIG BUS PARTS			
PERCENTAGE DISCOUNT			
BLANKET PERCENTAGE OFF CATALOG OR LIST PRICE			PERCENTAGE %
Percentage off all OEM Gillig bus parts provided by Vendor. Percentage off shall apply to all purchases made through Vendor.			

ADDENDUM #3 – DATED 11/06/2020

24 B200372RJD, GILLIG BUS PARTS FOR LEETRAN



Procurement Management Department
2115 Second Street, 1st Floor
Fort Myers, FL 33901
Main Line: (239) 533-8881
Fax Line: (239) 485-8383
www.lee.gov.com/procurement

Posted Date: November 18, 2020

Solicitation No.: B200372RJD

Solicitation Name: Gillig Bus Parts for LecTran

Subject: Addendum Number 4

The following represents clarification, additions, deletions, and/or modifications to the above referenced bid. This addendum shall hereafter be regarded as part of the solicitation. Items not referenced herein remain unchanged, including the response date.

OPEN DATE/BIDS DUE EXTENSION:

FROM: November 19, 2020 at 2:30 PM

TO: December 3, 2020 at 2:30 PM

BIDDER/PROPOSER IS ADVISED, YOU ARE REQUIRED TO ACKNOWLEDGE RECEIPT OF THIS ADDENDUM WHEN SUBMITTING A BID/PROPOSAL. FAILURE TO COMPLY WITH THIS REQUIREMENT MAY RESULT IN THE BIDDER/PROPOSER BEING CONSIDERED NON-RESPONSIVE.

ALL OTHER TERMS AND CONDITIONS OF THE SOLICITATION DOCUMENTS ARE AND SHALL REMAIN THE SAME.

Robin Dennard

Robin Dennard
Procurement Analyst Direct Line: 239-533-8837
Lee County Procurement Management

**EXHIBIT B
FEE SCHEDULE**

<i>OEM GILLIG BUS PARTS</i>	
<i>PERCENTAGE DISCOUNT</i>	
BLANKET PERCENTAGE OFF CATALOG OR LIST PRICE	PERCENTAGE %
Percentage off all OEM Gillig bus parts provided by Vendor. Percentage off shall apply to all purchases made through Vendor.	25%

EXHIBIT C INSURANCE REQUIREMENTS



Lee County Insurance Requirements

Minimum Insurance Requirements: *Risk Management in no way represents that the insurance required is sufficient or adequate to protect the vendors' interest or liabilities. The following are the required minimums the vendor must maintain throughout the duration of this contract. The County reserves the right to request additional documentation regarding insurance provided*

- a. **Commercial General Liability** - Coverage shall apply to premises and/or operations, products and completed operations, independent contractors, contractual liability exposures with minimum limits of:

\$1,000,000 per occurrence
\$2,000,000 general aggregate
\$1,000,000 products and completed operations
\$1,000,000 personal and advertising injury

- b. **Business Auto Liability** - The following Automobile Liability will be required and coverage shall apply to all owned, hired and non-owned vehicles use with minimum limits of:

\$1,000,000 combined single limit (CSL); or
\$500,000 bodily injury per person
\$1,000,000 bodily injury per accident
\$500,000 property damage per accident

- c. **Workers' Compensation** - Statutory benefits as defined by FS 440 encompassing all operations contemplated by this contract or agreement to apply to all owners, officers, and employees regardless of the number of employees. Workers Compensation exemptions may be accepted with written proof of the State of Florida's approval of such exemption. Employers' liability will have minimum limits of:

\$500,000 per accident
\$500,000 disease limit
\$500,000 disease – policy limit

**The required minimum limit of liability shown in a. and b. may be provided in the form of "Excess Insurance" or "Commercial Umbrella Policies." In which case, a "Following Form Endorsement" will be required on the "Excess Insurance Policy" or "Commercial Umbrella Policy."*

Revised 03/19/2018 – Page 1 of 2



Verification of Coverage:

1. Coverage shall be in place prior to the commencement of any work and throughout the duration of the contract. A certificate of insurance will be provided to the Risk Manager for review and approval. The certificate shall provide for the following:
 - a. **The certificate holder shall read as follows:**

**Lee County Board of County Commissioners
P.O. Box 398
Fort Myers, Florida 33902**
 - b. *"Lee County, a political subdivision and Charter County of the State of Florida, its agents, employees, and public officials" will be named as an **"Additional Insured"** on the General Liability policy, including Products and Completed Operations coverage.*

Special Requirements:

1. An appropriate "Indemnification" clause shall be made a provision of the contract.
2. It is the responsibility of the general contractor to insure that all subcontractors comply with all insurance requirements.

Revised 03/19/2018 – Page 2 of 2

EXHIBIT E
VENDOR BACKGROUND SCREENING AFFIDAVIT



**VENDOR BACKGROUND
SCREENING AFFIDAVIT**

Florida Statutes Chapter 435 governs required background screenings for any employees, contractors, subcontractors, or agents of the Vendor who will have contact with any vulnerable person, as defined by statute, or who otherwise are required to undergo a Level 1 or Level 2 background screening in accordance with Florida law.

The Vendor is responsible for ensuring that such required background screenings are conducted in accordance with Florida Statutes Chapter 435. Documentation of such completed background screenings must be maintained for a period of no less than five (5) years and are subject to audit by Lee County at any time during such five (5) year period.

Under penalty of perjury, I declare that I have read and understand the requirements stated above, and that all required background screenings shall be conducted in accordance with this affidavit. I further understand that there may be additional local, state, and federal regulations that may require background screening, and that the Vendor will be solely responsible for complying with such legal requirements. Furthermore, the Vendor shall indemnify and hold Lee County harmless from any and all claims or actions resulting from failure to comply with this affidavit.

Date: December 30, 2020


Signature

STATE OF _____
COUNTY OF _____

Chuck O'Brien, Vice President
Name/Title

The foregoing instrument was sworn to (or affirmed) and subscribed before me by means of ☐ physical presence or ☐ online notarization, this ____ day of _____, _____, by the above-named person and in their stated capacity, and is either personally known to me or who has produce the following as identification: _____.

[Stamp/seal required]

SEE ATTACHED CERTIFICATE
Signature, Notary Public

CALIFORNIA JURAT WITH AFFIANT STATEMENT

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1-6 below)
☐ See Statement Below (Lines 1-6 to be completed only by document signer[s], *not* Notary)

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Alameda

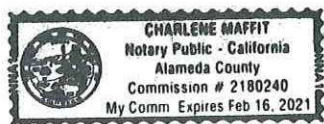
Subscribed and sworn to (or affirmed) before me

on this 31st day of December, 2020,
by Date Month Year

(1) Chuck O'Brien

(and (2) _____),
Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.



Signature _____

Signature of Notary Public

Seal
Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: VENDOR BACKGROUND SCREENING Document Date: December 30, 2020

Number of Pages: 1 Signer(s) Other Than Named Above: _____

GilligParts_ExistingContract_LeeCounty

Final Audit Report

2023-10-30

Created:	2023-10-27
By:	Virginia Barela (vbarela@lascruces.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2jpQqrV0DRLcKwSnb5IIHD4PXpq_t_h6

"GilligParts_ExistingContract_LeeCounty" History

-  Document created by Virginia Barela (vbarela@lascruces.gov)
2023-10-27 - 3:05:36 PM GMT
-  Document emailed to Donald Prosise (dprosisel@las-cruces.org) for signature
2023-10-27 - 3:06:38 PM GMT
-  Email viewed by Donald Prosise (dprosisel@las-cruces.org)
2023-10-27 - 3:07:05 PM GMT
-  Virginia Barela (vbarela@lascruces.gov) added alternate signer Alicia Hernandez (alhernandez@las-cruces.org). The original signer Donald Prosise (dprosisel@las-cruces.org) can still sign.
2023-10-30 - 5:22:44 PM GMT
-  Document emailed to Alicia Hernandez (alhernandez@las-cruces.org) for signature
2023-10-30 - 5:22:44 PM GMT
-  Email viewed by Alicia Hernandez (alhernandez@las-cruces.org)
2023-10-30 - 5:22:51 PM GMT
-  Document e-signed by Alicia Hernandez (alhernandez@las-cruces.org)
Signature Date: 2023-10-30 - 7:08:14 PM GMT - Time Source: server
-  Agreement completed.
2023-10-30 - 7:08:14 PM GMT



City Council Action and Executive Summary

3059; Council
Bill 24-017

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☒ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	January 16, 2024	Adopted:	February 5, 2024
Drafter:	Vince Banegas	Department:	Community Development
Program:	Community Planning	Line of Business:	Community Planning
Title:	AN ORDINANCE APPROVING ZONE CHANGES FOR LAND WITHIN THE HEATHER HILLS MASTER PLAN BOUNDARY LOCATED AT 5150 STERN DRIVE. SUBMITTED BY ZACHARY LIBBIN, LIBBIN UNDERWOOD ENGINEERING AND SURVEYING.		

TYPE OF ACTION: ☐ Administrative ☐ Legislative ☒ Quasi-Judicial

PURPOSE(S) OF ACTION:
Zone Change.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Council is required to review and take final action on zone changes per Section 38-10.B.2.b. and 38-13.A. of the 2001 Las Cruces Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulation uniformly governs the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting these changes pursuant to a recently approved major master plan amendment approved by the Las Cruces Planning and Zoning Commission (Attachment "A"). This amendment formally updated the subject master plan boundary following incorporation of land into a separate master plan called University Meadows. The amendment also adds 0.35 acres to the Heather Hills master plan boundary, converts land use designations from quasi-institutional to single-family medium-density residential and a small amount of land from right-of-way/ROW to drainage and single-family medium-density residential. These changes ultimately afford the developer an opportunity to develop a proposed ± 80 residential lots. The proposed zone changes pursuant to Exhibit "A" affect these master plan changes.

The proposed zone changes are consistent with Elevate Las Cruces Comprehensive Plan and several goals, policies, and actions contained therein. Policy supporting the request speaks in part to encouraging use/reuse of vacant/under-utilized property, balanced growth, encouraging a variety of housing types, lot sizes, and density ranges, and establishing compatibility between new and existing development. The subject property is within the Suburban Neighborhood place type and is characterized as providing low-to-moderate density residential land uses intermixed with areas of commercial development. The amended and approved master plan and the pending zone changes of this ordinance meet the intent of the Suburban Neighborhood place type.

On November 28, 2023, this case was heard by the Planning and Zoning Commission (P&Z) at their regular meeting and received a recommendation for approval by a vote of 4-0-0 (2 Commissioners absent, 1 seat vacant). There was no input received prior to the meeting or during the case discussion.

SUPPORT INFORMATION:

[EXHIBIT "A" - Vicinity/Zoning Map](#)

[EXHIBIT "B" - Findings](#)

[ATTACHMENT "A" - Approved Master Plan](#)

[ATTACHMENT "B" - Staff Report](#)

[ATTACHMENT "C" - Unapproved 11.28.2023 P&Z Minutes](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and affirm the P&Z recommendation for approval of the proposed zone changes. The subject property located at 5150 Stern Drive will be rezoned in accordance to Exhibit "A".
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current zoning will remain in place and be inconsistent with the amended master plan approved by P&Z.
3. Vote to "Amend"; this could allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.
4. Vote to "Table"; this could allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3059; COUNCIL BILL 24-017

AN ORDINANCE APPROVING ZONE CHANGES FOR LAND WITHIN THE HEATHER HILLS MASTER PLAN BOUNDARY LOCATED AT 5150 STERN DRIVE. SUBMITTED BY ZACHARY LIBBIN, LIBBIN UNDERWOOD ENGINEERING AND SURVEYING.

The City Council is informed that:

WHEREAS, Zachary Libbin, Libbin Underwood Engineering and Surveying, on behalf of the property owner has submitted a request for multiple zone changes pursuant to Exhibit "A"; and

WHEREAS, the size of the affected property is approximately 23.23 acres; and

WHEREAS, the zone changes are required to align with and implement the recently approved major amendment to the Heather Hills Master Plan and facilitate the development vision the owners have put forth; and

WHEREAS, the proposed zone changes are consistent with the Suburban Neighborhood place type per the Elevate Las Cruces Comprehensive Plan and are supported by various goals, policies, and actions therein; and

WHEREAS, the proposed changes meet the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

WHEREAS, the Planning and Zoning Commission, at their regular public hearing on November 28, 2023, recommended that the zone change requests be approved by a vote of 4-0-0 (2 Commissioners absent, 1 seat vacant).

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned as stipulated in said exhibit.

(II)

THAT the zoning is based on the findings contained in Exhibit "B", attached hereto and made part of this Ordinance.

(III)

THAT the zoning of said property be shown accordingly on the City Zoning Atlas.

(IV)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

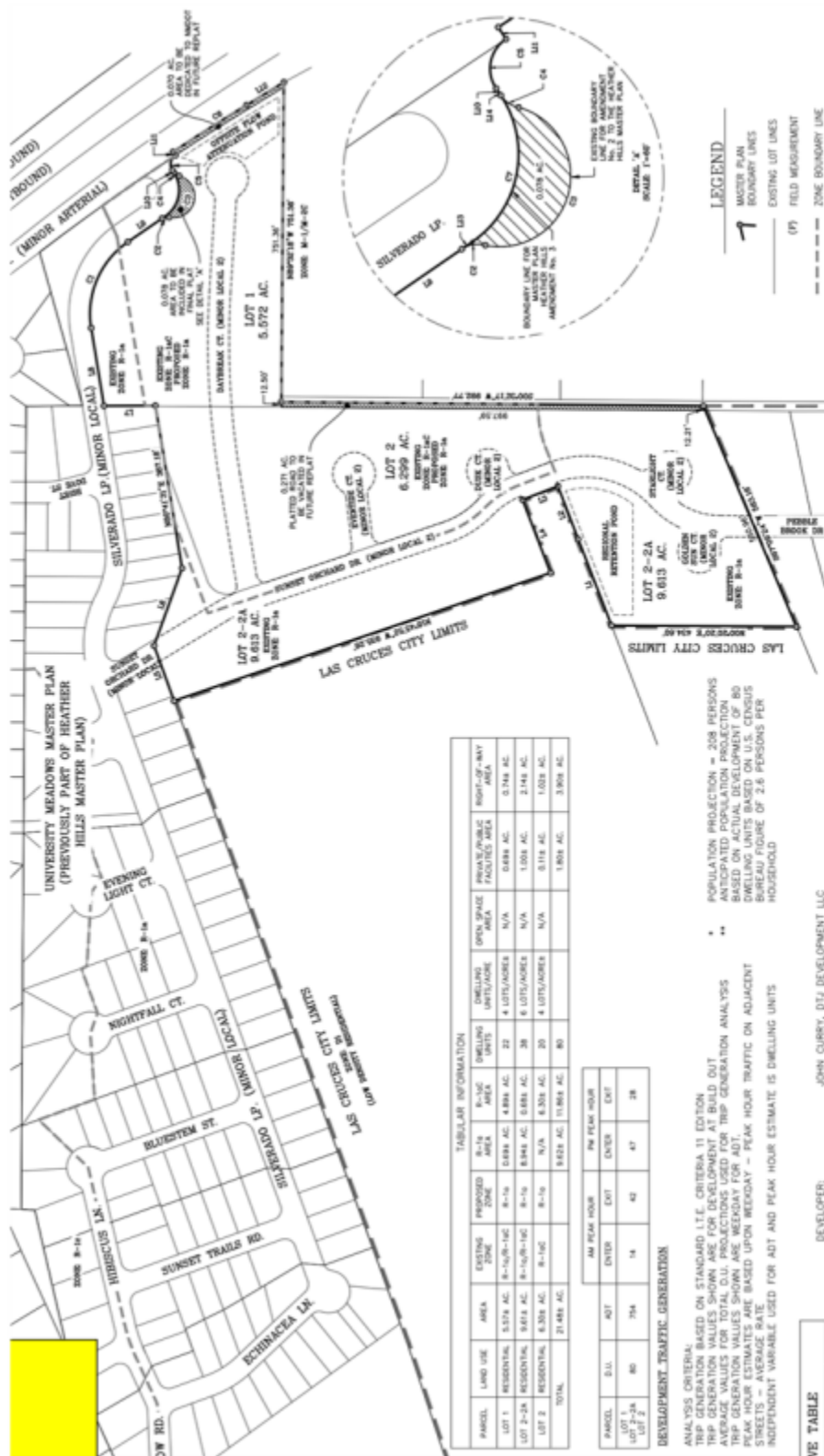
AYES

NAYS

EXHIBIT "B" - Findings

1. In 2007 the subject properties were annexed, master planned and zoned for single-family medium density residential and quasi-institutional (private school) development. Presently, the school (Mesilla Valley Christian School) is no longer considering this location for campus placement.
2. Amendment to the master plan and existing zoning allows opportunities to develop the remaining acreage consistent with the surrounding area.
3. The original Heather Hills Master Plan boundary was modified but never updated via the creation of the University Meadows Master Plan. Updating the Heather Hills Master Plan boundary can be achieved through this amendment and rezoning effort.
4. Staff finds that in some regards, modifying the master plan and zoning in the manner proposed will likely create less development impact to the surrounding neighborhood than what was originally proposed.
5. The subject property falls within the Suburban place type. This place type is characterized by low to moderate density residential land uses intermixed with areas of commercial development. This place type is consistent with what the proposed zone change seeks to provide.
6. The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).

ATTACHMENT “A” – Approved Master Plan





CITY OF LAS CRUCES

Planning & Zoning Commission 11/28/2023

CASE 23CS0500134: HEATHER HILLS MP AMEND. NO. 3

CASE 22ZO0500153: STERN DRIVE REZONING:

STAFF CONTACT:

Vincent Banegas, (575) 528-3058,
vbanegas@las-cruces.org

OWNER:

Mesilla Valley Christian Schools Inc. (Lot 1), DTJ Development LLC. (Lot 2), Heather Hills Investment LLC. (Lot 2-2A), University Meadows Development LLC (Tract E)

REPRESENTATIVE:

Zachary Libbin, Libbin Underwood Engineering and Surveying.

DISTRICT:

District #2

SITE ADDRESSES:

5150 Stern Drive

EXISTING ZONING:

Lot 1, 2-2A, Tract E, EBL&T Sub. 'B' platted road portion - R-1a/R-1aC (Single-Family Medium Density Residential/Single-Family Medium Density Residential - Conditional), Lot 2 - R-1aC (Single-Family Medium Density Residential - Conditional)

Master Plan Amendment (Major) updating the master plan boundary, adding ± 0.35 acres to said master plan, and converting applicable land uses from Quasi-Institutional and platted roadway/ROW to Single-Family Medium Density Residential,

REQUEST:

Rezone Lot 1, 2-2A, Tract E, and EBL&T Sub 'B' platted road portion from R-1a/R-1aC (Single-Family Medium Density/Single-Family Medium Density - Conditional) to R-1a (Single-Family Medium Density); Lot 2 from R-1aC (Single-Family Medium Density - Conditional) to R-1a (Single-Family Medium Density)

RELATED APPLICATIONS:

N/A

STAFF RECOMMENDATION:

Approval

This staff report is intended to cover both the master plan amendment request and the companion rezoning request. Where necessary case details will be separated for clarity. General details will be combined where applicable.

SUMMARY OF CASE 23CS0500134:

A request for approval of a major amendment, known as Heather Hills Master Plan Amendment No. 3. The proposed master plan amendment involves three parcels, one tract, and portions of a platted roadway (Silverado Loop, and a road that is part of EBL&T Sub. 'A'). The master plan is generally located west of Stern Drive and south of the University Meadows Subdivision development. The existing master plan boundary encompasses $\pm$ 21.48 acres and with the proposed added acreage, the master plan will become $\pm$ 21.83 acres.

Submitted by Zach Libbin, Libbin Underwood Engineering and Surveying.

SUMMARY OF CASE 22ZO0500153:

A zone change request for properties primarily within and immediately adjacent to the existing Heather Hills Master Plan located west of Stern Drive and south of the University Meadows subdivision development. The request involves three lots, one tract and a portion of a platted road on the east side of said master plan boundary for a total affected area of $\pm$ 23.23 acres. Generally speaking, the request seeks to remove the condition requiring quasi-institutional uses where applicable.

Submitted by Zach Libbin, Libbin Underwood Engineering and Surveying.

SUMMARY OF RECOMMENDATION:

Staff is recommending **APPROVAL** of both requests based on the findings listed below:

- In 2007 the subject properties were annexed, master planned and zoned for single-family medium density residential and quasi-institutional (private school) development. Presently, the school (Mesilla Valley Christian School) is no longer considering this location for campus placement.
- Amendment to the master plan and existing zoning allows opportunities to develop the remaining acreage consistent with the surrounding area.
- The original Heather Hills Master Plan boundary was modified but never updated via the creation of the University Meadows Master Plan. Updating the Heather Hills Master Plan boundary can be achieved through this amendment.
- Staff finds that in some regards, modifying the master plan and zoning in the manner proposed will likely create less development impact to the surrounding neighborhood than what was originally proposed.
- The subject property falls within the Suburban place type. This place type is characterized by low to moderate density residential land uses intermixed with areas of commercial development. This place type is consistent with what the proposed zone change seeks to provide.
- The proposed zone change request is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent of the 2001 Zoning Code (2001 Zoning Code, Section 38-2).

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

One of the two actions being proposed involves a request for approval of a major amendment, known as Heather Hills Master Plan Amendment No. 3. The proposed master plan amendment involves three parcels, one tract, and portions of a platted roadway (Silverado Loop, and a road that is part of EBL&T Sub. 'B'). The existing master plan boundary encompasses ± 21.48 acres and with the proposed added acreage as indicated below, the master plan will become slightly larger (± 21.83 acres).

The proposed amendment will achieve the following actions:

- Update the master plan boundary following incorporation of Heather Hills Master Plan acreage into the approved University Meadows Master Plan.
- Increase the remnant portion of the Heather Hills Master Plan acreage by 0.35 acres.
- Convert some existing land use designations within the master plan from Quasi-Institutional to Single-Family Medium Density Residential, and for land outside the existing boundaries, from right-of-way/ROW to drainage and Single-Family Medium Density Residential.
- Allow for the proposed development of ± 80 single-family dwelling units consistent with other areas within and outside the master plan boundary.

The second proposed action involves a zone change request for properties that are primarily within the master plan boundary and those that will be added or otherwise affected by the amendment effort. The request involves three lots, one tract and a portion of a platted road on the east side of said master plan boundary for a total affected area of 23.23 acres. The request seeks to remove the condition requiring quasi-institutional uses. It will also serve to "clean-up" zoning near the boundary consistent with stated actions. More specifically, the following requests are being sought:

- Lot 1, University Meadows Subdivision
 - Tract D – A zone change from R-1aC (Single-Family Medium Density – Conditional) to R-1a (Single-Family Medium Density) for ± 4.88 acres.
 - Tract G – A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 0.69 acres.
- Lot 2, MVCS Summary Subdivision No. 1
 - Tract B – A zone change from R-1aC (Single-Family Medium Density – Conditional) to R-1a (Single-Family Medium Density) for ± 6.30 acres.
- Lot 2-2A, University Meadows Subdivision
 - Tract A – A zone change from R-1aC (Single-Family Medium Density – Conditional) to R-1a (Single-Family Medium Density) for ± 0.68 acres.
 - Tract F – A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 8.94 acres.

- Tract E, University Meadows Subdivision
 - Tract E - A zone change from R-1aC (Single-Family Medium Density – Conditional) to R-1a (Single-Family Medium Density) for ± 0.52 acres.
 - Tract H - A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 0.95 acres.
- Portion of platted road, EBL&T Sub 'B'
 - Tract C - A zone change from R-1aC (Single-Family Medium Density – Conditional) to R-1a (Single-Family Medium Density) for ± 0.17 acres.
 - Tract I – A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 0.10 acres.

LAND USE HISTORY:

The Heather Hills Master Plan and its respective zoning designations were established on 6/25/07 allowing for not more than 172 single-family dwelling units. Three other conditions were also imposed on the master plan calling for certain areas within the master plan to be limited to quasi-institutional uses, limiting access to Broadmoor Drive to emergency vehicles only, and requiring underground utilities. On 12/17/08, the MVCS Summary Subdivision #1 was approved and recorded within the Heather Hills Master Plan vesting said plan. Later, an amendment to the plan was approved on 10/26/09 adding 7.126 acres to the master plan boundary. In 2019, the University Meadows Master Plan was approved, removing 36.145 acres of land from the Heather Hills Master Plan (this boundary modification is de-facto amendment #2). The Heather Hills Master Plan was never amended to reflect the boundary adjustment.

Pursuant to the development history provided in the previous section, many proposals including those at the time of annexation, were opposed by area residents located north of the current University Meadows Master Plan's northernmost boundary. However, in this case, the proposal is considered largely consistent with the area's development pattern and proposed land uses excepting of course, the quasi-institutional use and zoning conditions subject to removal via these requests. The subject properties are currently undeveloped.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
<u>Neighborhood Character and Compatibility</u>	Yes
<u>Elevate Las Cruces Comprehensive Plan</u>	Yes
<u>Thoroughfare Plans</u>	Yes
<u>Purpose and Intent of the Code: Section 38-2</u>	Yes
<u>Criteria for Decisions: Section 2-382</u>	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

In large part, the area surrounding the subject properties consist of single-family residential uses (north), standard industrial uses, low density residential uses, and multi-dwelling low density residential uses (south), I-10 right-of-way (east), and agricultural land (west). The zoning designations that support this development pattern involve R-1a, R-1c, M-1/M-2, R-2, and D1 (Dona Ana County Low Density Residential zoning). Given the development pattern described, there should be no adverse impact to the surrounding neighborhood in terms of the proposed development, its' character and compatibility.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

According to the Future Development Map in the Elevate Las Cruces Comprehensive Plan, the subject parcels fall within the Suburban Neighborhood Place Type. The Suburban Neighborhood Place Type is characterized as providing low-to-moderate density residential land uses intermixed with areas of commercial development.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the proposed Zone Change:

Community Environment:

- Goal CE-1: Balanced Growth – Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.
- Goal CE-4: Complete Neighborhoods – Develop mixed-use Neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
 - Policy CE 4.1 – Encourage a variety of housing types into new and redeveloping neighborhoods to provide options for all ages and incomes throughout the city.
 - Action CE 4.1.1 – Promote a diversity of residential building types, lot sizes, density ranges, and architectural styles in new neighborhoods.
- Goal CE-5: Building and Site Design – Establish standards to integrate new development with surrounding built and natural features while mitigating long-term natural resources and climate impacts.
 - Policy CE-5.1 – Promote building form and scale that complements surrounding neighborhoods and creates strong linkages between the development site, the street, and other public grounds.

Community Prosperity:

- Goal CP-9: Housing Diversity – Provide a diverse range of housing options to accommodate residents at all stages in life.

Community Livability:

- Goal CL-2: Neighborhood Conservation - Strengthen neighborhood condition through improvements to the built-environment.
 - Policy CL-2.2 – Encourage redevelopment of vacant properties within neighborhoods.

As the uses surrounding the subject property are congruous to the suburban comprehensive plan place type and supported by various comprehensive goals, policies, and actions, staff feels the application is justified and should pose no conflict with the existing neighborhood.

COMPLIANCE WITH THOROUGHFARE PLAN:

Access to the area comes primarily from Stern Drive, a 90' improved dedicated right-of-way designated as a minor arterial roadway in both the Elevate Las Cruces Comprehensive Plan and the MPO's Major Thoroughfare Plan. From Stern Drive, two roadways intersect and traverse west providing north and south ingress/egress to the master plan area. Silverado Loop is a local roadway having 50' of paved and dedicated right-of-way complete with curb, gutter, sidewalk and lighting. This road serves as a primary road in the University Meadows subdivision and has a stub out at approximately half its length to connect to future development within the Heather Hills area. To the south, Rocky Road functions as a collector roadway having 75' of right-of-way at full buildout (far west end), necks down to approximately 35' further east, and intersects with Pebble Brook Drive (a 50' dedicated and improved local roadway). Pebble Brook Drive will ultimately connect to Sunset Orchard Drive within the Heather Hills development. Ingress/egress as stipulated should easily accommodate the proposed residential uses within the Heather Hills Master Plan area. Traffic impact consideration may be required and if so, will take place upon subsequent development application submittal.

CONSISTENCY WITH PURPOSE AND INTENT OF THE ZONING ORDINANCE:

Per Section 38-2: The intent of the Zoning Code is to encourage the most appropriate use of land and to promote the health, safety, and general welfare of the community for the purpose of improving each citizen's quality of life.

The regulations relevant to the proposed zone change include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- G. Avoid the inappropriate development of land, ensure that development proposals are sensitive to natural areas and features, provide adequate protection from and reduce the effects of natural hazards.
- H. Encourage the conservation of energy in the use of structures, buildings, and land.
- J. Improve the design, quality, and character of new development.
- K. Encourage development of vacant properties within established areas.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- N. Conserve the value of buildings and land.

Review by Staff determined the proposed master plan and zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed zoning districts (with revised conditions) will be in keeping with the surrounding area. Additionally, the proposed action will eliminate a development void in the neighborhood that will result from the Mesilla Valley Christian School's change in development vision.

CRITERIA FOR DECISIONS:

Per Section 2-382 of the Las Cruces Municipal Code, the Planning and Zoning Commission shall determine the following:

- A. The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:
 1. Impair an inadequate supply of light and air to adjacent property or otherwise adversely impact adjoining properties.
 2. Unreasonably increase the traffic in public streets.
 3. Increase the danger of fire or endanger the public safety.
 4. Deter the orderly and phased growth and development of the community.
 5. Unreasonably impair established property values within the surrounding area.
 6. In any other respect, impair the public health, safety, or general welfare of the city.
 7. Constitute a spot zone, and therefore, adversely affect adjacent property values.
 8. Be in harmony with the purpose and intent of the zoning code, sign code, design standards, and other companion codes.
- B. The commission shall take care that the development of the city, in accordance with present and future needs, best promotes the health, safety, morals, order, convenience, prosperity, and general welfare of the people. It shall also promote efficiency and economy in the process of development.
- C. The commission shall encourage the proper use and development of land, shall seek to create and maintain an aesthetic urban setting, and protect and preserve the quality of the water, air and other environmental, natural, historical and cultural resources for the city.
- D. The commission shall use the comprehensive plan as a guide in making all future decisions concerning land use and development, and in the financing and location of capital improvements.
- E. Before taking any action concerning land use and development and financing and location of capital improvements, the commission shall review the relationship between the proposed action and the comprehensive plan.

Upon internal review, Staff did not identify any issues that would deter the Planning and Zoning Commission from making an affirmative decision (master plan amendment) or recommendation to City Council (zone change) as appropriate. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the requests appropriate and thus, providing a recommendation for approval.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject properties are currently zoned R-1a and R-1aC in the manner described previously and combined are ±21.34 acres in size (current master plan boundary). Approximately 43% of the land area in question is developable in a manner suitable for the single-family medium density residential land use proposed by the applicant. This of course is dictated by the master plan as it exists today. What is proposed would be congruous to the residential pattern established in the area. Were it not for the imposed zoning condition regarding quasi-institutional uses, the likelihood of seeing all areas within the master plan developed in a similar fashion to what's around is quite high.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

If the subject property is approved for the stated requests, both master plan and zoning will align and be consistent with the surrounding area. Additionally, the Heather Hills Master Plan will reflect all relevant updates eliminating any future confusion over prevailing plans for future development. A preliminary plat, final plat, and construction drawings will still be necessary to effect the creation of the proposed residential lots. Staff feels these requested changes will not negatively impact the surrounding area.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City sewer, water and gas will serve the properties and will not be negatively impacted by the master plan amendment and associated zone change requests and any resulting development.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Early notification for the zone change took place several months ago and according to the applicant, no input was received. Staff mailed out notification letters to property owners within 500 feet of the subject property on November 9, 2023. Staff has not received any input as of the completion of this report.

STAFF COMMENTS:

No reviewing department has provided any negative comments regarding the proposal.

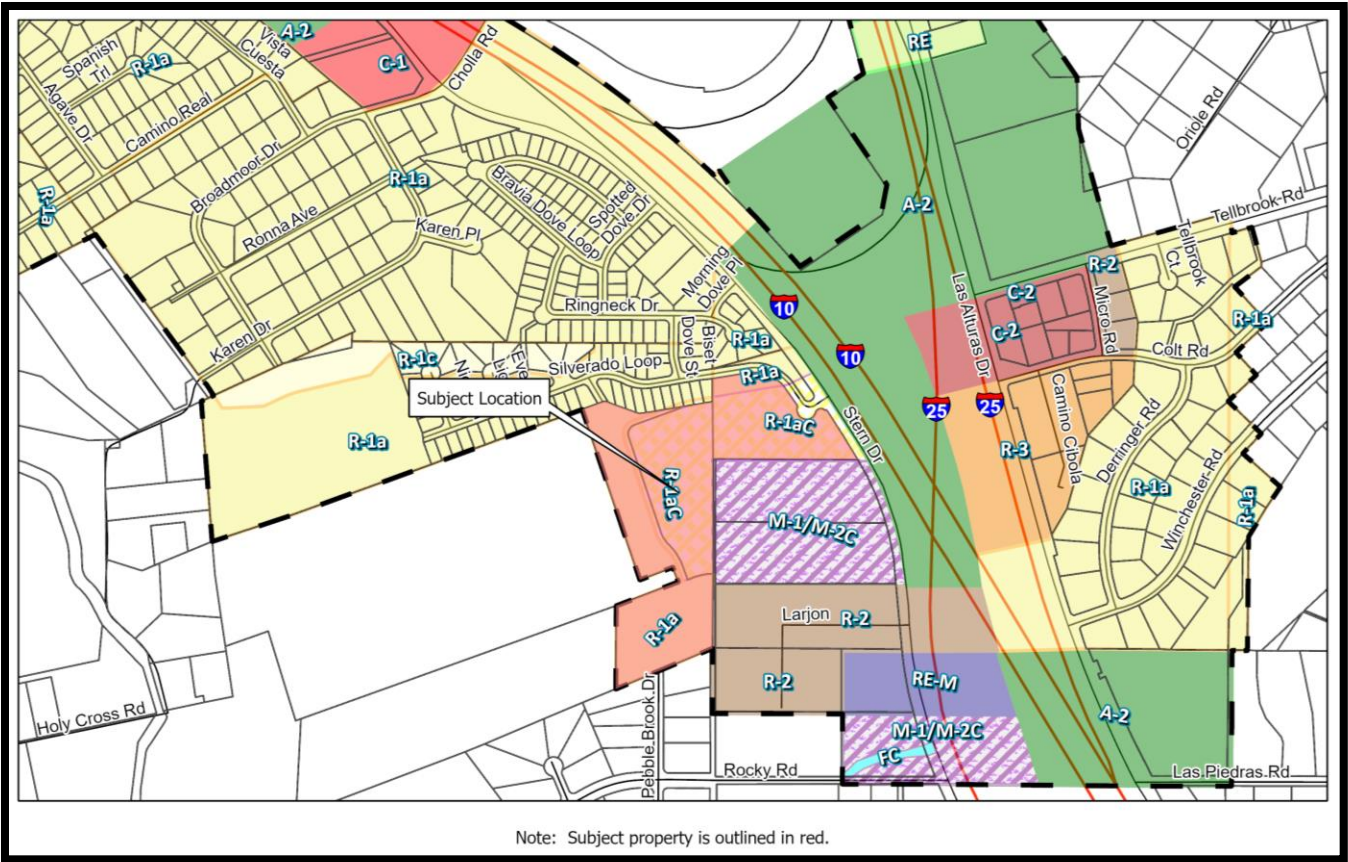
DEVELOPMENT REVIEW COMMITTEE (DRC) RECOMMENDATION:

At the November 8, 2023 DRC meeting, staff presented the proposed Master Plan amendment to the Committee. The points summarized in this report were also provided to DRC. The Utilities comment regarding connectivity of water and gas lines within the Heather Hills development to those along Silverado Loop were well received by the applicant and respective changes have been made reflecting the applicable connection. The Fire Dept. comment regarding connection of roadway to Pebble Brook Drive was already planned for and will be carried out. With that, the DRC recommended approval of the Heather Hills Master Plan amendment to P&Z by a vote of 4-0-0 (one member absent).

ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Master Plan
4. Master Plan Utilities
5. Master Plan Grading/Drainage
6. Zone Change Request
7. Department Review Comments
8. DRC Minutes from November 8, 2023

ATTACHMENT 1
Zoning Map

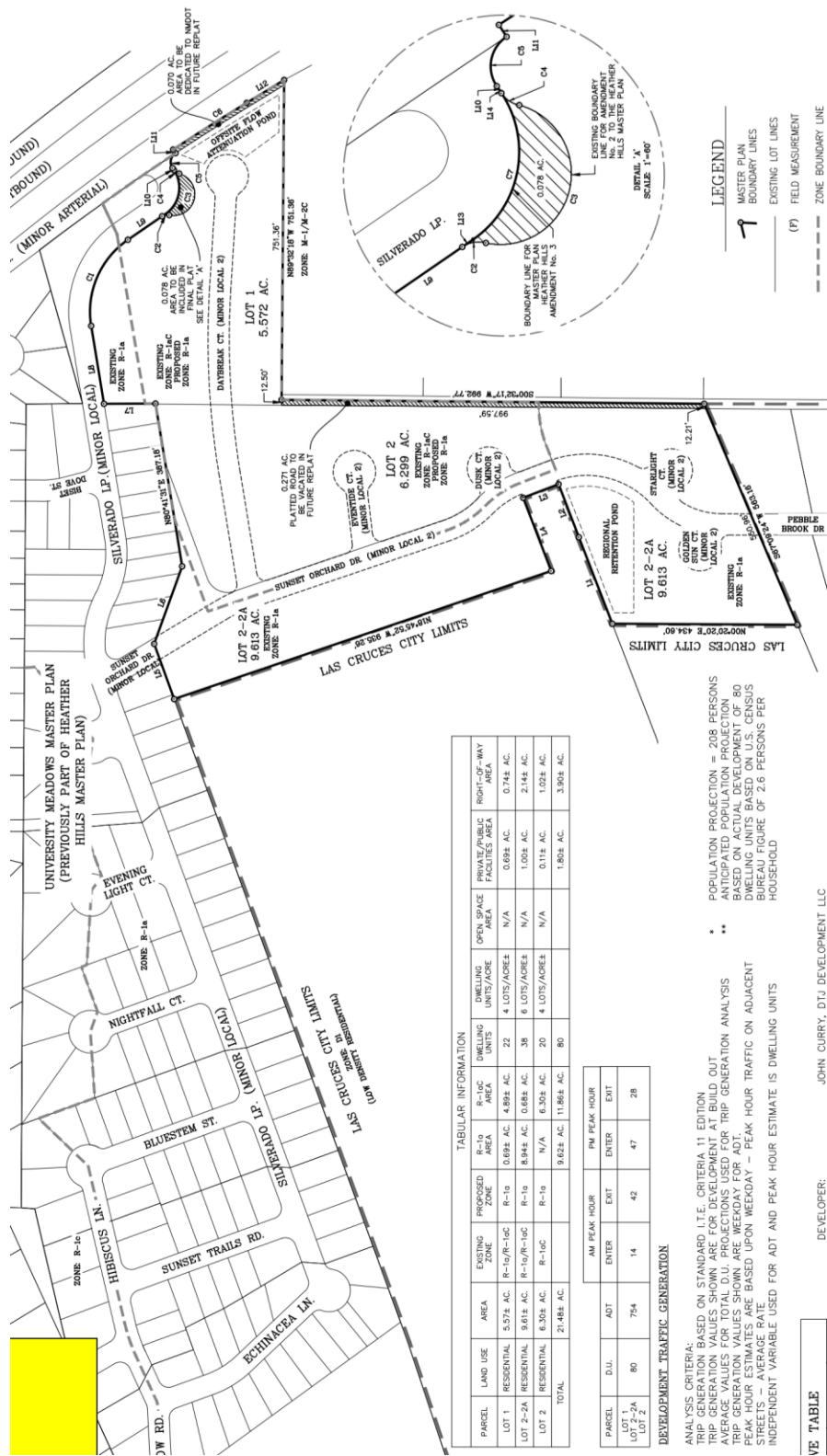


ATTACHMENT 2
Aerial Map



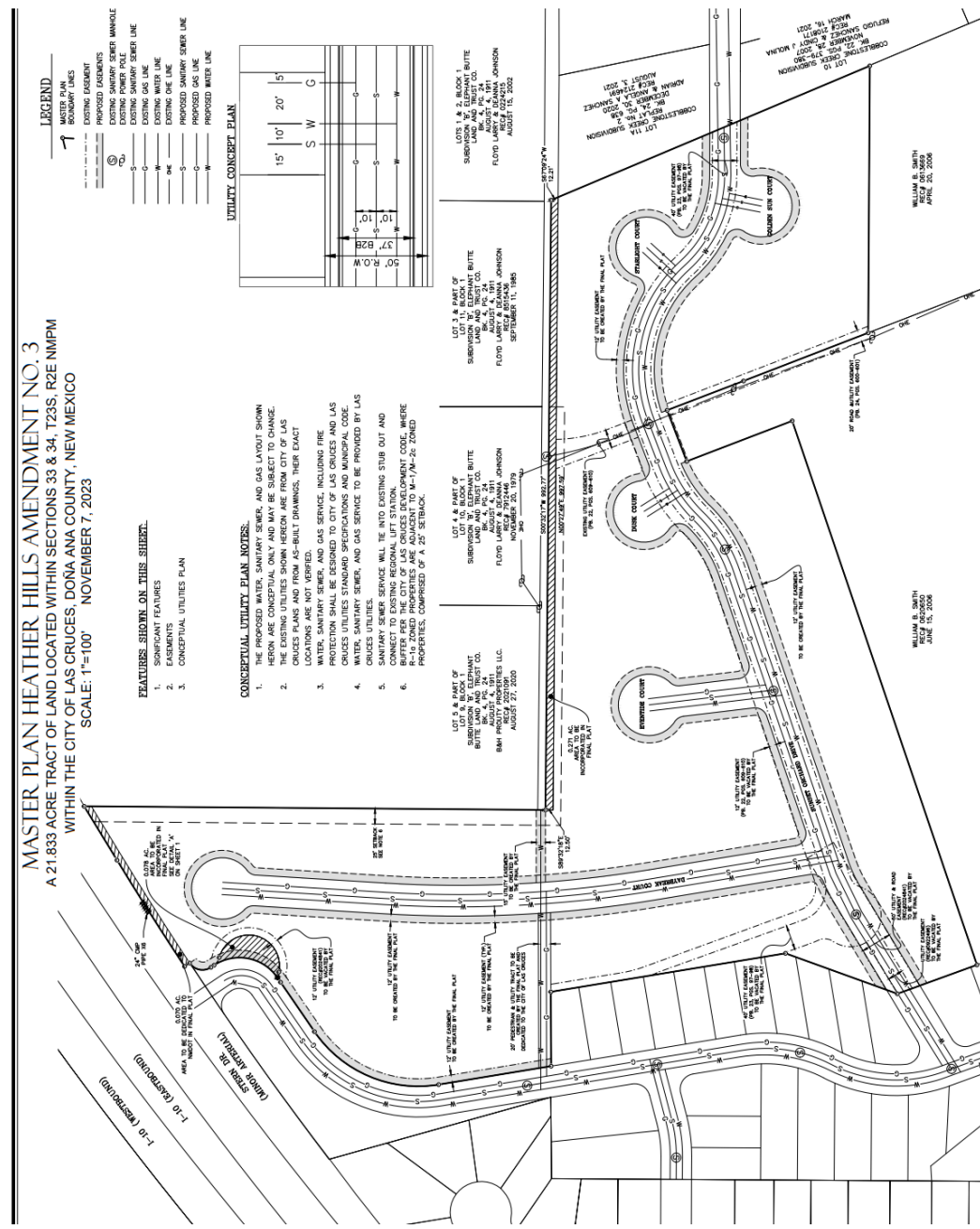
ATTACHMENT 3

Master Plan



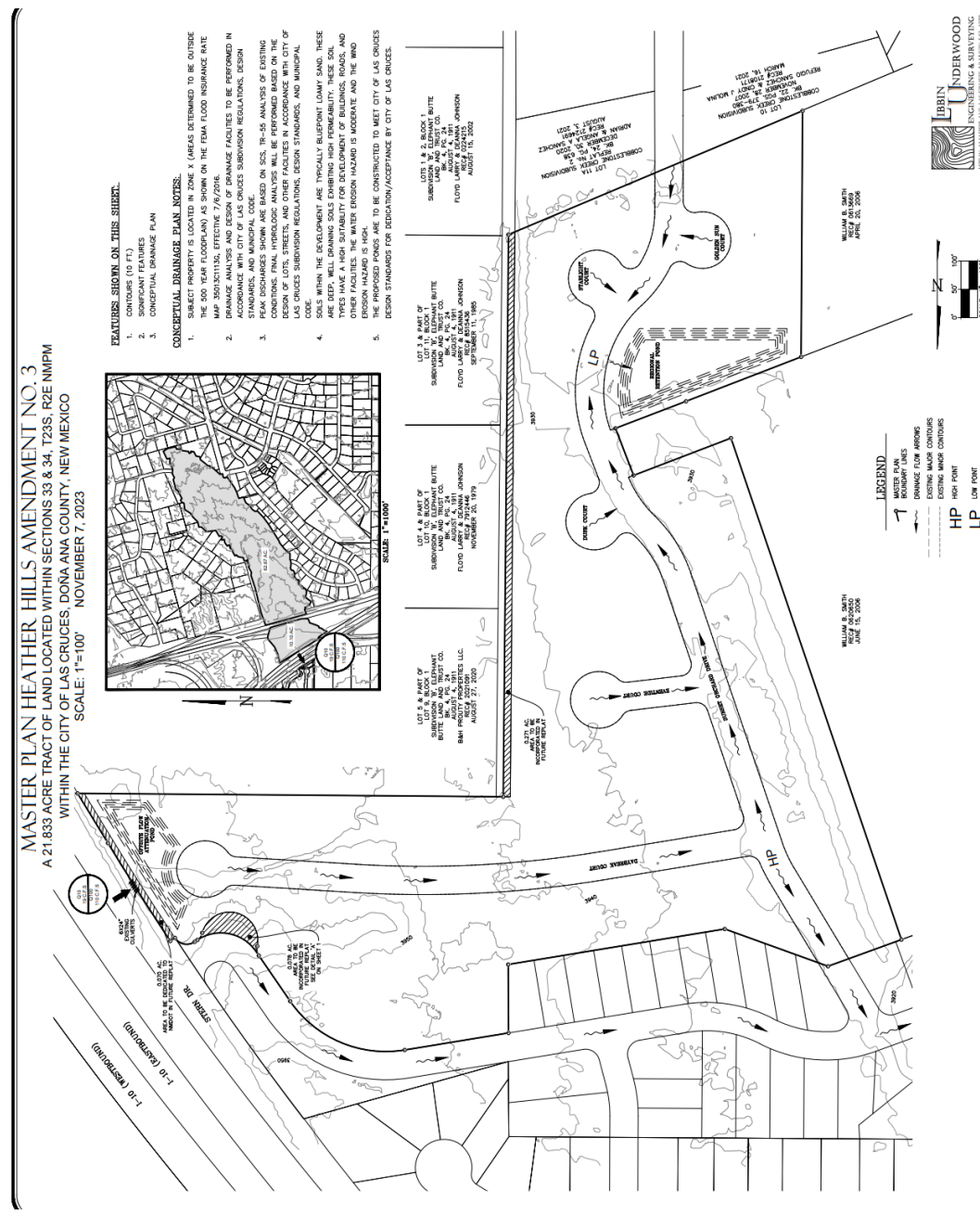
ATTACHMENT 4

Master Plan Utilities



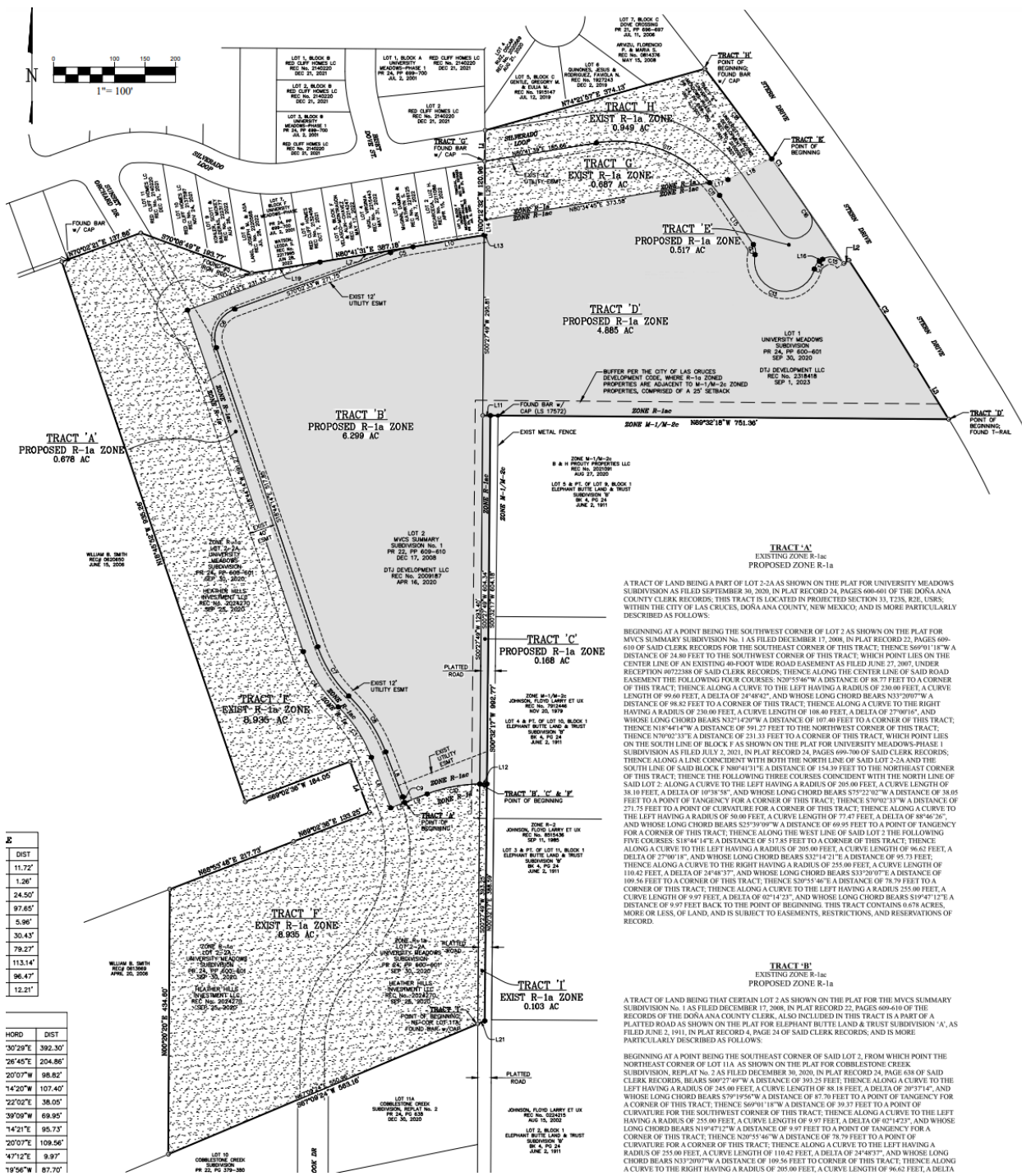
ATTACHMENT 5

Master Plan Grading/Drainage



ATTACHMENT 6

Proposed Zoning



ATTACHMENT 7
Department Review Comments
MP & ZC

Department: Planning

Status: YES

The code requires that the residentially zoned properties abutting the M-1/M-2C zoned property provide a 25' setback buffer to said industrially zoned properties. Per code, the only structures allowed within the buffer area are sheds and other like structures.

Department: Flood Zone

Status: NOT REQUIRED

Department: Parks and Recreation

Status: YES

Department: Transportation

Status: APPROVED; NOT REQUIRED

Department: Engineering

Status: NO COMMENT; NOT REQUIRED

Department: Utility

Status: YES w/CONTINGENCY; YES

Water and gas lines to connect to main lines along Silverado Loop.

Department: Fire

Status: YES w/CONTINGENCY; YES

Road connection to Pebble Brook Drive shall be required when development of 30 or more lots are proposed for development.

Department: MPO

Status: YES; YES

Department: Economic Development

Status: NOT REQUIRED; NO COMMENT

ATTACHMENT 8
Unapproved DRC Meeting Minutes
(Under Separate Cover)



**PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
November 28, 2023 at 6:00 p.m.**

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Connor Murray, Member

BOARD MEMBERS ABSENT:

Joaquin Acosta, Member
Vanessa Porter, Member

STAFF PRESENT:

Larry Nichols, Director Community Development Department
David Weir, Deputy Director Community Planning
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Sara Gonzales, Senior Planner
Vincent Banegas, Interim Planner
Kyle Metzger, Planning Technician Senior
Mark Dubbin, Fire Department
John Castillo, Planner
Mark Miller, Planner
Christina Abeyta-Corella, Planner
Jocelyn Garrison, City Attorney
Adrian Guzman, Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: Good evening, ladies and gentlemen. Welcome to the November 28th City of Las Cruces Planning and Zoning Commission meeting. It is 6:00 p.m. We will go ahead and call this meeting to order. If folks could please take their seat, we would appreciate that so we can get underway here. We're going to do things slightly differently on the consent agenda so bear with me as I explain that when we get there.

2. CONFLICT OF INTEREST

Kaiser: But in the meantime, do we have any conflict of interest tonight? All right.

3. APPROVAL OF MINUTES – October 24, 2023

Kaiser: Are there any comments on the October meeting minutes? Looking for a motion to approve.

Bennett: I make a motion to approve the previous meeting's minutes.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Motion passes.

4. POSTPONEMENTS

Kaiser: Okay. And I believe, staff, we have one postponement this evening?

Ochoa: Yes, Mr. Chair. The case we are looking to postpone is case number 9.3, Case # 23ZO0500120, a proposed zone change from R-3 to C-1 for a property located at 541 South Campo. So we're looking to do a date specific postponement to the December 19th Planning and Zoning Commission meeting, sir.

Kaiser: Very good. Can I get a motion to postpone Item 9.3 to December 19th?

Bennett: I make a motion to postpone Item 9.3 to December 19th.

Murray: I second.

Baum: Board Member Smith.

Agenda Item #7.3.

1 Smith: Yes.

2

3 Baum: Board Member Bennett.

4

5 Bennett: Yes.

6

7 Baum: Board Member Murray.

8

9 Murray: Yes.

10

11 Baum: Chair Kaiser.

12

13 Kaiser: Yes.

14

15 Baum: Motion passes.

16

17 **5. ACCEPTANCE OF THE AGENDA**

18

19 Kaiser: Okay. With that item postponed looking for a motion to accept tonight's
20 agenda.

21

22 Bennett: I make a motion to accept tonight's agenda.

23

24 Smith: I second.

25

26 Baum: Board Member Smith.

27

28 Smith: Yes.

29

30 Baum: Board Member Bennett.

31

32 Bennett: Yes.

33

34 Baum: Board Member Murray.

35

36 Murray: Yes.

37

38 Baum: Chair Kaiser.

39

40 Kaiser: Yes.

41

42 Baum: Motion passes.

43

44 **6. PUBLIC PARTICIPATION**

45

1 Kaiser: Okay. We're going to go to public participation. Is there anybody in the
2 audience tonight that wishes to speak on something that is not on tonight's
3 agenda? Yes, ma'am. And before you begin may you state your name for
4 the record? And swear you in.

5
6 Lewis: I will. Good evening. My name is Irene Oliver Lewis and I live on Kansas
7 Avenue, Lot 45 of the original Las Cruces townsite plat of 1849 or what is
8 now known as the 2005 South Mesquite Overlay for issues of planning and
9 zoning. My sister, Sylvia Camuñez and I are the third generation living in
10 the original adobes built in 1906 on Kansas. Sylvia was one of the riders of
11 the South Mesquite Overlay and past president of Las Esperanzas, the
12 neighborhood preservation association.

13
14 Historic preservation and cultural significant is in our DNA. I speak to you
15 tonight because my perception as well as my neighbors is that the
16 Community Development Department and staff approach historic
17 preservation as an obstacle, a nuance for business development and
18 housing, and resort to demolition or neglect of historic property, traditions,
19 character, or quality of life.

20
21 The P&Z is one of the most important commissions in city government, as
22 you have to recommend zoning changes and have to balance the attraction
23 and the retention of small businesses while maintaining the needs of the
24 existing neighborhoods in traffic flow, in health, in safety, and the general
25 quality of life for the residents to maintain their architectural character and
26 their neighborhood.

27
28 For the Mesquite Street historic neighborhood, the P&Z has to acknowledge
29 the downtown development code as well as Elevate Las Cruces and how
30 they complement the South Mesquite Overlay District. Therefore, I invite
31 the P&Z to request from the Community Development staff while adhering
32 to all the number of established ordinances and codes that they give priority
33 to the established cultural, historic, and architectural significance of our one
34 and only original townsite.

35
36 It appears that the South Mesquite Overlay ordinance is given low priority
37 on zoning changes from City staff. We have a Historic Preservation
38 Commission and they are up to date on necessary cultural and architectural
39 needs. Perhaps the P&Z and the Historic Preservation Commission can
40 have a more cooperative relationship to issue the significance of our shared
41 cultural historic neighborhoods. Muy gracias.

42
43 Kaiser: Thank you very much. We appreciate that perspective. Is there anybody
44 else in the audience tonight that wishes to speak on an item that is not on
45 tonight's agenda? Okay. Seeing none. I will close public participation.

7. CONSENT AGENDA

Kaiser: And we are going to move into the consent agenda where we're going to do things a little bit different this evening given that there are so many items on the Consent Agenda tonight. There's five in fact. What you see somewhere above me are the items that are on the Consent Agenda tonight. We have 7.1 through 7.5.

I will first ask our Commission if anybody wishes to pull any item for discussion? All right. Seeing none. It's my understanding that there might be some folks in tonight's audience who would like a discussion. So I'm going to go one at a time and I'm just going to ask for a raise of hands for those of you who wish to have a discussion.

So for Item 7.1 raise of hands. Okay, I see two. Item 7.2. I see no hands. Item 7.3. I see no hands. Item 7.4. Okay. I see several hands. And Item 7.5. All right. So 7.1, 7.4 and 7.5. So I request that we make motions to pull those three items. Can we do them as a group? We can do them as a group. So if I can get a motion to ...

Bennett: I make a motion to remove 7.1, 7.4, and 7.5 from the consent agenda.

Smith: I second.

Kaiser: Just to clarify, we're not moving it from discussion. We're just moving it from the consent agenda so we can approve everything else and then we'll come back to those.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Motion passes.

1 Kaiser: All right. So that leaves Items 7.2 and 7.3 on the consent agenda. So
2 looking for a motion to approve the consent agenda.
3
4 Bennett: I make a motion to approve the consent agenda.
5
6 Smith: I second.
7
8 Baum: Board Member Smith.
9
10 Smith: Yes.
11
12 Baum: Board Member Bennett.
13
14 Bennett: Yes.
15
16 Baum: Board Member Murray.
17
18 Murray: Yes.
19
20 Baum: Chair Kaiser.
21
22 Kaiser: Yes.
23
24 Baum: Motion passes.
25

26 **8. OLD BUSINESS**

27
28 **9. NEW BUSINESS**

29
30 **7.1 Case # 23CS0500113:** A request to approve a non-administrative replat
31 known as Majestic Hills Subdivision No. 1 Replat No. 4. The proposed
32 subdivision encompasses 1.9754 ± acres in size, zoned R-3 (Multi-Dwelling
33 Medium Density) and located at 2969 Claude Dove Drive. The subdivision
34 proposes to subdivide one existing lot and a portion of another existing lot
35 into two new lots that are 0.443 ± and 1.531 ± acres in size. Submitted by
36 Bohannon Huston, representative. Council District 2.
37

38 Kaiser: Okay. Now, we will go into the discussion on Item 7.1.
39

40 Gonzales: Sara Gonzales with Community Development. This is a proposed
41 Subdivision Replat known as Majestic Hills Subdivision No. 1 Replat No. 4.
42 The property is located at 2969 Claude Dove Drive. It is currently 1.974
43 acres in size. It is zoned R-3 which is our Multi-Dwelling Medium Density
44 and currently has an assisted living facility as well as a preschool childcare
45 center on the property.
46

Here's a zoning map of the subject property and the surrounding area. As you can see there are multiple land uses as you have single-family, multifamily located towards the east and to the south. You have multifamily, office, and then a commercial located to the north and over to the west side of the property. Here's an aerial map of the subject property. As you can see located on the north side is the assisted living facility. This is where the childcare center is currently. As the property sits it's between multiple property lines. And this is actually a cleanup on the property.

With the replat, it is currently an existing lot and a portion of another lot and a portion of another lot. In order to bring it into code compliance including building, the property is proposing to subdivide into two lots. Essentially, whenever you go from more than what is currently on the property, you have to do a non-administrative replat and go through the public process.

Lot one is going to be a 0.443 acres lot. Lot two is 1.531 acres. All lots will have access from Claude Dove Drive. They are still sharing access and parking to eliminate any additional parking structures to be developed on the site. And there's no proposed land use changes with the subdivision.

Here's the proposed replat as listed. This is going to be lot 5B, lot 5A is the assisted living facility on the north side. Currently, there is access points off of Claude Dove; one is through the east side, then you have the west side for the property. The parking lot is basically already aligned, there's no additional improvements required with the subdivision. It basically goes through the process to eliminate this building line that goes through these properties because essentially with the building code any development or any future development, that lot line would have to be removed through this process as well. So this would just clean up the property in case there is any future development to take place on the site.

But as defined earlier, there are no land use changes. There are no proposed changes to the site. The assisted living facility will stay on lot 5A and the daycare will remain on lot 5B.

Staff sent out notice to the surrounding property owners. I did receive two phone calls inquiring if this was going to be for multifamily development. Part of the subdivision process that is not going to be on the site at all is the assisted living facility will remain as well as child daycare. I did explain however though that this is a multifamily development zoning so if something were to take place in future development, if any of the buildings were demolished, multifamily could take place on these properties.

With that, staff went to the Development Review Committee on November 1st. Through discussions we outlined if it meets the proper lot sizes per the R-3 zone. Does it have access? Is there shared points? And does it meet

1 the parking? All of those were met and so DRC recommended approval of
2 the non-administrative replat.

3
4 Staff is recommending approval based on it does meet the subdivision code
5 that is outlined in the 2001 Code. All the lots meet all the criteria and the
6 land uses are permitted in the R-3 zoning district. This property will also be
7 brought into compliance with the subdivision taking place, so if there are
8 future development, they will have the ability to move forward
9 administratively. And the DRC did recommend approval on November 1st.

10
11 With that the Commission's options are to vote "yes" and approve, vote "no"
12 to deny, please be aware that if you vote to deny to provide additional
13 findings, vote to amend, or vote to table. I stand for any questions. And the
14 applicant's representative is here as well.

15
16 Kaiser: Thank you. Any questions, comments from the Commission? All right.
17 Anybody in the public who wishes to speak on this item? Okay. Seeing
18 none. We'll close public participation. Any additional comments or
19 questions? All right. Looking for a motion to approve.

20
21 Bennett: I make a motion to approve 7.1.

22
23 Smith: I second.

24
25 Baum: Board Member Smith.

26
27 Smith: Yes, based on staff recommendation and it meets neighborhood
28 compatibility.

29
30 Baum: Board Member Bennett.

31
32 Bennett: I vote to approve based on staff recommendation and DRC
33 recommendation.

34
35 Baum: Board Member Murray.

36
37 Murray: Yes, to approve based on staff recommendation.

38
39 Baum: Chair Kaiser.

40
41 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
42 Cruces.

43
44 Baum: Motion passes.

1 **7.4 Case # 23ZO1000122:** A request for a Special Use Permit (SUP) to allow
2 a group childcare home not to exceed 12 children on a property Zoned R-
3 1a (Single-Family Medium Density). The subject property is located at 4703
4 Big Springs St. and encompassing 0.13 ± acres. Submitted by Roxanna
5 Sanchez representative. City Council District 5.

6
7 Kaiser: Okay. We'll move onto Item 7.4.

8
9 Castillo: Good evening, Commission. Tonight, we have 4703 Big Springs Street.
10 It's a Special Use Permit for a group child homecare ...

11
12 Nichols: Please identify for the record please.

13
14 Castillo: Sorry. I apologize. My name is John Castillo for the record. I'm an
15 urban planner with the City of Las Cruces. So as I was saying before,
16 we have 4703 Big Springs Street requesting a Special Use Permit for a
17 group childcare home facility.

18
19 The current conditions of the property is it's currently zoned R-1a which
20 is our Single-Family Medium Density zoning district. It's a developed
21 residential lot that encompasses 0.13 acres. It's located within the
22 Parkhill Estates Subdivision Phase 4. And this has been operating as a
23 family childcare home for five-plus years and operating out of the
24 property since January of 2023.

25
26 It has direct access from Big Springs Street which is a local roadway. As
27 you can see from the zoning map, it is relatively all single-family
28 residential. Here we go looking at an aerial map. Nothing but houses
29 around. This is our street view looking southbound on Big Springs and
30 then looking northbound on Big Springs.

31
32 The code requirements for a family childcare home or a group childcare
33 home is it does require a home occupation business registration under
34 Section 38-52. The family childcare home which they are currently
35 operating as allows five to six children. It is a conditional use meaning
36 that they all follow in accordance with state licensing agreements and
37 register with the City as a business registration license. It is allowed in
38 all single-family zoning residential districts.

39
40 The group childcare home which is what we're discussing today is a
41 Special Use Permit under Section 38-54. This is for all single-family
42 residential zoning districts. These are allowed uses within R-2 and R-3
43 and R-4 zoning districts. They are only permitted to have seven to 12
44 children in the home at any given point. And once again, they must all
45 follow accordance with the State Licensing requirements and all City
46 requirements.

1
2 Today's proposal is the SUP to convert a family childcare home to a
3 group childcare home, meaning they're going to occupy at least 12
4 children in the facility. They will follow both state and city licensure
5 requirements and follow all applicable regulations. They are also going
6 to be providing a childcare service in and around the neighborhood to
7 fulfill a much needed service that's within our community.

8
9 This is a site plan of the home. This is the proposed parking that they're
10 going to do for drop offs and pickups. They do have the driveway parking
11 for the staff that's going to be there, basically, it's the husband and wife.
12 Public input was sent to all relevant agencies and departments. All
13 supported the proposed Special Use Permit. Notice was sent to the
14 surrounding properties within 500 feet. Staff did receive two phone calls
15 in opposition of the proposed SUP.

16
17 Today staff recommends approval based on the following findings. The
18 property owner has operated a family childcare home at this address and
19 at previous residences since 2017. The applicant is familiar with state
20 mandated requirements and has submitted plans to ensure that the
21 group childcare home operates in a manner sensitive to and compatible
22 with the surrounding residential neighborhood.

23
24 The drop off and pickup locations are optimized onsite and on street in
25 a manner that promotes child safety. The childcare is a much needed
26 service in and around the neighborhoods. The proposed SUP meets the
27 purpose and intent of Section 38-2 of the Zoning Code. All applicable
28 code requirements as outlined in the 2001 Zoning Code and those
29 stipulated by the State of New Mexico must be adhered to for operation
30 of the and proposed occupation.

31
32 Today, your options are to vote "yes" to approve, "no" to deny, vote to
33 amend, or vote to table.

34
35 Kaiser: Thank you very much. Any questions or comments from the
36 Commission? Commissioner Smith.

37
38 Smith: Yes, I have one question for staff. The two parties that were in
39 opposition, did they vocalize any reasons why? Or they just did not want
40 to have more kids in the neighborhood?

41
42 Castillo: I do believe that it was also the increased number of children in the
43 neighborhood, traffic. I do believe that those people are here as well to
44 speak out as well.

45
46 Smith: Okay. Thank you.

1
2 Kaiser: Any other questions, comments? All right. I will go to public comment.
3 If I can get a show of hands of anyone in the audience who wishes to
4 speak on this item. I see three hands. I'll go ahead and give each person
5 three minutes. We'll start with the gentlemen in the way back. And
6 before we begin, I need to swear you in. So if you could state your name
7 for the record.
8

9 Heaney: Yes. My name is Richard Paul Heaney, H-E-A-N-E-Y. I reside at 4691
10 Big Springs Street and I'm here to speak in opposition to the program.
11

12 Kaiser: Okay. And do you swear or affirm that the testimony you're about to give
13 is the truth and nothing but the truth under penalty of law?
14

15 Heaney: Yes, sir.
16

17 Kaiser: Go ahead.
18

19 Heaney: Okay. I'm a retired teacher of 40 years. I'm currently a substitute in Las
20 Cruces public school district. Though I'm not here opposing kids but
21 what I am here is opposing some misconceptions on this project.
22

23 Number one, the person who bought this house purchased it in January.
24 And therefore his business that he ran before was six years was before
25 he came here. So to me it looks like he bought that property with the
26 intention of running a childcare center. Number two, there's a childcare
27 center located within 0.2 miles on Arabela through our neighborhood and
28 they service children already.
29

30 When I talked about the zoning guidelines, I looked at them and read
31 them and they are vague and overbroad, and that means that every
32 house in our neighborhood could be given a SUP. The next thing is that
33 nothing was addressed, or what I saw in the reports about disability
34 access to the property. The kitchen facilities are residential kitchen
35 facility. I do not see where it says anything about the facility and the
36 kitchen being protected from the children that are in the facility. The
37 backyard description lacks presentation of what the backyard consists
38 of. Is it desert landscaping, dirt, or grass?
39

40 The staff, they say they're going to fulfill the requirements. I want to
41 know are they CPR trained? Have they taken safe school training? Do
42 they have medical staff on? Is the fire department gone in and visited
43 the facility? Do they have fire suppressing equipment? And can that
44 equipment be, have they been trained on its use? And the
45 environmental impact on the neighborhood with increased traffic and

1 noise. Not the kids that they're dropping off, but the cars that are coming
2 in and then the lack of playground accessibility.

3
4 From where our house is, it is almost a mile to the nearest playground
5 and that crosses a major artery. And then the intent of our area when
6 we bought our house was that was an R-1 facility. It is not meant to run
7 businesses. We have two daycare facilities, one on Telshor and one on
8 Del Rey Boulevard within five minutes of our residence.

9
10 And then the last thing is that I just feel that if you approve this then you
11 are accepting financial responsibility for any loss of property value that
12 we have in our area. So I thank you for taking time to listen to my
13 concerns, and I appreciate the job that you guys have to do. Thank you.

14
15 Kaiser: Thank you. All right. I think there was a gentleman that was in front,
16 come on down. Please state your name for the record.

17
18 Martinez: My name is Charles Anthony Martinez.

19
20 Kaiser: And do you swear or affirm that the testimony you're about to give is the
21 truth and nothing but the truth under penalty of law?

22
23 Martinez: Yes.

24
25 Kaiser: You've got three minutes.

26
27 Martinez: Okay. I moved here last February so I'm relatively new to this
28 neighborhood. But I understand that these houses were made for single
29 use family residence only. It was only until I found out from this letter
30 when I came over that residents of Las Cruces can run businesses out
31 of their own homes. And felt that was really unusual because where I
32 came from in Nevada before I moved here. We had CCNRs, HOAs and
33 things like that that would keep these kind of things out of the
34 neighborhoods to keep the property values up, keep traffic down and to,
35 you know keep the value of our homes up. So those are the things that
36 I'm really concerned with.

37
38 The biggest thing is the traffic problem. Right now there's just no way
39 that our street can handle that type of traffic. And I think that the biggest
40 part of the problems that I see is going to be maybe the noise level. I
41 just don't think that you know that's going to be appropriate. I'm retired
42 and I bought this home, this neighborhood thinking it's going to be a nice
43 quiet community. I want to keep it that way. So anything that you can
44 do to be able to consider the residents of this neighborhood, I would
45 appreciate the consideration, sir. Thank you.

Agenda Item #7.3.

1 Kaiser: Thank you. And then we have this gentleman over here. Please state
2 your name for the record.
3
4 Th. Austin: Thomas Austin.
5
6 Kaiser: And do you swear or affirm that the testimony you're about to give is the
7 truth and nothing but the truth under penalty of law?
8
9 Th. Austin: I do.
10
11 Kaiser: Go ahead.
12
13 Th. Austin: Ditto to the gentleman that went before me. We own property in that
14 neighborhood. We're here really to oppose the next one on the agenda,
15 7.5. We own property at 1232 Antelope Pass. There is no parking there.
16 There's no parking there now. And what we're concerned with and the
17 reason we're opposed to this one is because it will set precedent for the
18 next one and all the other houses that are coming after that.
19
20 We as property investors bought the house at 1232 Antelope Pass which
21 is the next one. Which is close to this neighborhood. And like the
22 gentleman before me or the first gentleman who came up. There's
23 plenty of daycare centers within a very short distance of this property.
24 So by approving these, these SUPs, it's going to set precedent for all the
25 neighborhoods that are zoned for R-1a which is single-family, medium
26 density housing.
27
28 And the lot line, the setbacks on these properties if you guys have seen
29 them are what, about five feet. So the next house is 10 feet from our
30 property. The next wall is about 10 feet from our wall. So it's you know
31 it's going to affect the living standards for the people who already own
32 houses there. That have bought those houses. Had those houses for
33 years. And we've owned that property for over five.
34
35 So yes, we're in opposition of this one and we're going to be in opposition
36 to the next for the same reason.
37
38 Kaiser: Thank you very much. Anybody else who wishes to speak on this item?
39 Yes, please come forward. Please state your name for the record.
40
41 Holloway: Valaria Holloway.
42
43 Kaiser: And do you swear or affirm that the testimony you're about to give is the
44 truth and nothing but the truth under penalty of law?
45
46 Holloway: That is correct.

1
2 Kaiser: Go ahead.
3
4 Holloway: Yes. I am actually one of the daycares in the Parkhill Estates. And
5 currently I care for 11 children. And I am wanting to be in agreeance
6 with whoever this person is, I don't know her personally, for her SUP. I
7 know that there are plenty, I would say about three daycares that are
8 centers that are close to our homes. However, our neighbors and our
9 friends and people who live in our neighborhood want to be in a small,
10 intimate environment with their children. They don't want to be in a
11 classroom with 30 or less, more kids. And they want to be able to take
12 care of their kids. Right now like I said I take care of 11. And I do walk
13 across that Parkhill Drive to go to the park. I'm not really sure how far it
14 is but all the neighbors that I have ever ran into as they're driving does
15 slow down and help us to get across the street safely.
16
17 We are short-staffed home providers. I'm here speaking on that and 7.5
18 as well. So I don't know if I need to come back up and say it again a few
19 minutes from now, but we are really short. Not having enough providers
20 to take care of our kids in New Mexico. They're still building houses and
21 we really do need to have enough people to take care of them. Thank
22 you.
23
24 Kaiser: Thank you. All right. Last call. Anybody else in the audience? Yes.
25 Please come forward. This is for 7.4.
26
27 Lee: Hello.
28
29 Kaiser: Please state your name for the record.
30
31 Lee: Jeffery Lee.
32
33 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
34 and nothing but the truth under penalty of law?
35
36 Lee: I do.
37
38 Kaiser: Go ahead.
39
40 Lee: So I'm one of the original homeowners on Big Springs. And so I've seen
41 the area develop over the years. And traffic, yes, traffic is an issue. Now
42 that we have perpendicular streets, Big Springs is used as one of the
43 thoroughfares to get down to Cabin Creek. And then funnel out onto Del
44 Rey.
45

1 So traffic and parking are an issue. There are bus stops that are on
2 Cabin Creek so the increase in traffic does provide a hinderance to kids
3 being able to play outside. I do have neighbors that have basketball
4 courts or the stanchions and the kids play out in the street. And we have
5 folks that you know come down the street and probably faster than they
6 should. I've witnessed one neighbor backing out of her driveway and
7 running into another neighbor pulling out of their driveway. So you know
8 having this business there does provide you know a safety issue.

9
10 You know I do have one question. That is I thought that I read
11 somewhere in the City bylaws in regards to businesses that are run out
12 of homes that you know there shouldn't be any signage you know that
13 promotes or advertises the business. So I hope that you know any
14 business that does get approved you know they're in compliance with
15 what the guidelines are for having signage or not. But most importantly,
16 it's traffic and parking. So thank you very much.

17
18 Kaiser: Thank you. Okay. Last call. Can I get a final raise of hands if anybody
19 wishes to speak on Item 7.4? Okay. Seeing none. I'm going to close
20 public comment. Come back to the Commission. Any comments or
21 questions. Commissioner Smith.

22
23 Smith: This question is for staff. The first gentleman that spoke, he gave a list
24 of concerns about safety. For example you know fire, CPR training. Are
25 any of all of those listed a direct requirement for licensing?

26
27 Castillo: Mr. Chair, Commissioner Smith. A lot of those are going to be actually
28 state mandated regulations regarding CPR and educational
29 requirements that the state would require. So I'm not too familiar with
30 those. But our fire department does go out to every family childcare
31 home facility that does a home occupation regarding those. And they do
32 yearly inspections so they do look at life safety aspects.

33
34 So once a business that is doing a childcare facility from their home, they
35 are required to have a fire inspection. The fire does go out and regulate
36 what is needed for the home so that there will be modifications to this
37 home that are going to be required as part of fire code regulations.

38
39 Smith: And my second question could be for you all for the owner/operator.
40 They said that they operated at a previous address and now this
41 address. How long have they been in this current address?

42
43 Castillo: Mr. Chair, Commissioner Smith. I'm not sure as to how long they've
44 been at this current address. You guys did hear a Special Use Permit
45 for, I believe it was 1534 Santa Thomas. That Special Use Permit was
46 for this applicant as well. At the time that they applied for that one, they

1 were seeking to purchase this new home. So it was one of those things
2 where we just kind of fell short on certain aspects, not necessarily from
3 the City's standpoint or from their standpoint, it was just a weird
4 coincidence that they received a home shortly after they had to come to
5 this hearing.
6
7 Smith: Okay. Thank you.
8
9 Murray: I do have a question for staff. In the process of going through the
10 presentation, making sure it complies with all the codes and whatnot. Do
11 you guys look at the CCNRs if it is applicable to a specific neighborhood?
12
13 Castillo: Chair Kaiser, Commissioner Murray. The City does not adhere to
14 CCNRs. We go strictly based off of what our municipal codes states.
15
16 Kaiser: Just to clarify I think what Commissioner Smith was asking. So it's my
17 understanding that in order to operate this business that you also have
18 to live at this address; is that correct?
19
20 Castillo: Mr. Chair. That is correct.
21
22 Kaiser: And how is something like that enforced?
23
24 Castillo: I will look to Adam.
25
26 Ochoa: Mr. Chair. To answer that question. There's multiple ways that that's
27 taken care of. One is when they submit for their home business
28 registration, they are listed as the actual property owner and that is
29 looked up to make sure that their the actual property owner themselves.
30 Additionally, on top of that the State of New Mexico themselves also do
31 their inspection making sure that this is meeting the definition of what is
32 a home occupation. So again, the definition of home occupation is the
33 primary use of the property as a home, secondary is the business.
34
35 So when it comes to signage or what it looks like an appearance so on
36 and so forth, primary home, secondary the business, sir.
37
38 Kaiser: Thank you.
39
40 Ochoa: You're welcome.
41
42 Kaiser: I just wanted to make one comment because I know it came up a number
43 of times about the potential for increase in car traffic. I mean I certainly
44 understand that you know if you increase the capacity that surely you
45 could have residents from another neighborhood perhaps driving to drop
46 their children off. But I think one of the huge advantages of having these

1 types of facilities directly in the neighborhood is to serve those residents
2 that are in the neighborhood. So while I understand that there is always
3 the possibility for an extra car or two, I think having this in the
4 neighborhood is a direct benefit. And I hope that folks that utilize this
5 service and take their kids there are going to be looking to walk their
6 children dropping them off and picking them up in the afternoons.

7
8 So I think this type of business, in my opinion, it's sorely needed across
9 the State of New Mexico and beyond. And I think any time that we can
10 put these types of uses closer to where our children live, I think is a great
11 opportunity. So that's just my perspective and comment there. Any
12 additional comments or questions from the Commission? Hearing none.
13 Looking for a motion to ... Commissioner Smith.

14
15 Smith: Just real briefly. I just wanted to add on too. I know traffic, this isn't the
16 first time that we've you know we've sat and voted on homecare facilities,
17 and traffic is always one of the big issues. You know I'm just a common-
18 sense guy. I look at you know the number of children going from say six
19 to 12.

20
21 At the most, we're talking doubling six cars in the course of a week. And
22 they're dropping the kids off and leaving and picking up. Yes, there's a
23 possibility that one of those parents could be in a hurry, could be
24 speeding, but I live on South Melendres, I've lived there for 20 years and
25 it's a Melendres 500. I deal with speed on my street every single day
26 when I back out of my driveway. So it's part of living in the city. It's part
27 of living in a neighborhood.

28
29 I just have a difficult time; you know we're putting a lot of weight into the
30 issue of heavy traffic based on one facility possibly dropping off. You
31 know, possibly increased by six cars as opposed to the number of cars
32 that drive through that neighborhood on a regular basis going to other
33 streets or coming from other parts of the town. So I just wanted to
34 comment on that.

35
36 Kaiser: All right. Looking for a motion to approve.

37
38 Bennett: I make a motion to approve 7.4.

39
40 Murray: I second.

41
42 Baum: Board Member Smith.

43
44 Smith: I vote yes based on staff recommendation and also just the dire need for
45 childcare in this City and in the State. And also to really think about how

important it is for parents, single parents, to be able to provide safe, adequate childcare for their children.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation, Elevate Las Cruces, and approval from transportation, this is a huge need in our community.

Baum: Board Member Murray.

Murray: I vote yes based on staff recommendation and the need for childcare in the community, along with meeting State compliance and regulation.

Baum: Chair Kaiser.

Kaiser: Yes, based on staff recommendation and consistency with Elevate Las Cruces.

Baum: Motion passes.

7.5 Case # 23ZO1000133: A request for a Special Use Permit (SUP) to allow a group childcare home for up to twelve (12) children within a single-family residence located at 1236 Antelope Pass Drive. The subject property is currently zoned R-1a (Single-Family Medium Density) and encompasses ± 0.11 acres. Submitted by Chavelita's Place LLC, business owner. Council District 5.

Kaiser: Okay. Moving onto Item 7.5.

Abeyta-Corrella: Good evening. Christina Abeyta for the record. Today, I will be presenting for 1236 Antelope Pass which is a Special Use Permit for a childcare group home.

The current conditions for the property is the property is zoned R-1a. It encompasses 0.126 acres. It is single-family home with a double car garage. The home occupation business registration, they've had it since January 15, 2016 operating with the six children currently.

Here on the zoning map, you can see the location. The subject property is right here. We have the aerial map. The redlining isn't that great but you can actually see the property right here. Here you can see the access points. Code requirement for this one is Section 38-52C of the 2001 Zoning Code. It allows for home occupation business registrations for family childcare services for one to six children by right. So we're asking to increase that to seven to 12 children. That requires the SUP.

Section 38-54B of the 2001 Zoning Code, it's compliant with that. Special Use Permit require approval by the Planning and Zoning Commission in regards to a group childcare home. The proposal is to seek to expand the childcare services to a group childcare home allowing seven to 12 children. They will have staggered drop off and pick up times. Property offers the required designated on street and off-street parking at the subject property.

It will follow all childcare regulations of the State, in addition to all fire and building code requirements. Will follow all requirements of Section 38-59 of the 2001 Zoning Code.

Here is a site plan of the property. Here is the floor plan that they have provided us to show us how the home will be used as that childcare facility. Now, the staff did not identify any issues related to the SUP request. Items that were considered were determining staff's recommendations are as follows. It provides a live/work environment that promotes the development of mixed used centers to support the surrounding neighborhood and serve as a focal point for the community life. It's convenient for parents that live within the area utilizing services that create and establish stronger relationships within the community. And services are customized to meet the needs for affordability, consistency for the families to choose a service that actually aligns with their personal preference and values.

I did not receive any public input prior to the meeting. Staff's recommendations and findings. Approval based on the findings. The property will provide adequate parking for the home occupation without eliminating the necessary off-street parking per Section 38-52D of the 2001 Zoning Code. The SUP is supported by Elevate Las Cruces Comprehensive Plan which encourages home employment opportunities and increasing access to childcare. The proposal is compliant with the provisions of Section 38-52 which is the home occupation business registration, and Section 38-54 special use of the 2001 Zoning Code as amended.

So today, you have the options to vote "yes" to approve, "no" to deny, "yes" to amend with conditions, or vote to table.

Kaiser: All right. Thank you very much. Any questions, comments from the Commission? All right. Seeing none. Can I get a raise of hands for those who wish to speak on this item tonight? I see two, three, four, five. Okay. Six. So we'll go ahead and give each three minutes. So we'll start in the first row here. Please state your name for the record.

M. Ramirez: My name is Marie Peruca Ramirez.

1
2 Kaiser: And do you swear or affirm that the testimony you're about to give is the
3 truth and nothing but the truth under penalty of law?
4

5 M. Ramirez: Yes.
6

7 Kaiser: Go ahead.
8

9 M. Ramirez: I just received this little thing in the mail. You could barely, I had to get
10 a magnifying glass to even read where it was. But this is the house that
11 I own with my son and my husband. I used to live there. And so, I know
12 and I visit him a lot. So I know the traffic conditions there are such that
13 people who have, it is a two car garage. They all have two car garages,
14 but if you have a man and a wife or three people living there, everybody
15 has a car and a truck and this and that. So people usually have their
16 cars parked in the driveways or on the available streets.
17

18 To go down Antelope Road, you know I have a friend that lives there too.
19 I usually have to go all the way down to find a parking place because
20 there's just no parking places that are available. So this is a problem too
21 with cars driving on the streets there. They come up, you had a map of
22 the street there, I don't know if you can see this. Yes. There you go. So
23 the cars, we live up on the corner up there, we used to live there, our
24 son and his fiancée live there now. Okay. The cars go around really
25 fast this way and then they try to, sometimes they want to go that way,
26 it's a shortcut to get to Roadrunner which is the big street up there. And
27 so, the streets, you can see the cars on that street there. They just
28 barely, if you have cars on either side of the road it's hard to squeeze
29 through them.
30

31 So it's just already crowded enough there. It is a really, really residential
32 development. And if people are living there and also taking care of six
33 kids, how many workers do you need for 12 kids? That's going to be
34 several more cars parked on the street somewhere. And then people
35 coming and going, picking them up, they're going to have to double park
36 sometimes to get out of their car to go get their kids and bring them in.
37 So I'm just concerned about that.
38

39 And the other thing I was wondering. It says on here that you don't
40 discriminate. So what if people want to open up a, let's say after work, I
41 want to work on cars on the street. Do I need a permit for that? And can
42 you stop me from doing that because you're allowing childcare with 12
43 kids on these little houses. They are three bedrooms, I believe. I don't
44 know how many bedrooms they have there. It looks like three. So if you
45 have a bedroom and your husband has an office, where's the space for
46 the kids to be? I'm just concerned about that. But mostly it's about the

1 traffic because I know it's dangerous, when I walk my dogs. I'm out of
2 time. Okay. Thank you.

3
4 Kaiser: Thank you very much. All right. We're going to stay on this side of the
5 room. Can I get a show of hands of who wish to speak? Okay. The
6 lady that was. Please state your name for the record.

7
8 Uribe: Hello. I'm Ada Uribe.

9
10 Kaiser: And do you swear or affirm that the testimony you're about to give is the
11 truth and nothing but the truth under penalty of law?

12
13 Uribe: I do. Yes.

14
15 Kaiser: Please go ahead.

16
17 Uribe: So I believe I live in the property behind the business and right now
18 everything seems to be okay with the five or six children that they're
19 taking care of, if that's what they're saying. And so, I believe when they
20 duplicate the intake of children that's probably going to cause more
21 liability. Up until now, I have had no issues other than maybe balls being
22 thrown into our backyard and so forth.

23
24 But I am concerned for the children. If increasing the number of children
25 is going to present, like I said, more liability. Are they going to be
26 climbing the wall and going into neighboring properties? And are we
27 going to be liable for that? Or who's going to be liable for the children?

28
29 The square footage seems adequate right now for the number of children
30 that they have. So that's my concern for the safety of the children. And
31 is there enough security? People have been voicing their concern about
32 traffic. There's no speed bumps and we do have sometimes people
33 speeding. Like you said, we live in the city and you know there's
34 concerns with that.

35
36 So there's no speed bumps. There is a parking issue. You know, the
37 families have two or three cars, so you do have you know people who
38 live in the homes already that park on the street already. And that
39 causes, you know you have to be very careful when you drive out and
40 make sure because there's cars precisely parked on the street. And you
41 have to be, you know make sure you're driving at 15 miles per hour or
42 less. Be very careful.

43
44 And then the other thing too. I mean I was a single parent. Then I
45 understand the need for childcare. And I understand that - what's the
46 age group? I guess that would be my question because I know when

1 they have different age group, it presents a risk. You know, if you have
2 older children you know being taken care with younger children then that
3 could present an issue. You know I would have a question on the age
4 group.

5
6 We do have loose pets sometimes wandering around the neighborhood.
7 I mean are they going to be secured? And then the hours of operation
8 is it going to be like 8:00 to 5:00 or are they going to hold onto that? So
9 those are my concerns. And that's it. Thank you very much.

10
11 Kaiser: Thank you. And we'll go to the lady that was sitting next to her. Please
12 state your name for the record.

13
14 C. Ramirez: Chiara Ramirez.

15
16 Kaiser: And do you swear or affirm that the testimony you're about to give is the
17 truth and nothing but the truth under penalty of law?

18
19 C. Ramirez: Yes.

20
21 Kaiser: Go ahead.

22
23 C. Ramirez: I live on 4576 Pyramid Peak which is like if you go up and over it's the
24 corner to close to her, right next to her house. I have been there for nine
25 years and the street has been quiet. And I have a friend that lives on
26 1223 Antelope which is about three houses down across the street and
27 it's hard to park at her house. And it's just her that lives there.

28
29 And then I agree that there's a need for childcare but I believe not more
30 than six for a single, not even a two story. And the other thing is, is it for
31 children or children and teenagers? I'm really bad at this. I ditto Paul
32 and I think the other guy was Austin about all they said. And it also
33 decreases my home value, which I bought nine years ago.

34
35 It would increase noise on the street because it's a quiet street. And we
36 do have, we don't have traffic, it's more of a like people zooming around
37 the corners, revving their engines. We don't need more noise than that.
38 And if there's 12, there could be a lack of supervision because if it's just
39 two people doing this you know you can't see all the kids at once. And
40 then parking is an issue. And I believe that's all.

41
42 Kaiser: Thank you. And I believe we have one more on this side. Please come
43 down. Please state your name for the record.

44
45 Saldivar: Maria Saldivar.

1 Kaiser: And do you swear or affirm that the testimony you're about to give is the
2 truth and nothing but the truth under penalty of law?
3

4 Saldivar: I do.
5

6 Kaiser: Go ahead.
7

8 Saldivar: Okay. So I want answer. I'm the current owner of the SUP. I wanted to
9 just answer a couple of the questions of the concerns of my neighbors.
10 I assure you that the noise is going to be limited. I have a tight schedule.
11 Four of the kids, guys, are mine. I currently have four kiddos. My oldest
12 is nine years old and my youngest is two months old.
13

14 I'm trying to stay under. And by saying I'm trying is I just let go of one of
15 my children who turned 11 years old because my cap out is 10. Why?
16 Because I understand that a two-month-old and an 11-year-old,
17 completely different minds, completely different attention that they're
18 needing. I assure you that I am providing quality care.
19

20 The second provider also comes into the traffic concern is my husband.
21 I do park my van currently in the garage. I do currently have another van
22 that I just got rid of in my driveway. That will be gone by this weekend.
23 And my husband drives his Durango on the driveway. Parking, like I
24 said, four of the kiddos are mine. It's not going to be an issue because
25 my hours are very limited as well, Monday through Friday, 7:30 to 3:30.
26

27 The noise level will be minimal. The traffic will be minimal. What are
28 some of the other questions? Kids do not play on the street. Believe
29 me, safety is a huge thing for us. Kids will not be playing on the street
30 at any time. Like I said, we're on a schedule. I can provide people copies
31 of they needed it.
32

33 Three of the current kids that I hold right now, well, two of them actually,
34 two of the kiddos that I current watch are after school kids as well.
35 They're not even there during the day. And I close at 3:30 so they're
36 literally just, I'm their safe place to get them something to eat while their
37 parents can get from work to my home to pick them up. What else? If
38 you have any questions, I'm open. Thank you.
39

40 Kaiser: Thank you. Appreciate it. Can you just wait until we get through public
41 comment and then. I think we'll go over to; we had two folks on this side
42 of the room. Yes, so please come down. Just state your name for the
43 record and you can go ahead.
44

45 Th. Austin: Thomas Austin. I swear to tell the truth.
46

1 Kaiser: Go ahead.

2
3 Th. Austin: You bet. We do own 1232 Antelope Pass. What you gentlemen as
4 Planning and Zoning Commissioners, you understand why we have
5 Planning and Zoning, correct? I don't expect you to answer that
6 question. When we buy these properties, we buy them based on the
7 zoning that is in place. That's why we buy these properties. That's why
8 all these families have bought these properties.

9
10 But now, you're saying that the property that I bought, businesses can
11 move in next door, all around. So my question to you is where does it
12 stop? What can I start in my home and not, you've already set the
13 precedence in the last approval.

14
15 The other question I have for you and I don't understand this. As
16 Planning and Zoning, you make a recommendation to the City Council,
17 right? This isn't approved until the City Council approves that SUP,
18 correct? Or is that different here in Doña Ana County?

19
20 Kaiser: No. It's a final decision here, though you could certainly appeal it to City
21 Council.

22
23 Austin: Right. So we can appeal that, but you set precedent in the last one. So
24 what you're doing as a Planning and Zoning Commission is you're telling
25 all of these people that they can start a business in a single-family,
26 medium density housing project after we've already invested years of
27 money, mortgages in these properties. We've already heard what you
28 think about the traffic, the parking, all that stuff.

29
30 We understand that we need family care. That's why we have zoning,
31 right? Isn't that why we have zoning and planning within our
32 communities? That's where we have it. You have businesses that are
33 zoned for businesses. You have single-family residences that are zoned
34 for single-family residences. That's the purpose in planning and zoning.

35
36 So I'm confused as to what you guys are approving here when you're
37 telling these people that own single-family residential houses that now
38 you can start a business in that neighborhood. That's what you're doing.
39 So there's no limit. The lady asked about mechanics. Why can't I build,
40 so now you set a precedent. Now, I know that my house is no longer
41 single-family residence. I can turn it into a business because you just
42 said you could. And you're not worried about traffic. You're not worried
43 about safety. You're not worried about the zoning that was already
44 established when that subdivision was developed. You're going to
45 change that. And that's what you have done.

46

1 We will appeal this to the City Council, okay. But you've already set
2 precedence on the last one. I know how you're going to vote on this one.
3 I understand we're opposed to it because we bought that property based
4 on the zoning that was in place at the time. Thank you for your time.
5

6 Kaiser: Thank you. And one final speaker. Let's get through first round and then
7 we'll reconsider that. Please state your name for the record.
8

9 Te. Austin: I am Terrie Austin.
10

11 Kaiser: And do you swear or affirm that the testimony you're about to give is the
12 truth and nothing but the truth under penalty of law?
13

14 Te. Austin: Yes, sir.
15

16 Kaiser: Go ahead.
17

18 Te. Austin: So I'm here based on the children, not the traffic, not the business. I've
19 taught school for 30 years. Now, I substitute. We owned a daycare. My
20 husband and I owned Genesis Daycare. Quite a large daycare where
21 putt-putt golf used to be, we turned that into a daycare. Because we
22 wanted to help take care of children. So understand, we are not opposed
23 to taking care of children at all.
24

25 In our home at 1232 Antelope Pass, I'm there quite often because my
26 daughter lived there and my son lived there. And there are neighbors
27 around these homes that have the privacy to party if they want, do
28 whatever else they want. We have smelled, of course, smoking dope.
29 This is their business. This is their privacy. By putting these children
30 from this house with a little wall to that house, how do we know that the
31 people that are right next store or in the backyard of those homes, this
32 sounds rude to neighbors, but these obviously are decent people.
33

34 But what if there's somebody right there that's not maybe decent for
35 children? But that's their privacy. I mean that's their little square. That's
36 their little area. Their home to do what they want. Don't bring kids in
37 there that aren't, have security as the daycare that we had. We had
38 cameras at certain areas. We knew who came in and out of the house.
39 It was protected. We had to have, I don't even know how to go about
40 what I'm trying to say.
41

42 Let's please think of the children that are being dropped off there. That
43 other people that are around in this area are safe for those children. The
44 yard is no bigger than maybe from here to there. The yards are
45 extremely small with little walls. I don't know if anybody is looking over

1 those walls at these kids watching these kids. Are they protected?
2 That's what I want us to think about is the kids.
3
4 Kaiser: Thank you. Okay. A raise of hands from anybody else who wishes to
5 speak on this item? All right ma'am I'll give you 30 seconds additional
6 time. So state your name for the record and you may begin. I'll give you
7 30 seconds.
8
9 C. Ramirez: Okay. Chiara Ramirez.
10
11 Kaiser: You may begin. Go ahead.
12
13 C. Ramirez: Okay. I just wanted to talk of parking. My next door house has a ...
14
15 Kaiser: Sorry. Can you move the microphone closer to you.
16
17 C. Ramires: I'm sorry. Yes.
18
19 Kaiser: So we can hear you. Thank you.
20
21 Ramirez: My topic is about the parking. My next door neighbor already has six
22 cars and one of them blocks my windows. And the house has a lot of
23 traffic as it is like a business. And again, you're setting precedence for
24 everybody to have childcare, selling things out of their house. You know
25 it just can go on and on and on. And pretty soon, we don't have our little,
26 our single houses kind of.
27
28 Kaiser: Yes, I understand what you're saying. Unfortunately, that's time. I'm
29 going to have to cut you off there. But I appreciate your comments.
30 Okay. So seeing no other hands, we're going to close public comment
31 and come back to the Commission. And, Commissioner Smith, you had
32 a question for the applicant.
33
34 Smith: Yes. I actually have a question for staff. How narrow or broad are the
35 types of businesses that are permitted to be operated out of a single-
36 family home? I mean there's concerns about you know people starting
37 a you know auto shop you know out of the home. I mean what types of
38 businesses can be held in a single-family home?
39
40 Abeyta-Corrella: Commissioner, Chair. So the home occupation, there's actually an
41 entire code and reference to that. A home occupation can be opened by
42 any home. Again, like Adam said earlier, the primary use is the
43 residential component. The business is ancillary to that. So it is still
44 functioning as a residential home. You can open any type of business.
45 I know that they had some concerns in reference to like car shops. If the
46 person is running their office out of their home for a car shop, it is okay.

1 They cannot do work in their property because then it is a car repair
2 versus it being a primary residence.

3
4 So the focus is the primary use has to be residential. So pretty much
5 any business can go into a home as a home occupation based off of the
6 way the code is written by right. The reason we have to do the Special
7 Use Permit today is because they're asking for an increase in children
8 and that is also part of the code.
9

10 Gonzales: Chair, Commissioner Smith. To also elaborate, the uses that are
11 permitted by a home occupation are professional services, you have
12 office uses, you do have limitations as to a portion of your home is
13 allowed to be used. So only 25%, not to exceed 500 square feet. So
14 we have several home occupational business licenses that are actually
15 issued in the City of Las Cruces. Primarily, a lot of those are going to be
16 appointment based only. They could be doing massage therapy. They
17 could be running a barber shop. But these are their home occupations
18 in which they do not have to leave their home, but they're still providing
19 services to the community.
20

21 2001 Zoning Code was adopted by City Council so these regulations
22 have been in place for 22 years now. We have not amended that section
23 of our code for the home occupations. Anybody can come in and apply
24 and we look at the space in which they're using, the car demand that
25 would be required, and that's why we ask that there are generally
26 appointment based because they're utilizing still the spaces that are
27 available within your home or within the front of your property. Just to
28 clarify.
29

30 Smith: So I have a comment. So just to keep the bumpers on this bowling lane.
31 You know we're jumping outside of that lane in this narrative, creating all
32 these you know false narratives that you know are becoming a reality in
33 people's mindset. It's very, very unlikely that based on the regulations
34 and based on the rules that are in place that there would be very many
35 businesses outside of childcare that would generally occupy a single-
36 family home.
37

38 Abeyta-Corrella: Chair, Commissioner. Yes, that would be correct. So we do have
39 several businesses within this area. We do have several businesses
40 within a two-mile radius that a lot of people don't even know those
41 businesses are operating.
42

43 AUDIENCE MEMBER SPEAKING, NOT AT MICROPHONE.
44

45 Kaiser: Unfortunately, public comment is closed so we're not going to reopen
46 that. We understand the concerns. We appreciate everybody coming

1 out and expressing those tonight. Any additional comments or concerns
2 from the Commission? All right. Looking for a motion to approve.

3
4 Bennett: I make a motion to approve 7.5.

5
6 Smith: I second.

7
8 Baum: Board Member Smith.

9
10 Smith: Yes, based on staff recommendation.

11
12 Baum: Board Member Bennett.

13
14 Bennett: I vote to approve based on staff recommendation, This meets Elevate Las
15 Cruces, and the purpose and intent of the code.

16
17 Baum: Board Member Murray.

18
19 Murray: Yes, based on the staff recommendation.

20
21 Baum: Chair Kaiser.

22
23 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
24 Cruces.

25
26 Baum: Motion passes.

27
28 **9.1 Case No. 22ZO0500153:** A zone change request for properties primarily
29 within and immediately adjacent to the existing Heather Hills Master Plan
30 generally located south of University Meadows Subdivision and west of
31 Stern Drive, a.k.a. 5150 Stern Drive. The zone change basically involves
32 three lots and a portion of platted roadway adjacent to the current master
33 plan boundary for a total of ± 23.23 acres. The proposed zone change is as
34 follows:

- 35
36
- Lot 1, University Meadows Subdivision
 - Tract D - A zone change from R-1aC (Single-Family Medium Density-Conditional) to R-1a (Single-Family Medium Density) for ± 4.88 acre
 - Tract G - A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 0.69 acres.
 - Tract E, University Meadows Subdivision
 - Tract E - A zone change from R-1aC (Single-Family Medium Density-Conditional) to R-1a (Single-Family Medium Density) for ± 0.52 acre
- 37
38
39
40
41
42
43
44
45
46

- Tract H - A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 0.95 acres
- Lot 2, MVCS Summary Subdivision No. 1
 - Tract B - A zone change from R-1aC (Single-Family Medium Density-Conditional) to R-1a (Single-Family Medium Density) for ± 6.30 acres.
- Lot 2-2A, University Meadows Subdivision
 - Tract A - A zone change from R-1aC (Single-Family Medium Density-Conditional) to R-1a (Single-Family Medium Density) for ± 0.68 acres.
 - Tract F - A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 8.94 acres
- Portion of platted road (EBL&T Sub. B)
 - Tract C - A zone change from R-1aC (Single-Family Medium Density-Conditional) to R-1a (Single-Family Medium Density) for ± 0.17 acres.
 - Tract I - A zone change from R-1a (Single-Family Medium Density) to R-1a (Single-Family Medium Density) for ± 0.10 acres.

Submitted by Libbin Underwood Engineering & Surveying, representative.
Council District 2.

Kaiser: Okay. We are now moving onto Item 9.1. And I believe, staff you're going to want to combine 9.1 and 9.2.

Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas, Interim Planner for the record. That's correct. If we could suspend the rules and hear Case 9.1 and 9.2 together and then unsuspend them and vote on them independently, it would probably need a motion to do that.

Kaiser: Yes. So can I get a motion to suspend the rules so we can listen to 9.1 and 9.2 together?

Bennett: I make a motion to suspend the rules for 9.1 and 9.2 so we can hear them together.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

1 Baum: Board Member Murray.

2
3 Murray: Yes.

4
5 Baum: Chair Kaiser.

6
7 Kaiser: Yes.

8
9 Baum: Motion passes.

10
11 Kaiser: All right. Over to you staff.

12
13 Banegas: Thank you, Mr. Chairman, Members of the Commission. Tonight, we're
14 going to hear a proposed major amendment to the Heather Hills Master
15 Plan. And then along with that some rezoning of property within the
16 Master Plan and very little outside the Master Plan which will be brought
17 into the boundary for consistency's sake with what it is they're proposing
18 to do.

19
20 The cases involved is 23CS0500134 and 22ZO0500153. So the current
21 conditions regarding these two cases. They're both obviously located at
22 5150 Stern Drive. And as indicated incorporate most, well, all property
23 within the existing boundary of Heather Hills and again some limited
24 areas immediately adjacent to and outside that boundary.

25
26 The indication of MP pertains to a Master Plan. It's currently at 21.48
27 acres. It's vacant land, underutilized. Involves three parcels, one tract
28 and two portions of platted roadways. The Land Use Designations for
29 these are single-family medium density residential and there are some
30 areas that are identified as quasi-institutional. And if I could explain that.
31 Back in the day when this area was annexed and a Master Plan was
32 prepared and ultimately approved in the initial zoning brought forward to
33 City Council and that too was approved. The Mesilla Valley Christian
34 School wanted to place their high school campus in this vicinity and
35 hence the quasi-institutional restrictions that were put in place. They are
36 no longer interested in doing that, hence these amendments.

37
38 In terms of the zone change, it's involving a little bit more acreage. It
39 probably seems a little awkward that the acreage would be different, but
40 it's 23.23 acres. Basically, any time you're involving one piece of
41 property and the conditions are on part of it but not on the other, you
42 have to identify the whole thing just for clarity's sake. And so, that's what
43 the difference is there.

44
45 We have zoning in place per the Master Plan that is both R-1a, that's our
46 single-family medium density residential, and R-1aC. The big C at the

1 backside there pertains to a set of conditions that were originally placed.
2 It talks about access to Broadmoor Drive and restrictions to that. It talks
3 about underground utilities. It talks about total cap on dwelling units that
4 were put in place back in the day and quasi-institutional uses in certain
5 areas.

6
7 So the Master Plan was prepared and approved back in '07. And I
8 mentioned some of the dwelling unit restrictions, they limited the
9 development within Heather Hills to 172 dwelling units. And I'll be
10 explaining that some of these requirements or restrictions are no longer
11 valid, but in this instance those were the restrictions that were put in
12 place and that's in bullet number one.

13
14 So in 2009, there was the first amendment which added 7.13 acres. In
15 2019, I consider de facto amendment, they carved out 36.5 acres of the
16 Heather Hills boundary and created another Master Plan called
17 University Meadows. So one of the elements of tonight's amendment
18 process is to realign, if you will, the boundaries for Heather Hills, update
19 them among other things.

20
21 So the property itself is in the suburban neighborhood place type
22 pursuant to the Elevate Las Cruces Comprehensive Plan. The access
23 is primarily from Stern Drive onto Silverado Loop. And then there is a
24 dead end or a portion of roadway that will provide access to the property
25 in question.

26
27 And then on the south side, it's also from Stern Drive onto Rocky Road
28 and then a street called Pebble Brook Drive. Pebble Brook Drive is part
29 of a Cobblestone Creek, a subdivision. Back in the day, it was an ETZ
30 or Extraterritorial Zone subdivision that was approved.

31
32 Both Stern Drive and Rocky Road, Stern Drive is a minor arterial, Rocky
33 Road a collector is designated in the MPO Major Thoroughfare Plan and
34 in Elevate Las Cruces. Area land uses include single-family residential
35 on the north, some industrial uses and low density residential along with
36 multi-dwelling low density residential in the south. You've got I-10
37 basically and Stern Drive to the east. And agricultural uses to the west.

38
39 As indicated earlier, Mesilla Valley Christian School was proposing to
40 locate their high school campus within Heather Hills and my
41 understanding is they are no longer interested in doing so.

42
43 So this is the area in question. I show it as an orange-colored area. This
44 shows the zoning that is in place. Some of the property is R-1a, some
45 of it is the R-1aC. And again, those conditions that I've talked to in the
46 previous slide. Around it you have some industrial zoning here. You've

1 got a mobile home park and lower density residential uses here. And
2 then very similar style of development in terms of what is being proposed
3 in this vicinity, this area here is the University Meadows. Once upon a
4 time when it originally came in, it was all part of Heather Hills.

5
6 Aerial map just showing you location. Again, ag land immediately west,
7 proximity to I-10, etc. So in terms of the proposal for the Master Plan,
8 applicant is seeking a major amendment. It will be called Heather Hills
9 Master Plan Amendment No. 3. And again, it's intended to change the
10 land use designation of areas within the boundary that were originally
11 specified for quasi-institutional uses. And they're asking that that be
12 changed and that they become single-family medium density residential
13 designations.

14
15 We're also adding two portions of platted right-of-way and roadway. All
16 told was 0.35 acres so very little added to the existing boundary of
17 Heather Hills. So it's going from 21.48 to 21.83 acres. And obviously,
18 we're also going to be updating the Master Plan boundary and the
19 proposal seeks to create ultimately through the development process 80
20 additional single-family dwellings within the property itself. I should say
21 80 total, not 80 additional.

22
23 So here's the Master Plan. Again, University Meadows up here. That's
24 no longer a consideration as part of Heather Hills. But what we have is
25 a boundary here that is certainly under consideration this evening for the
26 amendment. As indicated, a couple of parcels, three parcels, one tract,
27 and then some portions of right-of-way are under consideration.

28
29 These are the areas that had the condition placed where it limited uses
30 to quasi-institutional. This was for the college campus. And those are
31 the areas that would be earmarked for consideration of change this
32 evening. Just a quick picture showing some of the Master Plan drainage
33 and grading that's being proposed and some of the utilities as well.

34
35 And in terms of the proposal for a zone change, obviously we're looking
36 for consistency with the Master Plan Amendment. We're looking to
37 change those areas that are R-1aC to R-1a. This action would eliminate
38 the conditions originally and subsequently established for Heather Hills.
39 And to recap, that talks about the restrictions to Broadmoor Drive and its
40 access. That issue is no longer relevant to Heather Hills because it no
41 longer is adjacent to that subdivision where Broadmoor Drive would have
42 provided access for the area.

43
44 The dwelling cap was established for the entire original boundary and
45 since 35 acres were carved from Heather Hills and made into its own
46 Master Plan, those conditions no longer are relevant. Underground

1 utilities, the developer is proposing to do just that. So that's really not a
2 relevant condition at this point. And quasi-institutional uses as indicated
3 are no longer relevant in that they have pulled back from placing their
4 campus on site.

5
6 These are very much the same boundary. These are the areas that have
7 that condition associated with it. So you can see that not all of the
8 boundary has the R-1aC, just the areas in orange. A couple of photos
9 taken just looking from Silverado Loop to Stern Drive. That's the primary
10 access point, and that's that cul-de-sac. They're looking to carve or
11 redefine the cul-de-sac and kind of normalize it a little bit. And then that
12 piece that gets removed would go into the boundary. But otherwise,
13 Silverado Loop traverses in this fashion down and provides access to
14 University Meadows primarily.

15
16 This is a shot from Silverado Loop that looks at the industrial properties
17 that are more or less, well along the east side of the Heather Hills
18 boundary. This is that little roadway that has a name, I cannot remember
19 what it is, but that will be providing connectivity to Heather Hills. And
20 then this is looking towards Cobblestone Creek, again that ETZ
21 subdivision on the south. And this is the roadway that traverses through
22 Cobblestone Creek in part. This is Pebble Brook Drive looking south.
23 Rocky Road is more or less in this vicinity and would take you out to
24 Stern Drive. This is a road that will provide the southern access that they
25 will ultimately connect to.

26
27 So in terms of analysis, there is no health, safety, or welfare issues
28 identified by staff. Staff also feels that the Master Plan Amendment as
29 proposed and the zone changes as proposed will provide compatibility
30 with the existing uses that are out there within the surrounding
31 neighborhood. It's certainly consistent with the suburban place type as
32 per Elevate Las Cruces. Encourages, obviously, low to moderate
33 density residential land uses intermixed with areas of commercial.
34 There's not a lot of commercial development out there but there is some
35 industrial uses. And the proposal is just to create additional residential
36 lots that fulfill that focus.

37
38 There is a requirement in code for a buffer along the residential lots
39 where they sit adjacent to those industrial areas, more intense land uses,
40 and that will be achieved merely through a setback requirement of 25
41 feet within that area that's very standard. Within that area, they can
42 place sheds, you know gazebos, that kind of thing, but nothing on a
43 primary use type level such as a house.

44
45 The case was noticed as per code. And staff received a few phone calls,
46 inquiries only. No pros or cons were identified in talking with the

1 individuals. And before the Master Plan was up for consideration, the
2 applicant had done an early notification mailout for the zone change
3 portion and staff did not hear of any significant public input regarding that
4 effort.

5
6 The Master Plan itself was taken to DRC on the 8th of this month and
7 the DRC voted four to zero in favor of it. Two issues were addressed at
8 DRC. One regarding connectivity of the water and gas utilities in the
9 proposed Master Plan area with existing utilities in Silverado Loop. And
10 then one was the roadway connection to Pebble Brook Drive. Both of
11 those issues have been addressed by the developer's representative,
12 design engineer and they are certainly willing to do that, so those are
13 kind of nonissues at this point.

14
15 Staff recommendation and findings, the subject property is vacant, 21.4
16 acres in size as proposed with the amendment. It was annexed Master
17 Plan and zoned for single-family medium density residential and quasi-
18 institutional development. Again, the school is no longer interested in
19 this location. The amendment and zone change, if approved, brings
20 consistency to what's already developed in the surrounding area. And
21 quite frankly, staff finds that the proposed amendment may reduce
22 development impacts to the area than what was originally proposed.
23 That seemingly was a big issue back in the day when annexation was
24 underway for this area.

25
26 The subject property is in the suburban neighborhood place type. It's
27 characterized by a development style that is being proposed. And
28 several goals, policies, and actions from Elevate support this request,
29 and it is certainly consistent with the purpose and intent of the 2001 Las
30 Cruces Zoning Code.

31
32 So your options this evening are to vote "yes" and approve the two cases
33 individually, vote "no" and deny them, vote "yes" with conditions, or vote
34 to table. And just recognize that any denial will require new information
35 or facts that were not identified in packet or presentation by staff. We do
36 have Mr. Zach Libbin who's the design professional regarding this
37 property in attendance and he may want to say a few words. And he's
38 certainly here to answer any questions you may have of him. And I stand
39 for questions.

40
41 Kaiser: All right. Thank you very much. And does the applicant representative
42 wish to make some remarks? Before you begin, please state your name
43 for the record.

44
45 Libbin: Zachary Libbin.
46

1 Kaiser: And do you swear or affirm that the testimony you're about to give is the
2 truth and nothing but the truth under penalty of law?
3

4 Libbin: I do.
5

6 Kaiser: Go ahead.
7

8 Libbin: Mr. Chair, Commissioners. I think Vincent did a very nice job of
9 presenting the project at hand and I don't really have anything to add.
10 As noted, with the school no longer planning to build a school there, the
11 residential lots consistent with the surrounding area makes sense.
12

13 Kaiser: All right. Thank you. Any questions from the Commission? I've got just
14 a couple of brief ones. This is for you Mr. Banegas. In the staff report,
15 page three you describe zone changes from R-1a to R-1a but that's not
16 what's actually happening, right? We're just looking at the R-1aC to R-
17 1a?
18

19 Banegas: Mr. Chairman, Members of the Commission. When I speak to, the area
20 that is under zone change is presented not only to staff but will be
21 presented to the Council in what the design professional identified as
22 tracts. And some of those tracts, for instance, this one here or in this
23 case it's a lot, Lot 2-2A comes down in this fashion and then loops
24 around, etc. And there's a piece, there's a portion of it that has the R-
25 1aC designation. So for sure that piece gets identified but because it's
26 part of a larger property you also need to identify the portion that's okay
27 as a remaining R-1a. That's why that's ...
28

29 Kaiser: Okay. Thank you. And then, so in this what we're looking at right now,
30 I guess it would be Daybreak Court? Has that been proposed in that
31 fashion? It's at that northern part. South a little bit. The cul-de-sac at
32 the very top.
33

34 Banegas: Okay. This one here?
35

36 Kaiser: Yes, that one. Was that the original when they were looking at the
37 campus, was that the original roadway design, or is that something that's
38 relatively recent?
39

40 Banegas: Mr. Chairman, Commissioners. That is a design consideration. Again,
41 this is showing proposed. They're subject to change but roadways as
42 part of their development proposal. In the original Master Plan, there
43 were no such configurations of roadways for the school.
44

45 Kaiser: Okay. I guess my only comment would be it seems kind of silly to have
46 such a long cul-de-sac. I just don't understand why you wouldn't connect

1 that to the Silverado Loop and have an actual loop. So that would just
2 be my only suggestion if that's even on the table. You know if you're
3 living at the edge of the cul-de-sac I mean you're literally right next to the
4 arterial, the exit to the neighborhood and yet you've basically got to go
5 that entire distance out of your way. It just seems inefficient.
6

7 Banegas: Mr. Chairman, Members of the Commission. Mr. Libbin was advised of
8 that very concern. It's not an issue for tonight in that it's a Master Plan
9 but for preliminary plat consideration. I'm informed that that could very
10 well be an issue.
11

12 Kaiser: Very good. That's all that I have. Any other comments? All right. I will
13 go to the public. Is there anybody who wishes to speak on this item? I
14 see one. And state your name for the record.
15

16 Pearson: George Pearson.
17

18 Kaiser: And do you swear or affirm that the testimony you're about to give is the
19 truth and nothing but the truth under penalty of law?
20

21 Pearson: I do.
22

23 Kaiser: Go ahead.
24

25 Pearson: So I didn't understand the right-of-way discussion. Whether you're
26 taking right-of-way away from the roadways or adding right-of-way to the
27 roadways. My concern would be that complete street standards are
28 followed. And especially seems like there's an arterial going through
29 part of this. That the arterial would be built for safe multimode access
30 for both pedestrians and bicyclists. Thank you.
31

32 Kaiser: Thank you. And I'll go to staff. I think it's being added to the subdivision,
33 correct?
34

35 Banegas: That's correct. These roadways are being added. And there's a stretch
36 of half a roadway here that is being added. And then obviously, this little
37 cul-de-sac just is becoming usable land. But all the roadways that are
38 shown at this stage as proposed roadways are local roadways,
39 residential.
40

41 Kaiser: Thank you. All right. We will need to restore our regular rules to be able
42 to vote on both of these independently since we're looking at 9.1 and
43 9.2. And we have to make a motion to restore. So can I get a motion?
44

45 Bennett: I make a motion to unsuspend 9.1 and 9.2.
46

Agenda Item #7.3.

1 Murray: I second.
2
3 Baum: Board Member Smith.
4
5 Smith: Yes.
6
7 Baum: Board Member Bennett.
8
9 Bennett: Yes.
10
11 Baum: Board Member Murray.
12
13 Murray: Yes.
14
15 Baum: Chair Kaiser.
16
17 Kaiser: Yes.
18
19 Baum: Motion passes.
20
21 Kaiser: All right. Looking for a motion to approve Item 9.1.
22
23 Bennett: I make a motion to approve 9.1.
24
25 Smith: I second.
26
27 Baum: Board Member Smith.
28
29 Smith: I vote yes based on staff recommendation.
30
31 Baum: Board Member Bennett.
32
33 Bennett: I vote to approve based on staff recommendation, this meets Elevate Las
34 Cruces, and the DRC approval.
35
36 Baum: Board Member Murray.
37
38 Murray: Yes, based on staff recommendation, Elevate Las Cruces, and the highest
39 and best use of the tract of land.
40
41 Baum: Chair Kaiser.
42
43 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
44 Cruces.
45
46 Baum: Motion passes.

9.2 Case No. 23CS0500134: A request for approval of a Major Amendment, known as Heather Hills Master Plan Amendment No. 3. The existing Heather Hills Master Plan boundary includes three parcels (Lot 1 and Lot 2-2A of the University Meadows Subdivision and Lot 2 of the MVCS Summary Subdivision No. 1. This master plan encompasses ± 21.48 acres and is generally located south of University Meadows Subdivision and west of Stern Drive, a.k.a. 5150 Stern Drive. Properties within the boundary are zoned R-1a (Single-Family Medium Density) and R-1aC (Single-Family Medium Density – Conditional). In terms of the amendment, consider the following:

- The proposed amendment will add ± 0.078 acres (Existing ROW from within the University Meadows Master Plan boundary and more specifically ROW from the easternmost Silverado Loop cul-de-sac). A portion of a platted roadway (EBL&T Subdivision 'B') will also be added to the Heather Hills Master Plan boundary making the total acreage ± 21.83 acres. The additional acreage will be incorporated into a proposed drainage tract and proposed residential lots.
- ± 4.96 acres of Lot 1, Lot 2 in its entirety, and ± 0.69 acres of Lot 2-2A will convert from the designated Institutional land use to Single-Family Medium Density.
- $\pm .271$ acres of a platted road (EBL&T Sub. B) will convert from a platted road to Single-Family Medium Density.
- 80 residential lots are proposed.

Submitted by Libbin Underwood Engineering and Surveying, representative. Council District 2.

Kaiser: Looking for a motion to approve 9.2.

Bennett: I make a motion to approve 9.2.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendation and it also meets the criteria for Elevate Las Cruces.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation.

Baum: Board Member Murray.

1 Murray: Yes, based on staff recommendation.

2
3 Baum: Chair Kaiser.

4
5 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
6 Cruces.

7
8 Baum: Motion passes.

9
10 **9.3 Case No. 23ZO05000120:** A proposed zone change request from R-3 (High
11 Density Residential District from the South Mesquite Overlay) to C-1
12 (Neighborhood Commercial District from the South Mesquite Overlay). The
13 subject property is encompassing 0.233 ± acres and is located at 541 S.
14 Campo St. The zone change is to allow for the future development of a
15 commercial business on the subject property. Submitted by Libbin
16 Underwood Engineering and Surveying, representative. City Council
17 District 1.

18
19 POSTPONED UNTIL DECEMBER 19, 2023.

20
21 **9.4 Case No. 23VO0500128:** A variance request to deviate fifteen (15) feet to
22 the required twenty (20) foot side yard setbacks for construction of a new
23 shade structure located at 480 N. Seventeenth Street. The property
24 encompasses 2.715 ± acres and is zoned M-1/M-2 (Industrial Standard).
25 Submitted by Libbin Underwood Engineering and Surveying,
26 representative. Council District 4.

27
28 Kaiser: Okay. Moving onto our final item this evening, Item 9.4, A variance
29 request to deviate fifteen feet at 480 North Seventeenth Street.

30
31 Abeyta-Corrella: Good evening. Christina for the record again. I will be presenting for
32 480 North Seventeenth Street. This is for a variance. The current
33 conditions of the property is the property is currently zoned M-1/M-2. It
34 encompasses 2.715 acres. It is currently the existing RT Electric,
35 Incorporated building. Its use is a warehouse associated with
36 manufacturing.

37
38 This is the zoning map. And here you can see the parcel of property
39 which kind of looks like an L. Here's the aerial map showing the property.
40 The proposal, the variance will allow for a new shade structure that will
41 encroach approximately 15 feet into the required side yard setback. The
42 current requirement is 20 feet. This is going to be created to house
43 vehicles, store material, and protect the utility poles. Here is the site plan
44 of the property. This is where they're going to be doing the construction
45 of that shade structure.

46

1 Analysis. Items that were considered when determining staff's
2 recommendation are as follows. The buffer requirement is intended to
3 minimize the noise, and that was the purpose of having that 20-foot
4 setback. Currently, if we go back to the map, there's already an organic
5 buffer right here by EBID. So there's like a canal already there. So there
6 will be no impact to the adjacent properties identified. The proposal
7 intent again is to store the materials, equipment, and vehicles that are
8 already part of their daily operations.

9
10 We did not receive any public input related to this variance. Staff
11 recommendation and findings are to recommend approval. The request
12 will not impact the neighboring properties. The surrounding properties
13 are currently zoned commercial and industrial. The request for the 15-
14 foot deviation to the minimum required rear setback will not have any
15 visual impacts to the surrounding property owners based off of the
16 zoning and the buffer.

17
18 The office and commercial districts allow a five-foot setback but industrial
19 has that 20-foot setback to enforce the buffer requirement. The proposal
20 will not hinder the intent of that buffer requirement.

21
22 So tonight, you have the option to vote "yes" to approve, vote "no" to
23 deny, vote "yes" to amend with conditions, or vote to table.

24
25 Kaiser: Thank you. Any questions, comments?

26
27 Smith: A quick one, just out of curiosity. How does an industrial setback differ
28 from a residential setback? And as far as like granting a variance.

29
30 Abeyta-Corrella: Residential is usually a five foot to seven foot. It's based on the
31 different zones. So it could be anywhere from zero to seven feet. The
32 industrial has the 20-foot buffer to separate from adjacent properties that
33 can be of different use types. So such as residential, additional
34 commercial and when we look here there's actually a mobile home park
35 and that's what it's buffering from. So it's not going to have impact here.
36 The rest of this is also, as you can see, industrial. Across we have a
37 PUD and the underlying zoning for that is also industrial.

38
39 Smith: All right. Thank you.

40
41 Kaiser: Any other questions? All right. Anybody in the audience who wishes to
42 speak on this item this evening? All right. Seeing none. Looking for a
43 motion to approve.

44
45 Bennett: I make a motion to approve 9.4.

1 Murray: I second.
2
3 Baum: Board Member Smith.
4
5 Smith: I vote yes based on staff recommendation and it meets the criteria for these
6 types of decisions.
7
8 Baum: Board Member Bennett.
9
10 Bennett: I vote to approve based on staff recommendation.
11
12 Baum: Board Member Murray.
13
14 Murray: Yes, based on staff recommendation and the use of the intended variant.
15
16 Baum: Chair Kaiser.
17
18 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
19 Cruces.
20
21 Baum: Motion passes.
22

23 **10. DISCUSSION**

24
25 **11. STAFF ANNOUNCEMENTS**

26
27 Kaiser: Okay. So that's it for our items this evening. Were there any staff
28 announcements or discussion?
29
30 Nichols: Yes. Thank you, Chair Kaiser and members of the Commission. Larry
31 Nichols for the record. Just basically, one announcement. And there will
32 be a Planning and Zoning Commission meeting, in December. It will be
33 scheduled for December the 19th. So we had hoped to not have to have
34 one during the approaching Christmas, but there were several items that
35 people wanted to be brought before the Commission. Thank you.
36
37 Kaiser: Well, that sounds good. I look forward to seeing everybody in December.
38

39 **12. ADJOURNMENT (7:43)**

40
41 Kaiser: And thank you all for coming out this evening. Looking for a motion to
42 adjourn.
43
44 Bennett: I make a motion to adjourn.
45
46 Smith: I second.

Agenda Item #7.3.

- 1
- 2 Kaiser: All in favor?
- 3
- 4 MOTION PASSES UNANIMOUSLY.
- 5
- 6
- 7
- 8
- 9
- 10

Chairperson



City Council Action and Executive Summary

3060; Council Bill 24-018

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A			
1st Reading:	January 16, 2024	Adopted:	February 5, 2024	
Drafter:	Chris Faivre	Department:	Economic Development	
Program:	Business Development	Line of Business:	Business Development	
Title:	AN ORDINANCE REPEALING SECS. 7.8-110—7.8-199, ARTICLE III. - WAGE PLUS AND SECS. 7.8-200—7.8-299 ARTICLE IV. - FILM, FROM CHAPTER 7.8 OF THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED.			

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To amend the Chapter 7.8 Economic Development of the Las Cruces Municipal Code to remove to Article III. Wage Plus, and Article IV. - Film.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
In 2018, the Economic Development Department was elevated from a section to a stand-alone department within the City. This process involved growing the role and scope of work of the staff. To help facilitate the City's economic development efforts, an economic development chapter was written into the Municipal Code. The intent of the chapter was to house and consolidate the various incentives the City has identified as significant to the economic growth of the community.

The creation of incentives for business development is an important component in recruiting and creating economic-based jobs for Las Cruces. These actions are supported by the City's strategic plan as well as Elevate Las Cruces.

In 1993, the New Mexico State Legislature enacted NMSA 1978 section 5 -10 -1 to 5-10 -13, titled the " Local Economic Development Act" (the "Act") to allow for the use of public resources for economic development. In 2023, the City of Las Cruces amended the Las Cruces Local Economic Development Plan through Ordinance No. 3039 to include recent changes to LEDA enacted at the state level.

Additionally, two of the articles of the Economic Development Chapter adopted in 2018 are no longer needed - Article III. Wage Plus, and Article IV. - Film from Chapter 7.8 Economic Development. Wage Plus will be amended and adopted via resolution, and there are no film incentives at the municipal level.

This ordinance is to amend Chapter 7.8 Economic Development of the Las Cruces Municipal Code to remove to Article III. Wage Plus, and Article IV. - Film.

SUPPORT INFORMATION:
[Exhibit "A" Repealed Sections](#)

Agenda Item #7.4.

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will amend Chapter 7.8 Economic Development of the Las Cruces Municipal, Code and remove secs. 7.8-110—7.8-199, article III. Wage Plus, and secs. 7.8-200—7.8-299, Article IV. - Film.
2. Vote "No"; this will not amend Chapter 7.8 Economic Development of the Las Cruces Municipal, Code to remove secs. 7.8-110—7.8-199, article III. Wage Plus, and secs. 7.8-200—7.8-299, Article IV. - Film.
3. Vote to "Amend"; this will require additional direction from City Council.
4. Vote to "Table"; this will require additional direction from City Council.

REFERENCE INFORMATION:

Ordinance No. 2697, Ordinance No. 3039

ORDINANCE 3060; COUNCIL BILL 24-018

AN ORDINANCE REPEALING SECS. 7.8-110—7.8-199, ARTICLE III. - WAGE PLUS AND SECS. 7.8-200—7.8-299 ARTICLE IV. - FILM, FROM CHAPTER 7.8 OF THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED.

The City Council is informed that:

WHEREAS, in 2018, the Economic Development Department was elevated from a section to a department within the City of Las Cruces, with the purpose of expanding the economic development efforts of the City; and

WHEREAS, an economic development chapter was written into the Municipal Code intended to house and consolidate the various incentives the City has identified as significant to the economic growth of the community; and

WHEREAS, the creation of incentives for business development is an important component in recruiting and creating economic-based jobs for Las Cruces, and these actions are supported by the City's strategic plan as well as Elevate Las Cruces; and

WHEREAS, in 1993, the New Mexico State Legislature enacted NMSA 1978 section 5 -10 -1 to 5-10 -13, titled the " Local Economic Development Act" (the "Act") to allow for the use of public resources for economic development; and

WHEREAS, in 2023, the City of Las Cruces amended the Las Cruces Local Economic Development Plan through Ordinance No. 3039 to include recent changes to LEDA enacted at the state level; and

WHEREAS, two of the articles of the Economic Development Chapter adopted in 2018 are no longer needed - Article III. Wage Plus, and Article IV. - Film from Chapter 7.8 Economic Development.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT Chapter 7.8 Economic Development of the Las Cruces Municipal Code is amended to remove secs. 7.8-110—7.8-199, article III. Wage Plus, and secs. 7.8-200—7.8-299, Article IV. - Film as shown in Exhibit "A".

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

Agenda Item #7.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

Secs. 7.8-110—7.8-199. Reserved.

~~ARTICLE III. WAGE PLUS~~

Secs. 7.8-200—7.8-299. Reserved.

~~ARTICLE IV. FILM~~

Secs. 7.8-300—7.8-399. Reserved.



24-050

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	Adopted: February 5, 2024		
Drafter:	Larry Nichols	Department:	Community Development
Program:	Office of the Director - Administrative	Line of Business:	Office of the Director - Administrative
Title:	A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 643 EAST PICACHO AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED AND AMEND THE CITY'S ADOPTED FY2023-24 BUDGET THROUGH A BUDGET ADJUSTMENT OF \$28,000.		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

Abate and remove the structure at 643 E Picacho Street and amend the adopted FY 2023-24 Budget by \$28,000.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) has received complaints regarding the 643 East Picacho Avenue property related to the unsafe interior space and collapsing structural framing. The City’s Chief Building Official submitted a property report with the findings of site and structural conditions including construction debris, severe hazards, and unsanitary conditions which deemed the property uninhabitable and substandard. Please see Attachment “A” for a more detailed summary of the conditions. The proposed resolution complies with state law and is a remedial measure taken to protect the health and safety of the community. Council approval is required in accordance with NMSA 1978, §3-18-5. The statute allows the governing body of a municipality to remove a structure that is a menace to the public comfort, health, peace, or safety. City funds will be used to complete this demolition action (see Attachment “B”).

SUPPORT INFORMATION:

- [Exhibit "A" FY24 Fund Summary CD](#)
- [Attachment "A" - 643 E Picacho Ave Property Report](#)
- [Attachment "B" - 643 E Picacho Ave Quote](#)

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

ADA Advisory Committee

DOES THIS AMEND THE BUDGET?:

- ☒ Yes
- ☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: 10,000 **AVAILABLE AMOUNT:** 6,209.22 **EXPENDITURE AMOUNT:** 28,000

Funding Source(s):
10146001-721080

Overall Budget Impact:
Please refer to Exhibit "A" Fund Summary

Does this action amend the Capital Improvement Plan (CIP)?

- ☐ Yes
- ☒ No

Does this action align with Elevate Las Cruces?

- ☒ Yes
- ☐ No

OPTIONS / ALTERNATIVES:

- 1. Vote "Yes"; this will approve the abatement and removal of the building located at 643 East Picacho Avenue and accept the budget adjustments as presented and adjust the City's FY2023-2024 budget.
- 2. Vote "No"; this will not approve the abatement and removal of the building located at 643 East Picacho Avenue nor accept the budget adjustments as presented and will not adjust the City's FY2023-2024 budget.
- 3. Vote to "Amend"; this will require the Council to share additional direction with staff.
- 4. Vote to "Table"; this will not approve the abatement and removal of the building.

RESOLUTION 24-050

A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 643 EAST PICHACO AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED AND AMEND THE CITY'S ADOPTED FY2023-24 BUDGET THROUGH A BUDGET ADJUSTMENT OF \$28,000.

The City Council is informed that:

WHEREAS, the building, structure, or premises is located at 643 E Picacho Avenue, Las Cruces, NM;
and

WHEREAS, the Community Development Department and the Code Enforcement Division of the Las Cruces Police Department have investigated the condition of said building, structure, or premises and have found same to be so ruined, damaged, and dilapidated that it constitutes a menace to the public comfort, health, peace, or safety and warrants abatement and removal; and

WHEREAS, multiple calls for service and complaints have been received by the Codes Enforcement Division; and

WHEREAS, the budgetary amendment is to issue an adjustment to the FY 2023-2024 budget to fund the cost of abatement of the building, structure, or premises located at 643 E Picacho Avenue, Las Cruces, NM; and

WHEREAS, this adjustment will not deplete the General Fund 2/12ths reserve requirement.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT City of Las Cruces, record owner of said building, structure, or premises shall commence removal of same within ten (10) days after service of a copy of this Resolution or within said ten (10) day period, file written objection to findings herein with the City Clerk of the City of Las Cruces, asking for a hearing before the City Council.

(II)

THAT if there is a failure of compliance with the provision of Section (I) herein, the City of Las Cruces shall proceed to remove said building, structure, or premises and abate said unsafe condition and the cost thereof shall constitute a lien against such property so removed and against said lot or parcel of land from which such removal be made, all as required and allowed by law.

(III)

THAT If any section, paragraph, sentence, clause, word, or phrase of this resolution is for any reason held to be invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity of the remaining provisions of this resolution. The Council hereby declares that it would have passed this resolution and each section, paragraph, sentence, clause, word or phrase thereof irrespective of any provisions being declared unconstitutional or otherwise invalid.

(IV)

Agenda Item #8.1.

THAT the FY 2024 Budget is hereby amended as shown in Exhibit "A", attached hereto and made a part of this Resolution.

(V)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Johana Bencomo

Seconded by: Tessa Abeyta

AYES

NAYS

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2023-24

Exhibit "A"

	1000 GENERAL FUND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 64,287,294	64,287,294	0	64,287,294
Revenues				
Municipal Gross Receipts Tax	54,285,239	54,285,239	0	54,285,239
Public Safety Gross Receipts Tax	4,880,700	4,880,700	0	4,880,700
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	47,825,436	47,825,436	0	47,825,436
Environmental Gross Receipts Tax	2,259,525	2,259,525	0	2,259,525
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	15,000	15,000	0	15,000
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	825,000	825,000	0	825,000
Lodgers Tax	0	0	0	0
Property Taxes	13,655,649	13,655,649	0	13,655,649
Payment In Lieu of Property Tax	867,573	867,573	0	867,573
Franchise Fees	2,805,951	2,805,951	0	2,805,951
Payment In Lieu of Franchise Fees	1,236,000	1,236,000	0	1,236,000
Licenses, Fees & Permits	3,123,510	3,128,510	0	3,128,510
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	81,100	81,100	0	81,100
Charges For Services	2,367,209	2,372,209	0	2,372,209
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	4,224,128	4,224,128	0	4,224,128
Investment Income	141,000	141,000	0	141,000
Miscellaneous Revenues	140,112	140,112	0	140,112
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	138,733,132	138,743,132	0	138,743,132
TOTAL RESOURCES	\$ 203,020,426	203,030,426	0	203,030,426
Expenditures				
General Government	4,781,377	4,781,377	0	4,781,377
Legislative	519,035	519,035	0	519,035
Municipal Court	2,106,314	2,106,314	0	2,106,314
Chief Administrative Officer	285,228	285,228	0	285,228
City Manager	6,641,813	6,805,313	0	6,805,313
Legal	2,728,546	2,728,546	0	2,728,546
Las Cruces Police Department	34,427,931	34,495,395	0	34,495,395
Las Cruces Fire Department	21,499,980	21,782,476	0	21,782,476
Utilities	0	0	0	0
Economic Development	4,372,325	4,372,325	0	4,372,325
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	3,438,804	3,438,804	0	3,438,804
Financial Services	7,467,508	7,467,508	0	7,467,508
Information Technology	6,352,622	6,355,158	0	6,355,158
Fleet	0	0	0	0
Assistant City Manger-500	9,471,636	9,488,017	0	9,488,017
Parks & Recreation	18,511,145	19,162,121	0	19,162,121
Community Development	5,126,792	5,126,792	28,000	5,154,792
Quality of Life	8,779,933	9,891,796	0	9,891,796
Public Works	10,479,099	10,493,077	0	10,493,077
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 146,990,088	149,299,282	28,000	149,327,282
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(19,369,208)	(19,504,221)	0	(19,504,221)
Total Other Resources	\$ (19,369,208)	(19,504,221)	0	(19,504,221)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 36,661,130	34,226,923	(28,000)	34,198,923
Required Reserve:				
State Required 1/12th	12,249,174	12,441,607	2,334	12,443,941
Local CLC 1/12th	12,249,174	12,441,607	2,334	12,443,941
AVAILABLE BALANCE	\$ 12,162,782	9,343,709	(32,668)	9,311,043



643 E Picacho

July 25, 2023

STAFF CONTACT:

Larry F Nichols, CBO, CPM (575) 528-3340,
lnichols@las-cruces.org

Building Inspector C. Grado (575) 528-3282

LCPD Code Officer Wieland (575-297-7672)

OWNER:

Owner Name CITY OF LAS CRUCES

Owner Address PO BOX 20000

LAS CRUCES, NM 88004

Legal Summary Subd: COUNTY ASSESSORS PLAT 2
 (BK 6 PG 64 - 477724) 346 Lot: PT OF LT 13 Block:
 204 S: 7 T: 23S R: 2E

Parcel Number 4-007-134-352-472

District:

1 - Councilor Gandara

SITE ADDRESS:

643 E Picacho Ave Las Cruces NM 88001

EXISTING ZONING:

RESIDENTIAL MEDIUM/HIGH DENSITY (R-2)

REQUEST:

Site assessment to determine property condition

SATUTORY AUTHORITY:

Substandard dwelling (Section 60-13-9,60-13-10.3 and 60-13-44 NMSA 1978):

[14.5.1.3 NMAC -Rp14.5.1.2
 NMAC,11/15/2016]

LCMC Ord. No. 2478 Article II, Division 1,

Sec, 30-137 14.5.1.12 Unsafe structure or
 other Life Safety Hazard: A.(2) and A. (3)

LCMC 2015 International Building code, as
 adopted by NMAC 14.7.3.8 - 14.7.2.44

Section 104 and section 116

SUMMARY OF SITE ASSESSMENT: The site inspection determined that the property needs rehabilitation or demolition Due to the removal of a structural framing, electrical hazards, unmaintained elements of the property.

SUMMARY OF RECOMMENDATION: The Community Development Department recommends that it be found:

The Building Official of Community Development Department recommends that it be found:

- 1) That the structure is substandard, unfit for occupancy or use and a hazard to the public safety, and welfare; and
- 2) That it is an unsafe structure due to the physical condition of the interior walls and roof / ceiling rafters / ceiling joist being damaged.
- 3) That the structure is not in substantial compliance with the municipal Building codes regulating structural elements of the roof and walls; and
- 4) That the Certificate of Occupancy be revoked; and
- 5) That the responsible party shall abide by all permitting requirements; and
- 6) That upon failure by the owner or any other interested party to comply with the order of the City Community Development Department; the City may take whatever action is necessary to bring the property into compliance, including demolition.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT: Notice was mailed to all property owners of the subject property on 7/28/2023.

STAFF COMMENTS: According to the Historic Properties map, this is a "Contributing"

PROPERTY INFORMATION AND CHRONOLOGY:

7/25/23 - The City's Code Enforcement Office was requested to complete an inspection of this property, inspection was completed on

7/30/ 2023 - A site and structure inspection was performed by the City Building Official and Public Works- Building Facility staff

STAFF AND PUBLIC COMMENTS

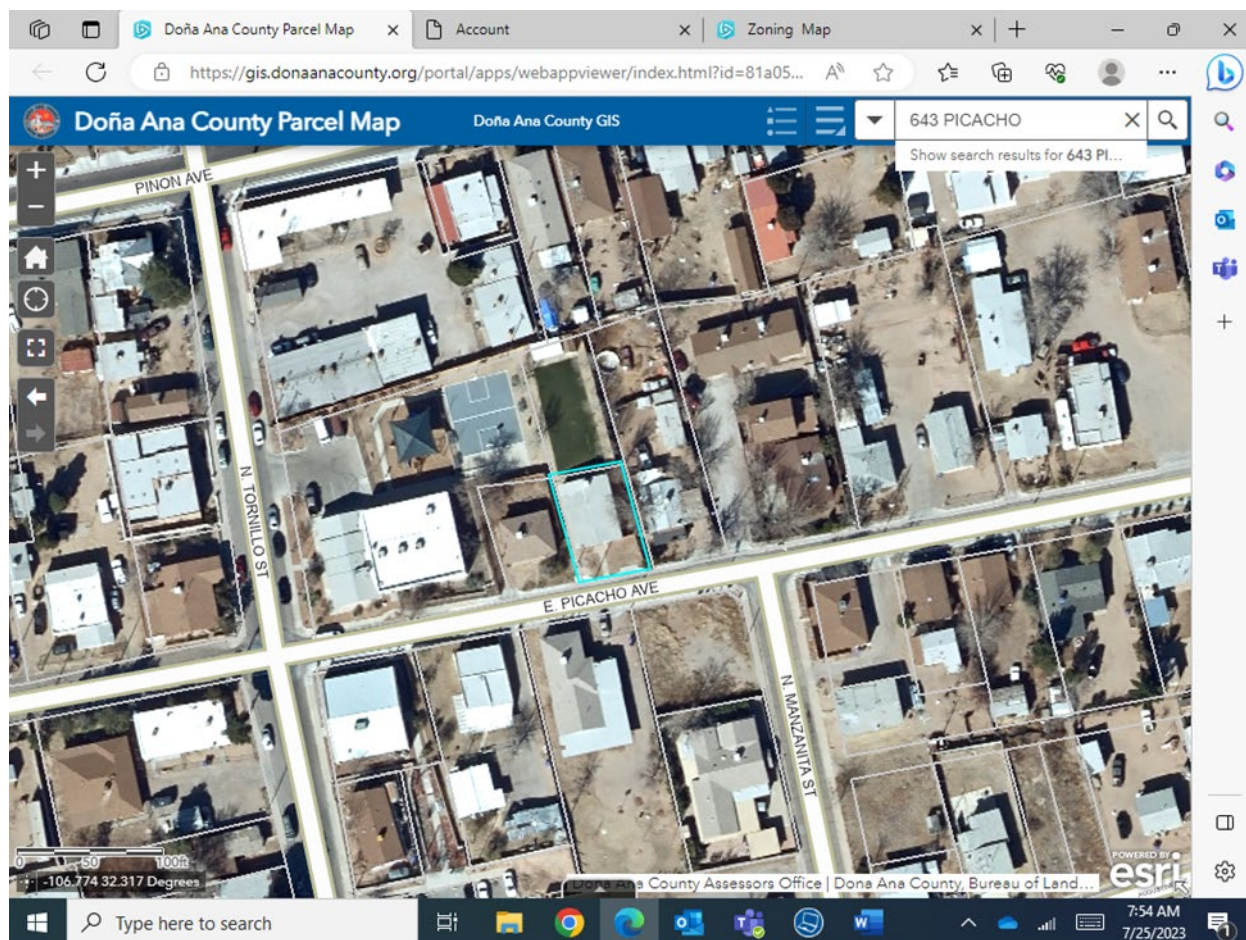
PUBLIC NOTIFICATION AND INPUT:

Notice of Condemnation and Do Not Occupy was posted the subject property on 7/28/2023.

This property is City owned and being scheduled for demolition in 2023.

ATTACHMENTS:

Vicinity Map:



County Tax Assessors Information:



Doña Ana County

Treasurers Office

Rodriguez

Treasurer

Shopping History

My Reports

Tax Account Search

Help

Logout Public

Assessor

Print Forms

[Account Balance](#)

[Statement Of Taxes Due](#)

[Summary of Taxes Due](#)

Account Links

[Account Summary](#)

[Account Value](#)

[Transaction Detail](#)

[Setup E-Billing](#)

External Links

[Your Assessor Account](#)

[Pay My Taxes](#)

How Do I Pay My Taxes?

- Perform an Account Search to locate your Account.
- Double-click on your Account to pull it up.
- Once you are in the Account, you will see a link to "Pay My Taxes" on the left under External Links.

Click the "Pay My Taxes" link.

Tax Account

Summary

Account Id

R0225599

Parcel Number

4007134352472

Owners

CITY OF LAS CRUCES

Address

PO BOX 20000
LAS CRUCES, NM 88004

Situs Address

643 PICACHO

Legal

Subd: COUNTY ASSESSORS PLAT 2 346 Lot: PT OF LT 13 Block: 204 S: 7 T: 23S R: 2E

Inquiry

As Of

07/25/2023

Payment Type

☐ First

☒ Full

Value

Area Id	2IN_R - 2IN_R	Mill Levy	31.3650000
		Actual	Assessed
EXEMPT RESIDENTIAL	15,000	5,000	
LAND - 9100			
EXEMPT RESIDENTIAL	28,815	9,605	

Type here to search

7:56 AM

7/25/2023



Doña Ana County

Assessor's Office

Account Search

View Created Report(s)

Help?

Logout Public

Account Information

[Account Summary](#)

[Remarks](#)

[Owner Information](#)

[Assessment History](#)

[Estimate Taxes](#)

[Tax Payment](#)

[Attachment\(s\)](#)

Account Detail

[Land](#)

[Residential](#)

Transfers

1114839

1112989

0933391

0433121

0214861

0214859

0214857

979783

979782

919434

919433

919432

Account: R0225599 *Mill Levy does not include Special District Rates such as: Lower Rio Grande Flood Levy, Hueco Levy, Mclead Watershed Levy, Caballo Soil and Water Conservation Levy, and La Union Watershed Levy.

Location	Owner Information	Assessment History		
Situs Address 643 PICACHO	Owner Name CITY OF LAS CRUCES	Actual (2023 - Residential Cap applied)		
Deed Holder	Owner Address PO BOX 20000	Primary Taxable		
Tax Area 2IN_R - 2IN_R	LAS CRUCES, NM 88004	Exempt (\$15,043)		
Parcel Number 4-007-134-352-472		Adjusted Taxable Total		
Legal Summary Subd: COUNTY ASSESSORS PLAT 2 (BK 6 PG 64 - 477724) 346 Lot: PT OF LT 13 Block: 204 S: 7 T: 23S R: 2E		Tax Area: 2IN_R Mill Levy: 31.3650000		
Neighborhood I04 - ORIG-TOWNSIT				
Type	Actual	Assessed	SQFT	Units
Exempt Land	\$15,000	\$5,000	3920.000	1.000
Exempt Improvement	\$30,129	\$10,043	896.000	

Transfers

Record Reception	Book	Sale Date	Grantor	Grantee	Doc Type	Parcel Number
Sequence	Number	Page				
14	1114839		CITY OF LAS CRUCES	DONA ANA COUNTY	C	4007134338488
13	1114838		DONA ANA COUNTY	RESOLUTION 000001	C	1537331330168

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Agenda Item #8.1.

Agenda Item #8.1.



ESC19 Contract # 21-7410

G. Sandoval Construction, Inc.
650 Montana, Suite B
Las Cruces NM 88001

DATE: 7/10/2023

Project:	City of Las Cruces 643 E. Picacho Demolition of a House	
Owner:	City of Las Cruces 700 N. Main Stret Las Cruces NM 88001	
Owner's PO#:		
Attention:	Tony Renio arenio@las-cruces.org	

DESCRIPTION		Cost
City of Las Cruces 643 E. Picacho Demolition of a House Demolition of an Existing House to include Removal/Disposal of any Concrete, Foundation, Utilities and Site Elements. Southwest Hazard Control Asbestos Testing Disposal Fees Hauling of Materials Off Premises Misc. Materials		\$25,862.50
	Subtotal:	\$25,862.50
	Tax: 8.0625%	\$2,085.16
	TOTAL:	\$27,947.66

Prepared by:
Michael Q. Hernandez, Project Manager



24-080

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ N/A		
1st Reading:		Adopted:	February 5, 2024
Drafter:	Sara Gonzales	Department:	Community Development
Program:	Community Planning	Line of Business:	Community Planning
Title:	A RESOLUTION ADOPTING THE NORTHRISE BLUEPRINT PLAN.		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
Approve the Northrise Blueprint Plan.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The Las Cruces City Council passed Resolution No. 11- 234 in 2011 and Resolution No. 16 - 032 establishing the City's Community Planning Blueprint Initiative. A Community Planning Blueprint is a policy plan for a defined area in the City that applies and promotes the vision, goals, and objectives of the City's Comprehensive Plan. Blueprint plans allow additional expression of the aspirations for an area or neighborhood regarding land use, aesthetics, urban design, and/or preservation of valued community resources.

This Resolution adopts the Northrise Blueprint Plan and promotes the vision and goals of Elevate Las Cruces Comprehensive Plan by supporting the planned and orderly development of vacant parcels of land in the suburban place type. The specific purpose of this blueprint plan is to:

- Promote the goals of Elevate Las Cruces;
- Address future public improvement needs;
- Address transportation and property access issues; and
- Support the development of the plan area.

The Northrise Blueprint is a staff-initiated planning effort for eighteen (18) unique parcels of real estate that encompass 62.39 + acres located between Northrise Drive, N. Roadrunner Parkway, Rinconada Boulevard, and the Alameda Arroyo. The blueprint plan states four (4) goals with supporting actions and includes a conceptual roadway/circulation alignment graphic. The blueprint plan goals include:

- Create an interconnected roadway network through the Northrise properties;
- Provide a system of multi-modal mobility connections that allows future residents and visitors to safely reach their destinations;
- Preserve natural drainage pathways and habitat in and around the Alameda Arroyo; and
- Prepare the land for future development.

City staff and their consultants, Sites Southwest, crafted the Northrise Blueprint Plan following the City's blueprint plan process including input from the property owners, impacted government agencies (New Mexico State University, Las Cruces Public Schools, New Mexico State Land Office, City of Las Cruces) and adjacent

Agenda Item #9.1.

property owners. Sites Southwest invited affected property owners and representatives in August 2023 to either an in-person discussion on September 28, 2023, or a virtual meeting (held via Zoom) on October 5, 2023, to address future public improvement needs along with transportation and property access concerns for the defined area.

The proposed Northrise Blueprint Plan represents a balancing of stakeholder input, staff input, technical and site-specific issues, and City Council policy represented in the Comprehensive Plan, the Strategic Plan, and related documents. The vision, goals, and policies of the Blueprint are in keeping with current trends and best practices in the planning field.

On December 19, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The blueprint request had no opposition from area residents and two owners attended the P&Z meeting and were supportive of staff's efforts to assist the community. The Planning and Zoning Commission recommended approval by a vote of 5-0-0 (one Commissioner absent, one Commissioner vacancy).

SUPPORT INFORMATION:

[Exhibit "A" - Northrise Blueprint Plan](#)

[Attachment "A" - P&Z Staff Report](#)

[Attachment "B" - Minutes from the December 19, 2023, P&Z Meeting](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

P&Z

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and adopt the Northrise Blueprint Plan.
2. Vote "No"; this will not approve the Resolution and not adopt the Northrise Blueprint Plan.
3. Vote to "Amend"; this would approve and make changes to the Northrise Blueprint Plan based on City Council Direction.
4. Vote to "Table"; this would delay the adoption decision on the Northrise Blueprint Plan to a future meeting, based on City Council direction.

RESOLUTION 24-080

A RESOLUTION ADOPTING THE NORTHRISE BLUEPRINT PLAN.

The City Council is informed that:

WHEREAS, Resolution No. 16-132, the Community Planning Blueprint Initiative, established a method for adopting a Community Blueprint; and

WHEREAS, the purpose of the Northrise Blueprint Plan is to assist the owners and developers of the property with utility and roadway access; and

WHEREAS, the Northrise Blueprint Plan is in conformance with and supported by the goals, objectives, and policies of Elevate Las Cruces by following the Suburban Place Type and proposing road cross-sections for multi-modal transportation; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on December 19, 2023, recommended approval of the Northrise Blueprint Plan request by a vote of 5-0-0 (one Commissioner absent, one Commissioner vacancy).

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the Northrise Blueprint Plan as shown in Exhibit "A", attached hereto and made a part of this Resolution, is hereby adopted.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

Agenda Item #9.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



NORTHRISE BLUEPRINT PLAN



DECEMBER 2023

PREPARED BY:



PROJECT OBJECTIVE AND BACKGROUND

Plan Objective

The Northrise Blueprint Plan is a document that is intended to address future access and conceptual road alignments on undeveloped land situated between Northrise Drive, North Roadrunner Parkway, Rinconada Boulevard, and the Alameda Arroyo.

The intent of this plan is to work with landowners of both the subject properties and adjacent properties to develop an access and road network plan that will guide future development. Additionally, this plan includes the following objectives:

- Promote the goals of *Elevate Las Cruces*
- Address public improvement needs
- Address transportation and property access issues
- Enable development of the plan area

Plan Criteria

The following criteria justify the need for a Community Blueprint Plan in this area of Las Cruces:

- Multiple landowners prevent standard planning or implementation process to address issues
- Supports Blueprint Objectives (see above)
- Stakeholder participation is required to successfully complete the Blueprint Plan
- There are defined property boundaries
- Plan must be compatible with the *Elevate Las Cruces* Future Development Map

PROJECT TIMELINE

August | Organization and Team Formation

August – September | Background Collection and Analysis

September- October | Property Owner and Developer Input

October- November | Street Network and Blueprint Action Plan Draft

December | Planning and Zoning and City Council Hearings

Plan Boundaries

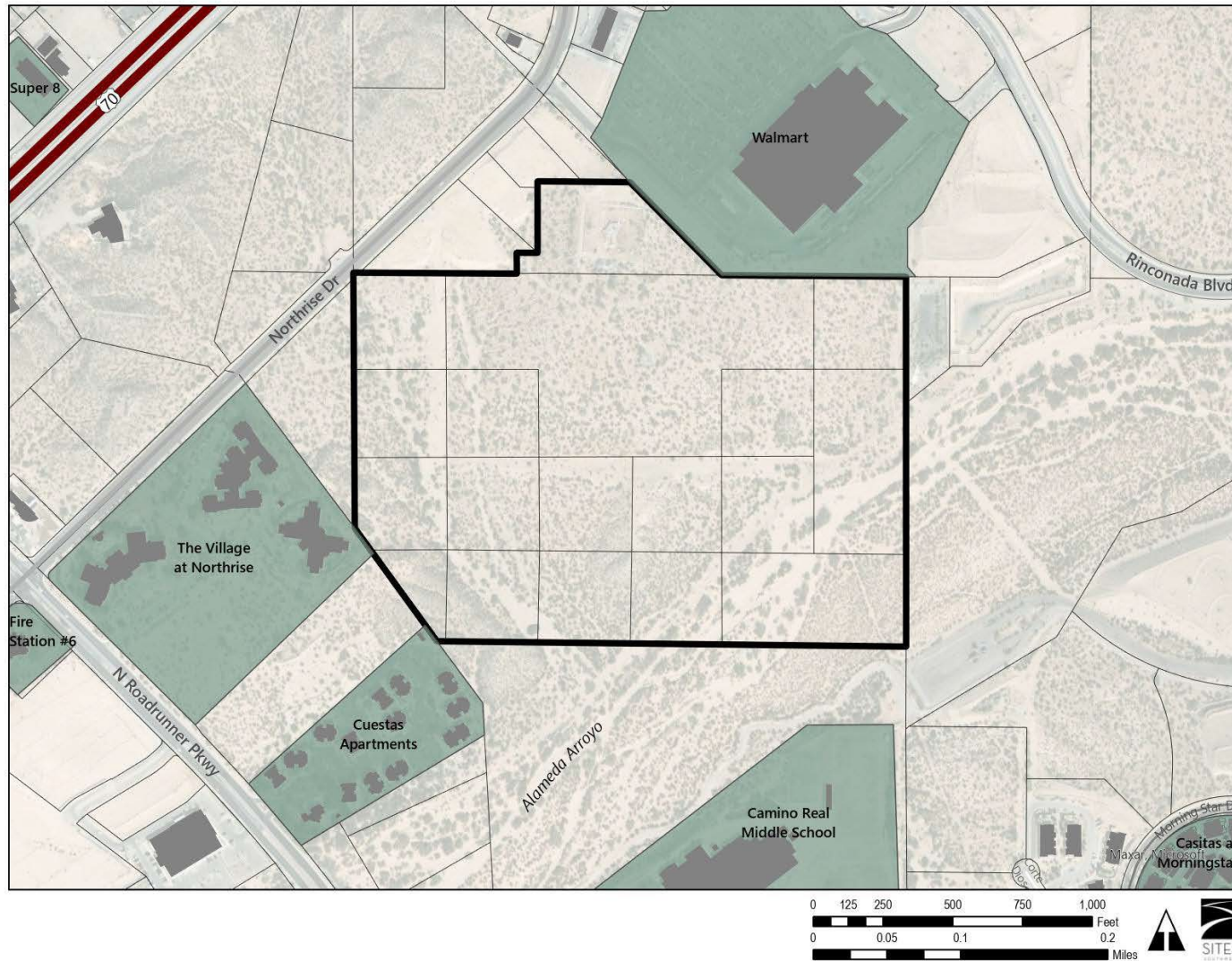


Figure 1. Plan Boundaries and nearby landmarks

The properties that comprise the Northrise Blueprint Plan are located in a growing part of the City of Las Cruces. The area surrounding the intersection of Rinconada Boulevard and Northrise Drive has seen lots of development in recent years, primarily in the form of commercial and service-related businesses. Beyond, there has been a lot of growth in single-family residential development, with some multi-family located along Roadrunner Parkway. This location also has easy access to US Hwy 70, allowing for a primary vehicular connection to downtown Las Cruces and the surrounding areas.

The vacant land in the subject area is largely undisturbed, with the exception of social trails and utility easements. The planning area lies in the Desert Scrub and Grassland community of the Chihuahuan Desert ecoregion. The vegetation found here corresponds to the topography of the area and its relationship to the Alameda Arroyo. Within the arroyo there are large, undeveloped desert areas with healthy stands of vegetation, including velvet mesquite, screwbean mesquite, acacia, desert willow, creosote, fourwing saltbush, winterfat and native grasses. This vegetation provides habitat for desert wildlife. All recommendations provided later in this document take into consideration the importance of providing a natural buffer around the arroyo in order to maintain this habitat.

This planning area also includes significant topographic variations that will affect both roadway development and drainage. The topography also provides lovely viewsheds oriented toward the Organ Mountains from various vantage points in the property that should be preserved, when possible.



Figure 2. Views from planning area



Stakeholder Engagement



Initial communication was sent to property owners as a letter in February 2023 informing them of the City's intention to move forward with the Blueprint planning process.

In August of 2023 the team sent out invitations to property owners and their representatives to attend either an in-person discussion about the Blueprint Plan on Thursday, September 28, 2023, or a virtual meeting (held via Zoom) on Thursday, October 5, 2023. The purpose of these discussions was to better understand the plans and ideas that owners have for the area regarding future access and a road/multi-modal transportation network in the area.

The following questions were asked as part of these discussions:

1. Do you have any plans for your property?
2. How do you envision this space in the future?
3. What do you see as potential issues or challenges for access?
 - a. Public v. Private Roadways
 - b. Topography
4. What do you see as the most important connections to surrounding roadways and destinations?



Figure 3. Notes from Stakeholder Meetings

Previous Plan Alignment

ELEVATE LAS CRUCES



Figure 4. Elevate Las Cruce Future Development Map of subject property

The *Elevate Las Cruces Plan* (adopted in 2020) provides guidance on how the City and community envision the area around the Northrise properties in the future. As shows in Figure 4, the properties are primarily designated as “Suburban Neighborhood” with some land, primarily along the Alameda Arroyo, shown as “Open Space Reserve”.

Suburban Neighborhood: provides for low-to-moderate density residential land uses intermixed with areas of commercial development. Predominant land uses include single-family and multi-family development, retail and office uses, and other ancillary

institutional and public uses such as schools, parks, and places of worship.

Open Space Reserve: land to be maintained in a natural state and to remain primarily undeveloped. This place type includes public property and other areas principally set aside for habitat preservation or passive recreation, including preserves and other open spaces conserved in perpetuity.

The plan also provides direction for future streets in Suburban Neighborhoods. Key considerations include:

- Incorporate Complete Street features in a way that comfortably accommodates bicycling, walking, and transit use.
- Maximize street interconnectivity with emphasis on small block size.
- Create greater separations between motor vehicle travel lanes and parallel pedestrian pathways.
- Improve motor vehicle flow through ease of access management design features.
- Incorporate enhanced traffic stops that remove buses from travel lanes.

FIGURE 1.20. TYPICAL SUBURBAN STREET SECTION

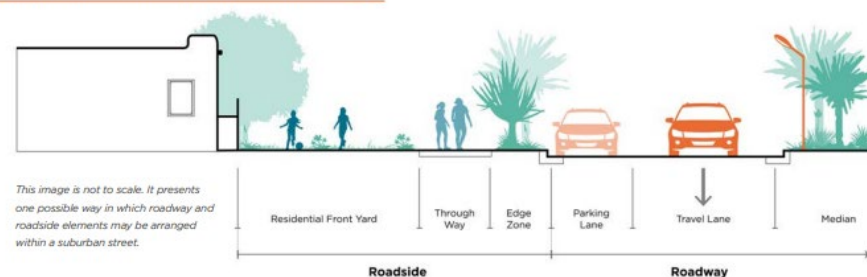


Figure 5. Typical Suburban Street Section as shown in ELC

LAS CRUCES ACTIVE TRANSPORTATION PLAN & COMPLETE STREETS



The 2018 Las Cruces Active Transportation Plan provides guidance for how the City can achieve its goal of making Las Cruces more accessible and safer for multi-modal transportation. The plan shown above notes several proposed trails and bikes lanes that would buffer the project site. This plan also provides design recommendations for different types of streets and trails. Complete Street elements are noted here and include: sidewalks, bike lanes, or wide paved shoulders, special bus lanes, comfortable and accessible public transportation stops, frequent and safe crosswalks, median islands, accessible pedestrian signals, curb extensions, narrower travel lanes and roundabouts.

Complete Streets are streets that have been designed for all modes of transportation including walking, bicycling, riding the bus, and driving. They prioritize people over automobiles and can lead to improvements in safety, health, economic vitality, and community vibrancy.

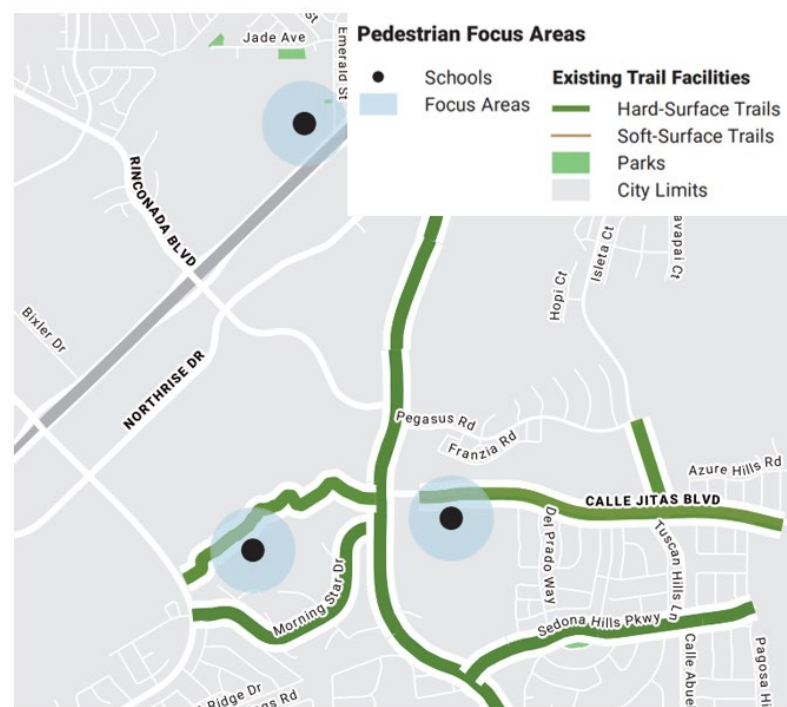


Figure 6. Proposed pedestrian focus areas

Figure 6 notes priority pedestrian areas that are closest to the project area, including Camino Real Middle School and Doña Ana Community College to the east.

MESILLA VALLEY MPO PLANNING DOCUMENTS

The Mesilla Valley MPO Future Thoroughfares Map notes Northrise Drive and N Sonoma Ranch Boulevard as existing Principal Arterials. Roadrunner Parkway and Rinconada Boulevard are classified as existing Minor Arterials.



Figure 7. MPO Future Thoroughfares Map, 2020



Figure 8. MPO Transit System Priorities Map, 2020

The MPO Transit System Priorities Plan notes that Northrise Drive should be an express corridor for the RoadRUNNER transit system.

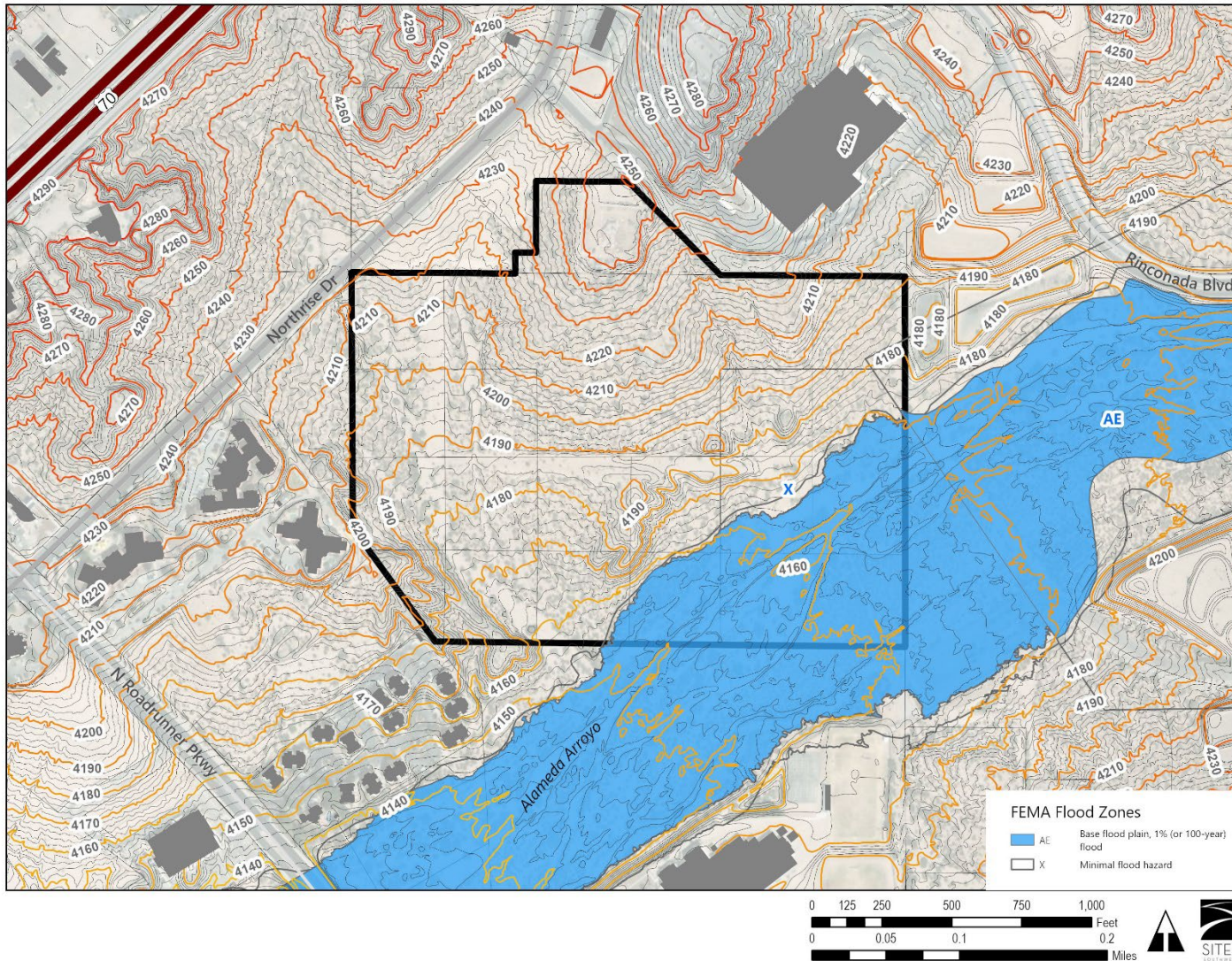
Existing Conditions

The following pages describe the overall existing conditions of the property, including the landscape and environment, topography and flood zone, land use, zoning, utilities, easements, circulation around the site, and property ownership. This information provides contextual information that is critical for recommendations for future access and connections throughout the site.

LANDSCAPE



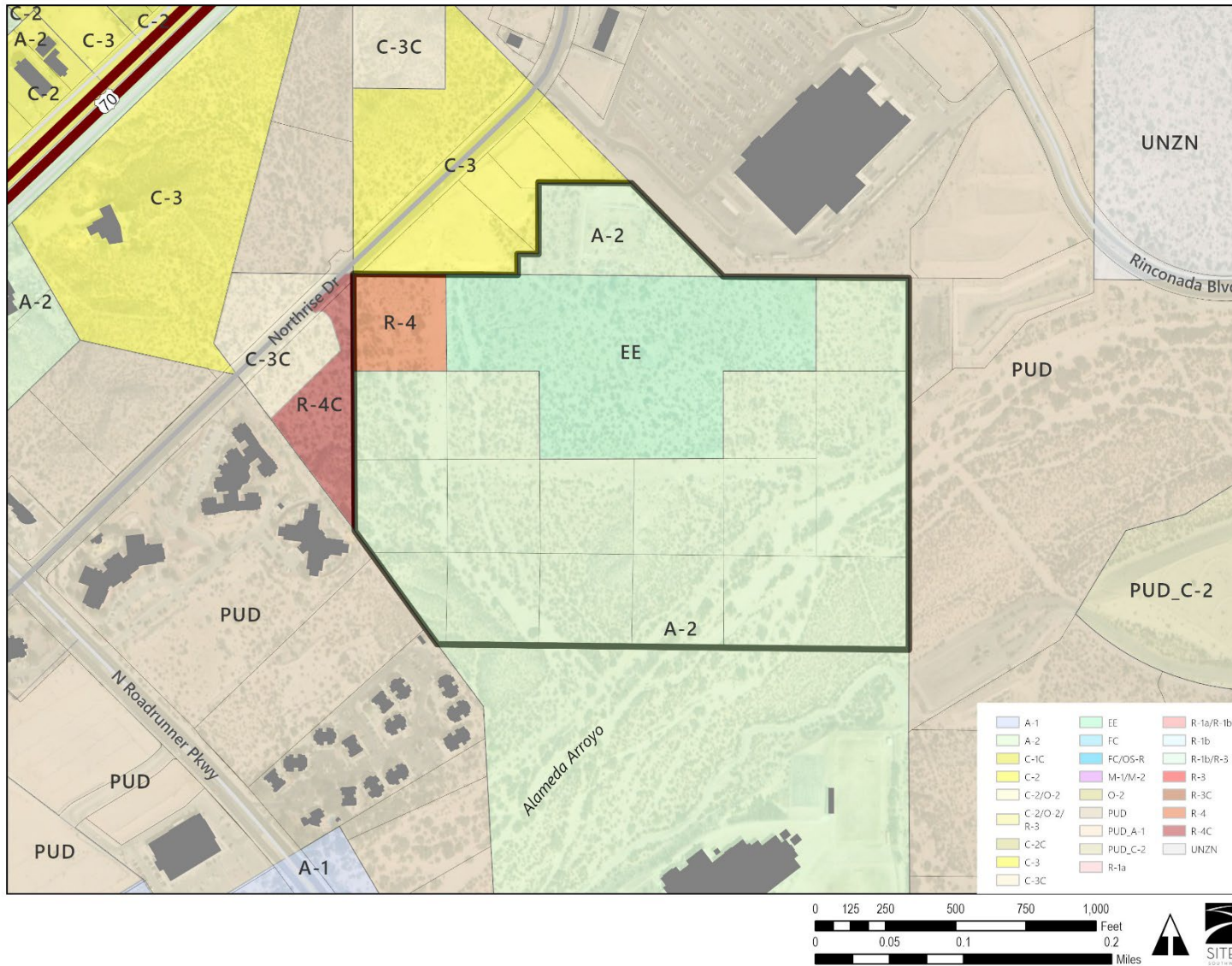
TOPOGRAPHY & FLOODZONE



The properties that comprise the project area have varied, hilly topography that reaches its lowest point at the Alameda Arroyo. The Arroyo cuts diagonally through the project area, flowing from the east to the southwest.

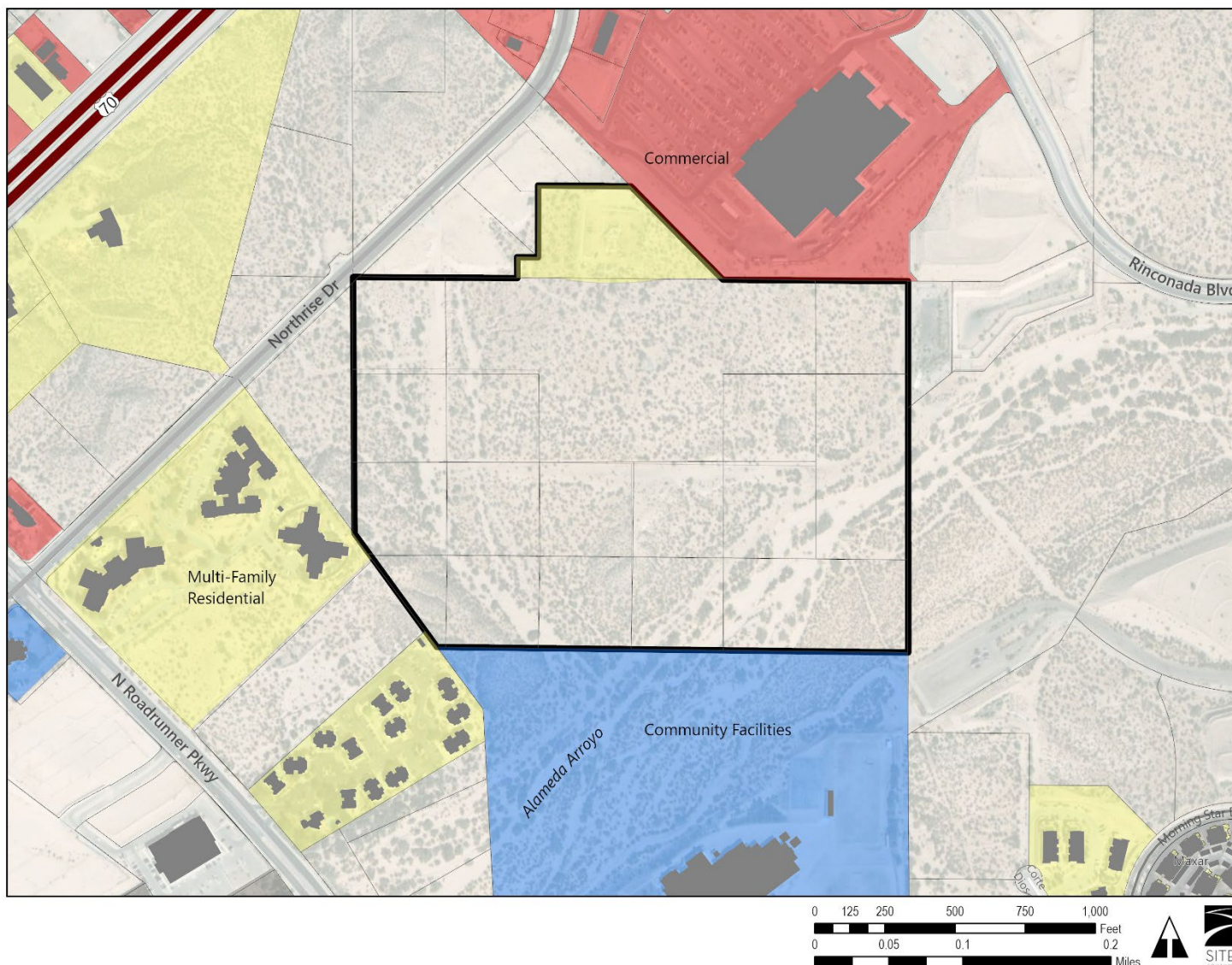
Given that four of the subject properties lie fully or partly within the FEMA AE flood zone, future potential development here would be significantly restricted and have substantial development costs added in accordance with Section 34 of the City's Land Development Code.

ZONING



Zoning for the subject properties includes three categories. The first is the property in the northwest corner which is zoned R-4 (orange, Residential Medium/High Density). The largest interior property is zoned EE (light green, Equestrian Estate). Finally, the rest of the properties are zoned A-2 (also light green, Rural/Agricultural). The EE zoning could potentially be changed to allow for an increase in density. A-2 zoning is out of compliance with the 2001 Zoning Code and needs to be updated.

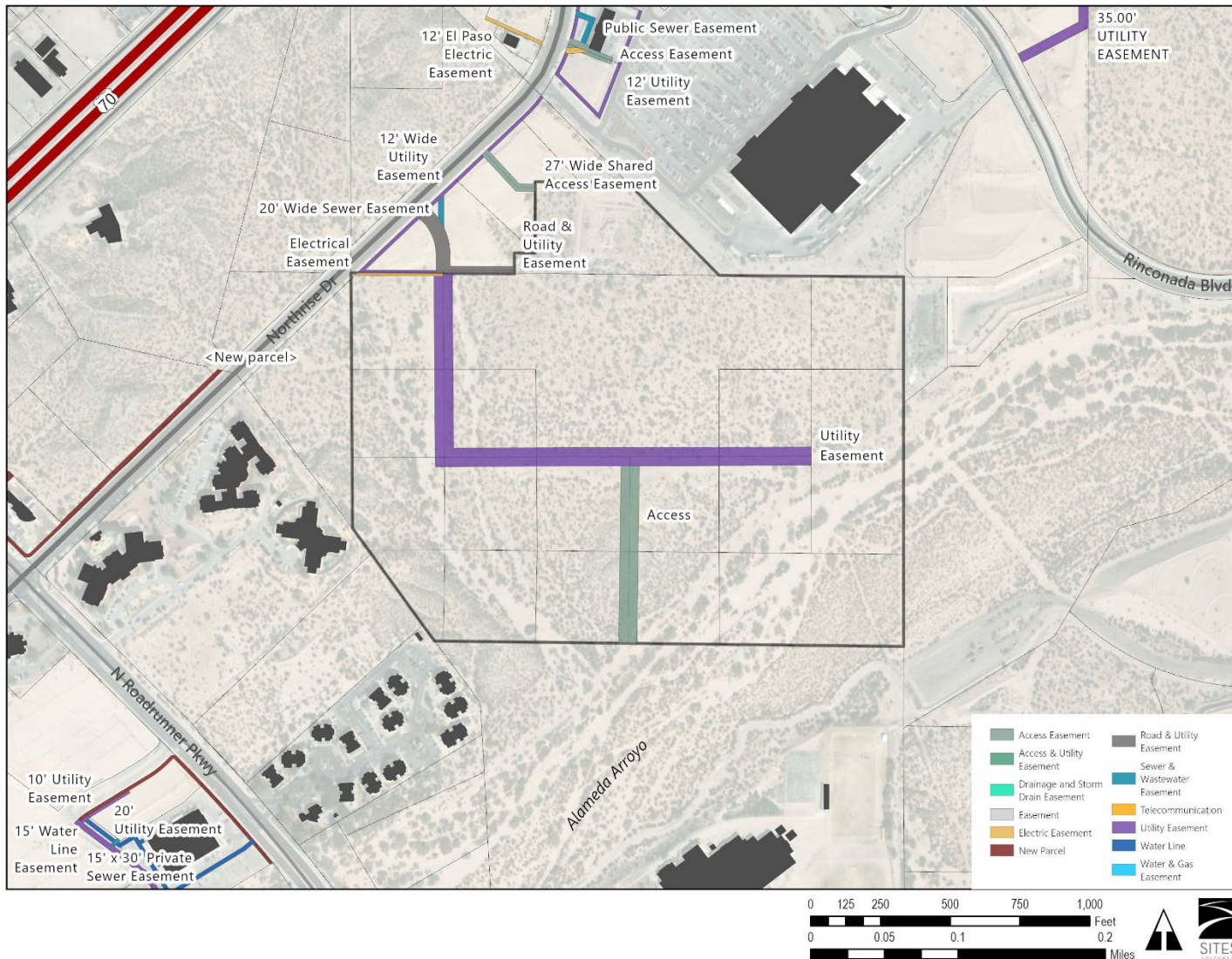
LAND USE



There are a diverse mix of land uses around the subject property. Shown in red in the image to the left, there is primarily commercial development and existing land uses along Northrise Drive and Rinconada Boulevard. However, on the north side of Northrise Drive and along North Roadrunner Parkway there is primarily residential with multi-family complexes. Further to the south there is a condo development and larger single-family homes, primarily along Morningstar Drive.

Finally, Camino Real Middle School to the south provides an institutional anchor for the area.

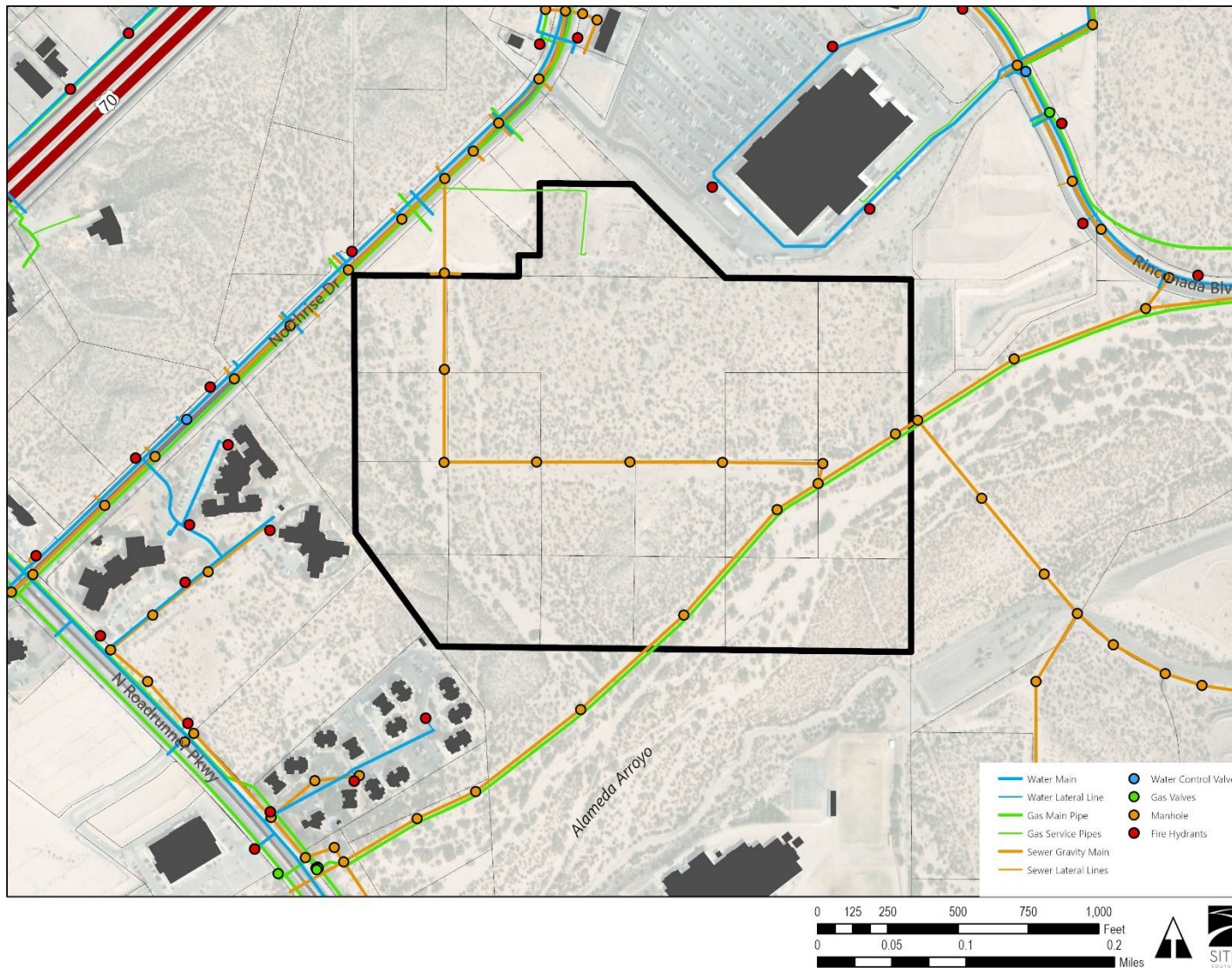
EASEMENTS



Many of the properties in question have some kind of existing easement connecting to them. There is a 33' road and utility easement (shown in purple) on both sides of the property line that connects south from Northrise Drive and turns east, connecting to several properties along their northern borders.

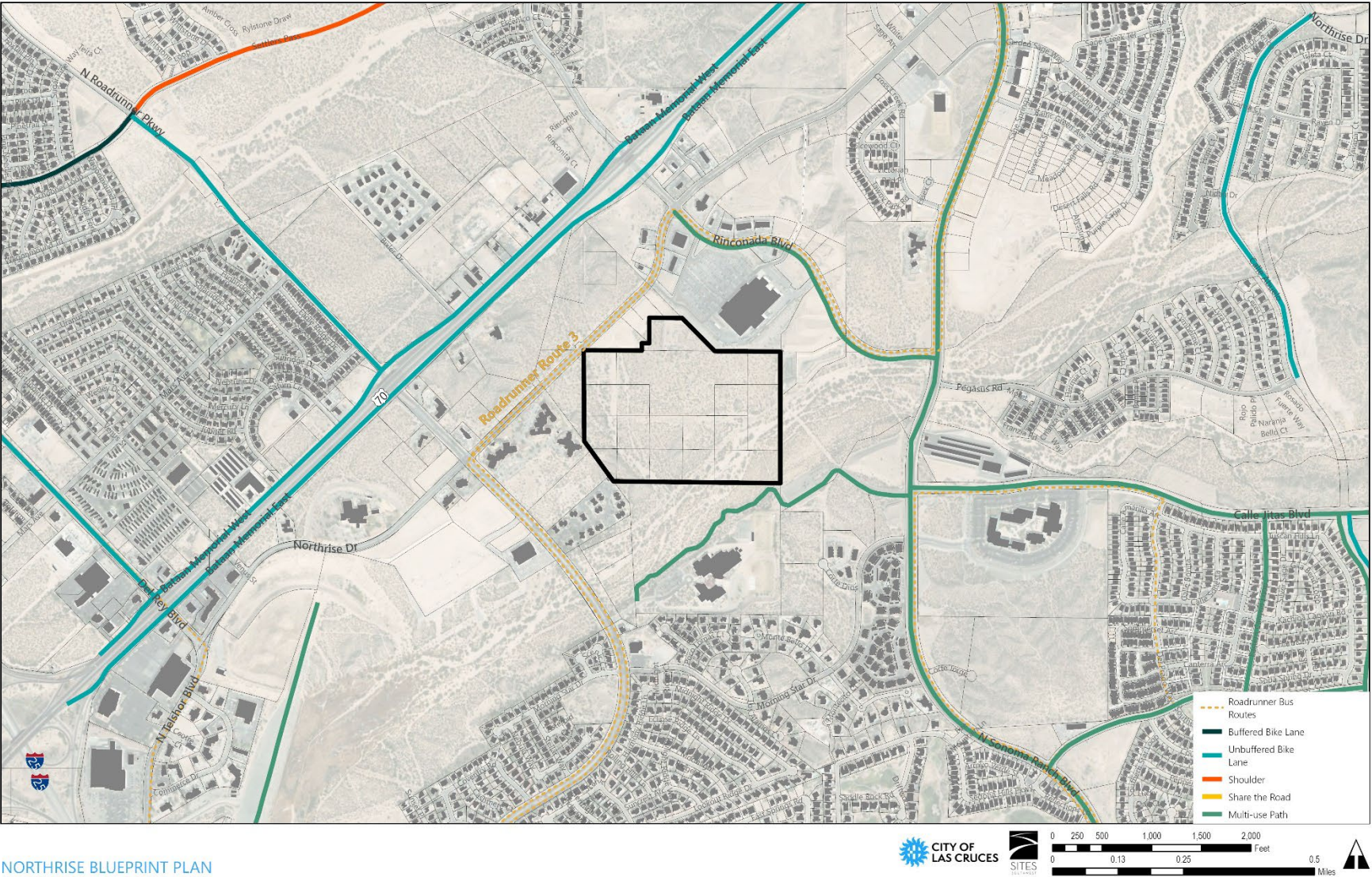
There is also a road and utility easement (shown in dark grey) that connects Northrise Drive to the northernmost interior property. We see this as having potential to be a primary entry point to the subject area.

UTILITIES



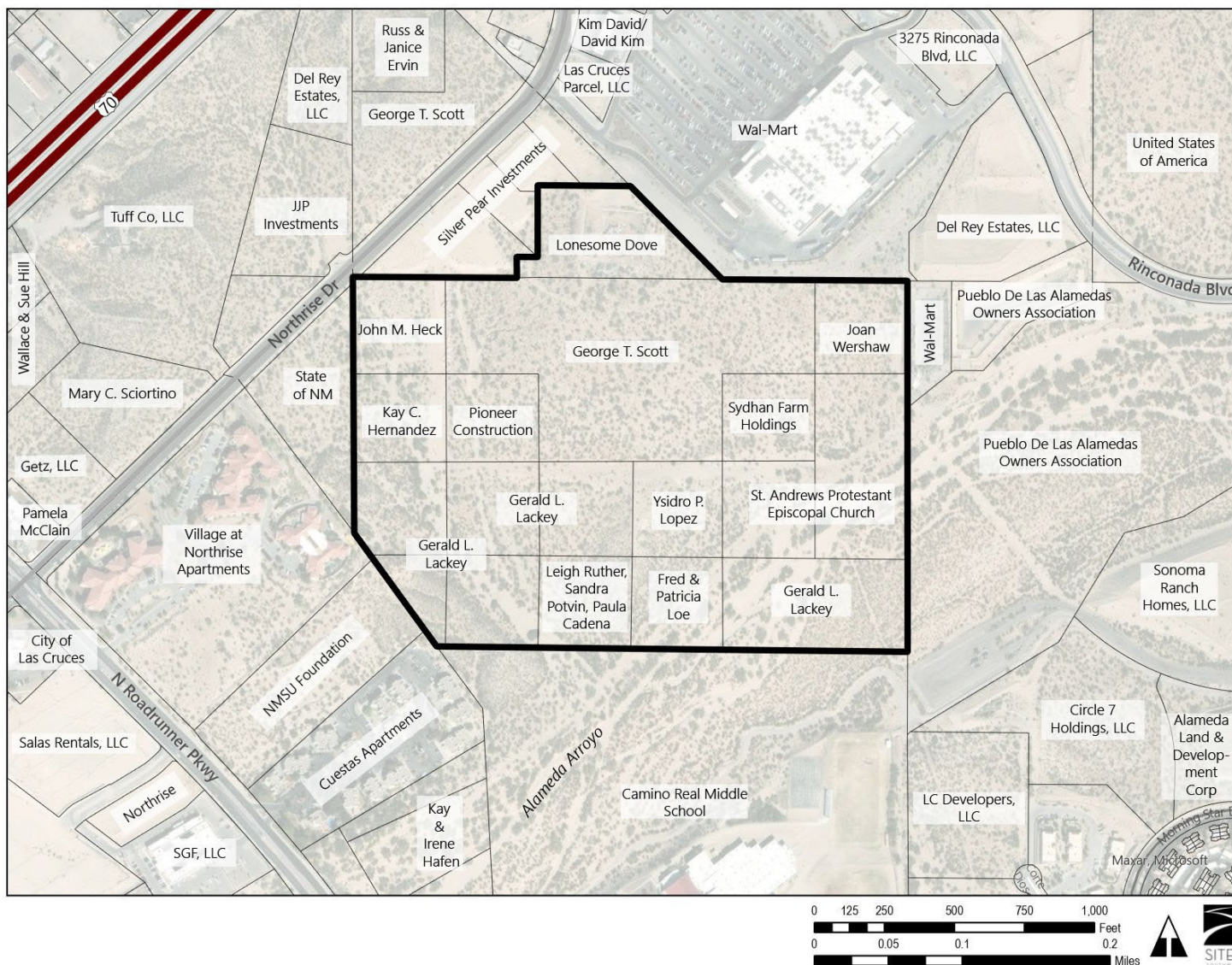
The existing utility lines on and around the Northrise properties primarily following the surrounding roads and developments. There are also gas and sewer lines that follow the Alameda Arroyo and a sewer line that cut through the properties, forming an L-shape and shown in orange in the map to the left.

CIRCULATION



NORTHRISE BLUEPRINT PLAN

OWNERSHIP



There are 18 unique parcels in the subject area with 12 different property owners. The majority of these properties are held in trust. The team has conducted outreach to all property owners and their representatives as part of this planning process. They have provided invaluable insight regarding what they hope to see here in the future, and where they see potential challenges and opportunities for property access.

Conceptual Framework and Action Plan

Issues and Opportunities

LANDLOCKED

The primary challenge as it relates to the goals for the Northrise Blueprint Plan stems from the fact that the subject properties are landlocked beyond two easement connections near the northwest corner that provide access to Northrise Drive. This means that any recommendations for future access and a transportation network will depend on collaboration with surrounding property owners. These include the State Land Office, who owns property along Northrise Drive, west of the Heck property and Silver Pear Investments, who is currently building a commercial building on Northrise Drive, east of the Heck property.



Figure 9. Possible connection point to N Roadrunner Parkway

Along North Roadrunner Parkway, the New Mexico State University (NMSU) Foundation, the Hafen family and Camino Real Middle School all own property that could offer connections to this roadway.

To the east, there are possible connections to Rinconada Boulevard from either the Walmart property or south along the Pueblo de las Alamedas Owners Association property.

TOPOGRAPHY & DRAINAGE



Figure 10. Drainage pond east of project area, south of Walmart

The variable topography of the project site presents opportunities as they are related to the views of the nearby mountain ranges and city to the south. In general, the site has a gradual drop from the north side of

the properties toward the arroyo in the southeast corner. The Alameda Arroyo also is a potential asset in that it provides a lovely natural buffer to the subject area that is host to natural flora and fauna. It also already has a multi-use trail that runs along the south side of the arroyo, near the Camino Real Middle School.

However, the topography, natural drainage paths and arroyo also present some challenges for what might be most appropriate or even possible for future development in these locations. FEMA requires a permit before construction or development within flood zone and any future development must follow the requirements of the National Flood Insurance Program (NFIP) and local floodplain management ordinance.

TRAFFIC IMPACTS

According to the Mesilla Valley MPO Traffic Flow data, the 2017 Average Annual Weekday Traffic for the primary roads around the subject area are as follows:

- Northrise Drive – 10,116
- N Roadrunner Parkway – 10,922
- Rinconada Boulevard – 4,464
- N Sonoma Ranch Boulevard – 8,877
- Morning Star Drive – 1,391

Anecdotally, this area also receives a daily fluctuation in traffic for student drop-off and pick-up at Camino Real Middle School. This primarily impacts N Roadrunner Parkway, with a secondary access point for bus drop-off and pick-up just off N Sonoma Ranch Boulevard.

With this in mind it will be important that any proposed vehicular network within the project site designate through connections, while limiting cul-de-sacs and dead ends as much as possible. It would also

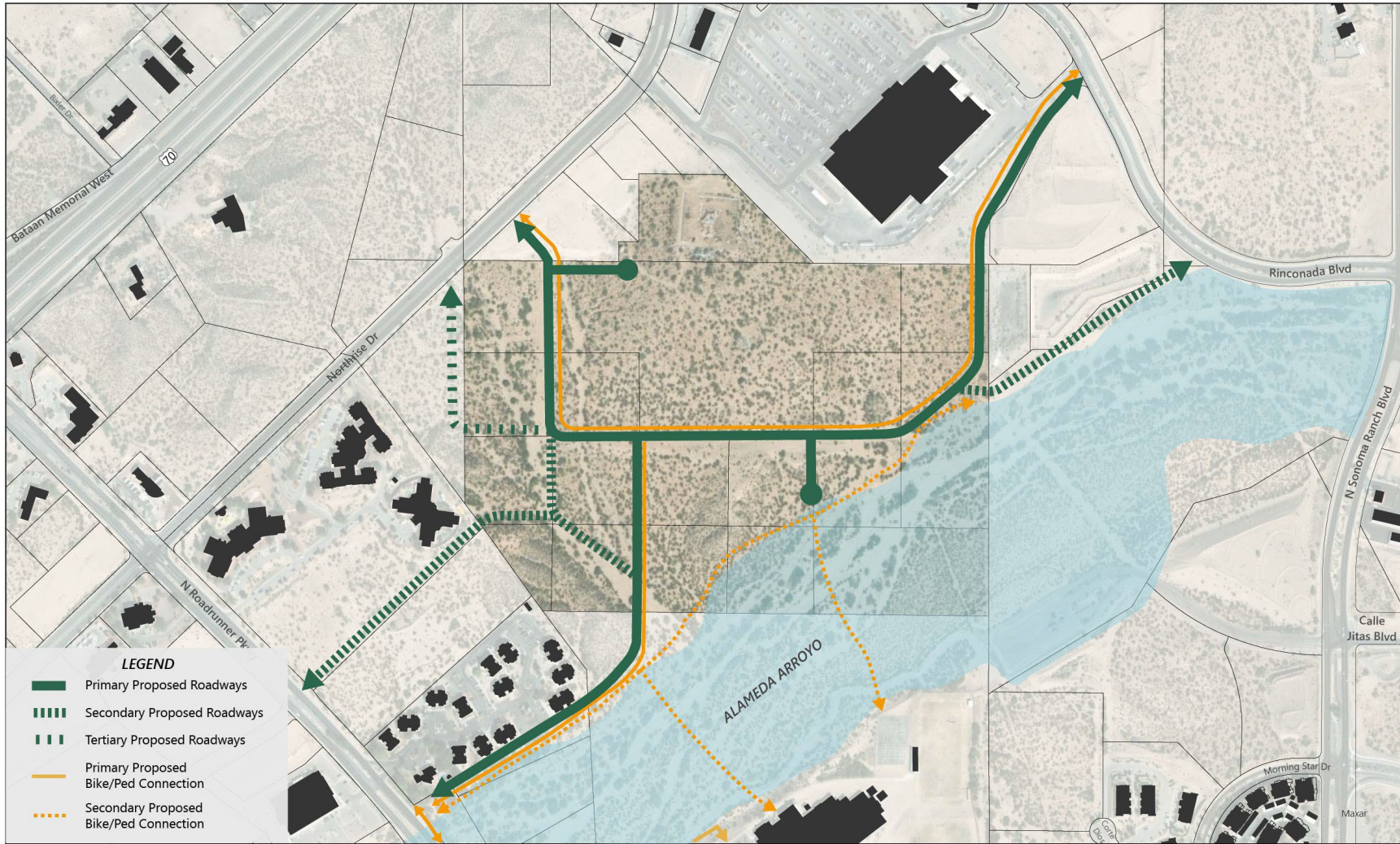
benefit the plan to connect to any existing roads or access points that are opposite proposed entries to allow for the possibility of a signalized intersection (for example, at Calle Jitas Boulevard).



Figure 11. Rinconada Boulevard looking south

With these issues and opportunities taken into account, the following section explores possible future access points for both pedestrians and vehicular traffic, as well as the actions the City and property owners can take to realize this vision for an interconnected set of properties that are ready for future development.

Conceptual Framework & Circulation Alignments



PROPOSED SITE PLAN
NORTHRISE BLUEPRINT PLAN



VISION

The Northrise Blueprint Plan will provide a conceptual framework to guide future development of a transportation network that provides access to all properties on this site for vehicles, pedestrians, and bicyclists. This framework takes into consideration the unique challenges and opportunities in this area, including its topography and relationship to drainage flows, the unique nature of the division of parcels here, and the traffic flows of surrounding thoroughfares.

CONNECTIONS

The conceptual plan on the previous page provides proposed roadways and trail connections using a hierarchy of preferred (primary) connections, followed by secondary and tertiary, if those preferred connections are not available.

The primary roadway connections are shown as a solid green line and provide ingress/egress from Northrise Drive, N Roadrunner Parkway and Rinconada Boulevard. Secondary and tertiary connections for future roads are shown in densely dashed and spaced-out dashed lines, respectively.

Bicycle and Pedestrian connections are depicted in yellow, with the primary routes shown by the solid line and secondary routes illustrated by the dashed yellow lines.



Figure 12. Morning Star Drive - Example Collector Road

ILLUSTRATIVE MULTI-MODAL STREET SECTIONS

The design of the future transportation network should be aligned with guidelines from previous and ongoing planning efforts by the City, namely among them, the forthcoming *Realize Las Cruces* which is anticipated to be released in summer of 2024. The following page provides conceptual sections for a Collector Road.

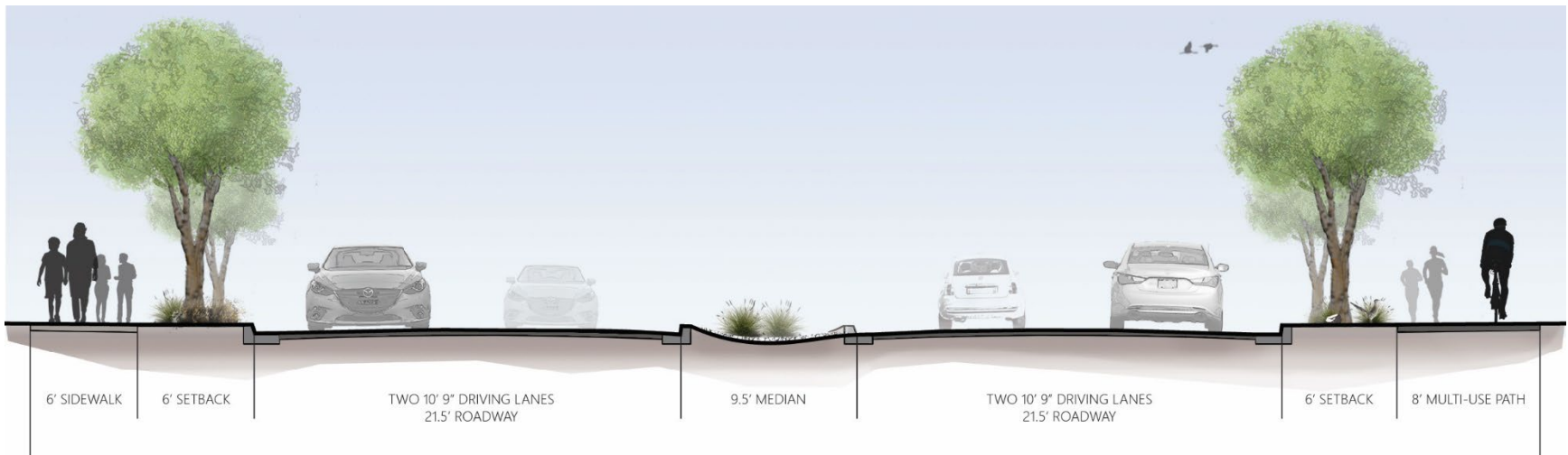
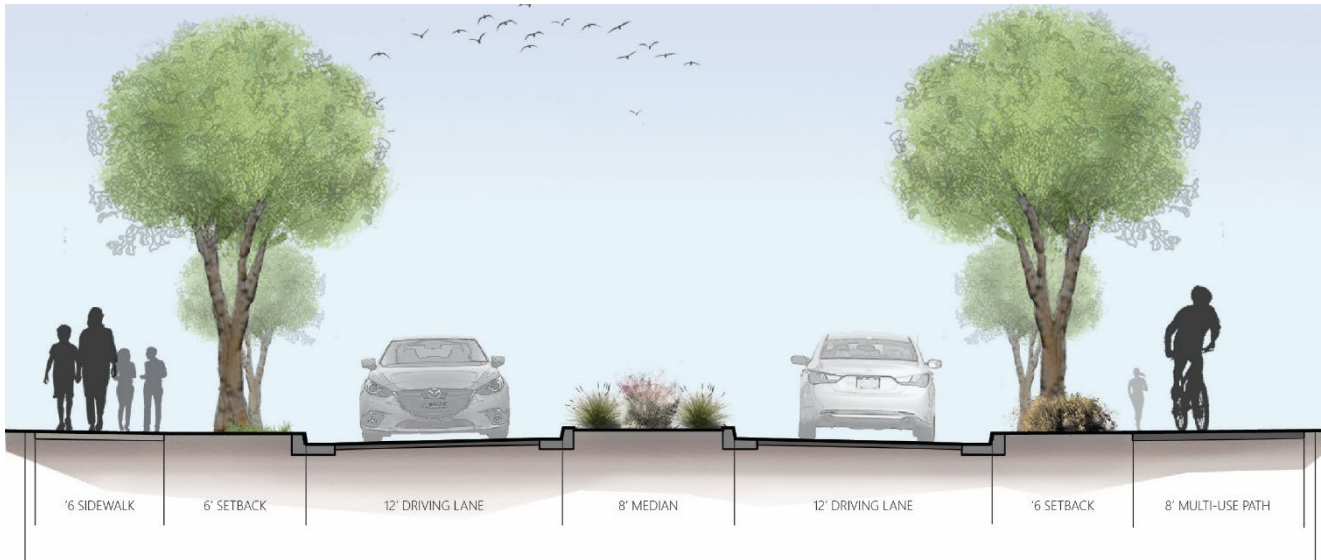


Figure 13. Example Collector Roads

All roads shall be developed as complete streets consistent with the Active Transportation Plan and in accordance with the current development standards.

Action Plan

The following Goals and Actions provide a path for the City to implement this framework and pave the way for development here in the future.

GOAL 1: Create an interconnected roadway network through the Northrise properties.

ACTION 1.1: Conduct Traffic Impact Study to determine appropriate level of roadway classification.

ACTION 1.2: Develop an appropriate roadway design using Complete Street guidelines and adopted recommendations from *Elevate Las Cruces*.

ACTION 1.3: Work with property owners to designate public right-of-way for the primary roadway connections.

GOAL 2: Provide a system of multi-modal connections that allows future residents and visitors to safely reach their destinations.

ACTION 2.1: Design streets with safe, multi-modal infrastructure, per *Elevate Las Cruces* Future Thoroughfare Map and current development standards.

ACTION 2.2: Pursue easement access for recommended trails on private property.

ACTION 2.3: Consider providing partial credits for developers for parkland dedication for trails with improvements that promote pedestrian and bicycle use.

ACTION 2.4: Work with Camino Real Middle School to pursue alignment and resources through Safe Routes to School program.

GOAL 3: Preserve natural drainage pathways and habitat in and around the Alameda Arroyo.

ACTION 3.1: Clearly define the edges of the arroyo according to flood zone maps.

ACTION 3.2: Preserve land, as much as possible, within the Alameda Arroyo according to guidelines within *Realize Las Cruces*.

ACTION 3.3: Work with property owners who have land in the flood zone and provide information about requirements for development within a flood zone, including possible channelization of the arroyo to meet MS4 (Municipal Separate Stormwater Sewer System) requirements and the filing of LOMR/CLOMR map revisions with FEMA.

ACTION 3.4: Encourage property owners and developers to incorporate on-site drainage and green infrastructure into future site plans throughout the planning area.

ACTION 3.5: Consider using Transfer of Development Rights (TDR) to work with developers and create tools to facilitate profitable development in areas that are considered a priority for future conservation (Alameda Arroyo and drainage areas).

GOAL 4: Prepare land for future development.

ACTION 4.1: Rezone Equestrian Estate (EE) and Agricultural (A-2) properties to allow for more flexible land uses in the future such as residential and small neighborhood commercial, in alignment with *Elevate Las Cruces* and current development standards.

ACTION 4.2: Consider conducting environmental and drainage reviews and the submittal of a grading plan for properties that include steep slopes.

Plan Adoption & Team

Blueprint Plan Purpose and Adoption Information

The following information is from the Community Blueprint Planning Initiative document for the City of Las Cruces.

A Community Planning Blueprint (Blueprint) is a policy plan for a defined area within the City's planning jurisdiction that further elaborates and promotes the vision of the City's Comprehensive Plan. A Blueprint planning effort is intended to address only a few issues unique to a particular geographic area or that require an atypical set of analyses and actions.

Individual Blueprints may serve as policy guides for City Council, Planning and Zoning Commission, City staff and the public and articulate the goals for the area regarding land use, economic development, aesthetics and urban design, resource protection, transportation and community services and/or the preservation of valued community resources. The Blueprint planning process is provided as a planning option other than the full-scale neighborhood or corridor plan process. A Blueprint requires less analysis and detail than a neighborhood or corridor plan, thus allowing for faster completion than these other more robust planning processes. However, not every area or neighborhood in Las Cruces will be appropriate for such a plan. The expectation is that this type of plan will be used for areas that are in transition, facing expanded development pressures, are concerned with maintaining their character, or other specific issues.

Community Planning Blueprints are policy documents adopted by resolution of the City Council and therefore are not development regulations or laws. Individual Blueprints will act as policy guides for activities within their called-out boundaries. A Blueprint will function to provide more fine-grained, in-depth analysis and direction tailored specifically for an area and its unique challenges or circumstances.

The approval of specific Blueprints will follow the standard plan adoption process of public input, staff preparation, public review, Planning and Zoning Commission recommendation and City Council adoption.

Acknowledgements

Project Staff

David Weir, Deputy Director, Community Development

Sara Gonzales, Senior Urban Planner, Community Development

Contributing Staff

Angela Armijo, Senior Engineering Tech – Floodplain Administrator, Community Development

Michael Kinney, P.E. Plans Review Engineer

Tony Trevino, Deputy Director, Public Works

Adam Ratliff, GIS Technical Support, Utilities

Property Owners and Developers

Thank you to the property owners, representatives, developers and other stakeholders who participated in meetings to provide their input and review draft plans.



Planning & Zoning Commission 12/19/2023
CASE BP-23-001: Community Blueprint

STAFF CONTACT:	Sara Gonzales, (575) 528-3049, sgonzales@las-cruces.org
APPLICANT:	City of Las Cruces
DISTRICT:	Districts #6
REQUEST:	Recommend adoption of the Northrise Blueprint Plan
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF REQUEST CASE BP-23-001:

The Northrise Blueprint Plan is a City-initiated plan intended to garner community input and give guidance on the development of eighteen (18) unique parcels that encompass 62.39 ± acres and located between Northrise Drive, N. Roadrunner Parkway, Rinconada Boulevard, and the Alameda Arroyo.

SUMMARY OF RECOMMENDATION:

Staff is Recommending **APPROVAL** based on the findings listed below:

- The Northrise Blueprint Plan is supported by Elevate Las Cruces by following the Suburban Place Type and proposing road cross-sections for multi-model transportation.
- The Blueprint will assist the owners and developers of the property with utility and roadway access.
- The Blueprint has been developed in accordance with City Council Resolution 16-132, the Community Planning Blueprint Initiative.

POLICY	DOES IT COMPLY?
City Council Resolution 16-132, Community Planning Blueprint Initiative	Yes
Elevate Las Cruces	Yes
Mesilla Valley Metropolitan Planning Organization (MPO) Thoroughfare Plan	Yes

COMPLIANCE WITH COMMUNITY PLANNING BLUEPRINT INITIATIVE:

A community planning blueprint (blueprint) is a policy plan for a defined area within the City's planning jurisdiction that further elaborates and promotes the vision of the City's Comprehensive Plan. A blueprint intends to address issues unique to a particular geographic area. A blueprint may serve as a policy guide for City Council, the Planning and Zoning Commission, City staff and the public. A blueprint can articulate the goals for an area regarding land use, aesthetics and urban design, and/or preservation of valued community resources.

The Northrise Blueprint Plan will provide policy that will guide the City Council, the Planning and Zoning Commission, City staff and the public to address future access and conceptual road alignments on undeveloped land located generally south of Northrise Drive. The Planning and Zoning Commission is asked to provide a recommendation to City Council for the adoption of the plan as City policy.

COMPLIANCE WITH ELEVATE LAS CRUCES:

The Northrise Blueprint Plan is within the Suburban Neighborhood Place Type with portions of parcels being within the Open Space Reserve. The Suburban Place Type is defined as an area for low-to-moderate density residential land uses intermixed with areas of commercial development. Predominant land uses include single-family and multi-family development, retail and office uses, and other ancillary institutional and public uses such as schools, parks, and places of worship.

The following goals, policies, and actions from Elevate Las Cruces are relevant to the Northrise Blueprint Plan:

➤ **COMMUNITY ENVIRONMENT:**

- Goal CE-1: Balanced Growth – Encourage land use development patterns that accommodate projected growth in a sustainable manner.
 - Policy CE 1.2: Promote investment within older areas of the city through redevelopment.
 - Action CE-1.2.2: Work with property owners of potential redevelopment tracts to create master plans that generate pedestrian-friendly mixed-use development sites and neighborhoods.
- Goal CE-2: Areas of Special Consideration – Integrate new development into the community in a manner that compliments significant built and natural features.

- Action CE-2.1.5: Identify areas within urban or overlay place type classifications that may serve as receiving areas as part of transfer of development rights feasibility study.
- Goal CE-6: Context Sensitive Street Design – Design streets to support varying levels of pedestrian activity based on the intended built context of surrounding development.
 - Policy CE 6.2: Design and construct city streets that support vehicular, truck, bus, pedestrian, and bicycle travel within the same right-of-way.
 - Action CE-6.2.1: Incorporate bicycle and pedestrian facility design recommendations from the active transportation plan into revised street design requirements.
- Goal CE-13: Natural Features and Habitat – Protect the regions environmentally-sensitive areas to prevent destruction of wildlife habitat and natural ecosystem functions.
 - Policy CE 13.1: Protect waterways and natural drainage corridors from development encroachment.
 - Action CE-13.1.3: Establish standards for arroyo development buffers to protect the natural drainageways from encroachment.

COMPLIANCE WITH MPO THOROUGHFARE PLAN:

The properties are located between Northrise Drive, N. Roadrunner Parkway, Rinconada Boulevard, and the Alameda Arroyo. Northrise Drive is listed as a principal arterial, and N. Roadrunner Parkway and Rinconada Boulevard are listed as minor arterials in both the MPO Thoroughfare Plan and the Elevate Las Cruces Future Thoroughfare Map. Based on the roadway classifications any development within this area would require multiple access points to properly circulate traffic and would need to build out a collector roadway to accommodate the possible increase in density that is outlined within Elevate Las Cruces.

ATTACHMENTS:

1. Northrise Blueprint Plan

NORTHRISE BLUEPRINT PLAN



PREPARED BY:



PROJECT OBJECTIVE AND BACKGROUND

Plan Objective

The Northrise Blueprint Plan is a document that is intended to address future access and conceptual road alignments on undeveloped land situated between Northrise Drive, North Roadrunner Parkway, Rinconada Boulevard, and the Alameda Arroyo.

The intent of this plan is to work with landowners of both the subject properties and adjacent properties to develop an access and road network plan that will guide future development. Additionally, this plan includes the following objectives:

- Promote the goals of *Elevate Las Cruces*
- Address public improvement needs
- Address transportation and property access issues
- Enable development of the plan area

Plan Criteria

The following criteria justify the need for a Community Blueprint Plan in this area of Las Cruces:

- Multiple landowners prevent standard planning or implementation process to address issues
- Supports Blueprint Objectives (see above)
- Stakeholder participation is required to successfully complete the Blueprint Plan
- There are defined property boundaries
- Plan must be compatible with the *Elevate Las Cruces* Future Development Map

PROJECT TIMELINE

- August** | Organization and Team Formation
- August – September** | Background Collection and Analysis
- September- October** | Property Owner and Developer Input
- October- November** | Street Network and Blueprint Action Plan Draft
- December** | Planning and Zoning and City Council Hearings

Plan Boundaries

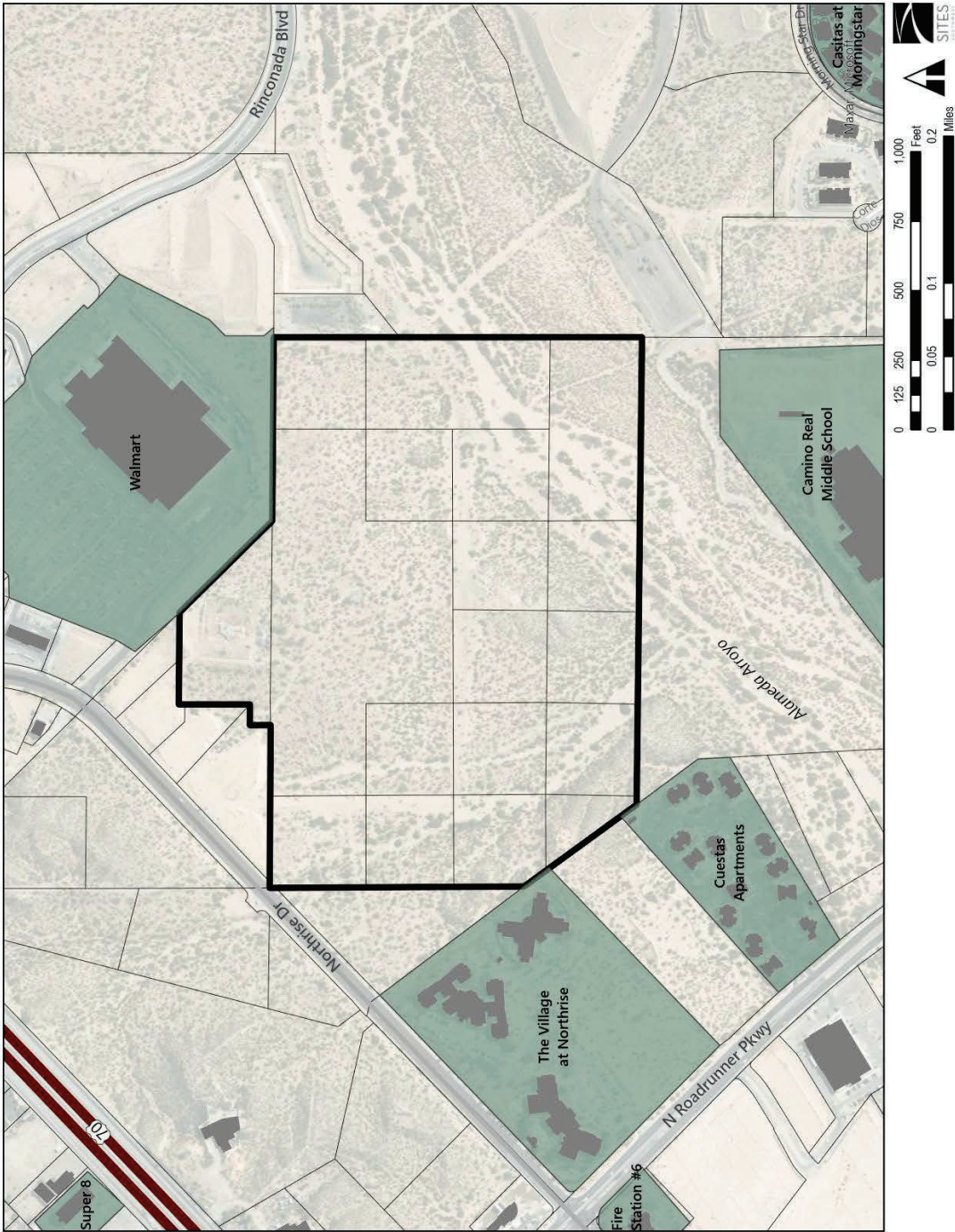


Figure 1. Plan Boundaries and nearby landmarks

The properties that comprise the Northrise Blueprint Plan are located in a growing part of the City of Las Cruces. The area surrounding the intersection of Rinconada Boulevard and Northrise Drive has seen lots of development in recent years, primarily in the form of commercial and service-related businesses. Beyond, there has been a lot of growth in single-family residential development, with some multi-family located along Roadrunner Parkway. This location also has easy access to US Hwy 70, allowing for a primary vehicular connection to downtown Las Cruces and the surrounding areas.

The vacant land in the subject area is largely undisturbed, with the exception of social trails and utility easements. The planning area lies in the Desert Scrub and Grassland community of the Chihuahuan Desert ecoregion. The vegetation found here corresponds to the topography of the area and its relationship to the Alameda Arroyo. Within the arroyo there are large, undeveloped desert areas with healthy stands of vegetation, including velvet mesquite, screwbean mesquite, acacia, desert willow, creosote, fourwing saltbush, winterfat and native grasses. This vegetation provides habitat for desert wildlife. All recommendations provided later in this document take into consideration the importance of providing a natural buffer around the arroyo in order to maintain this habitat.

This planning area also includes significant topographic variations that will affect both roadway development and drainage. The topography also provides lovely viewsheds oriented toward the Organ Mountains from various vantage points in the property that should be preserved, when possible.



Figure 2. Views from planning area

Stakeholder Engagement



Initial communication was sent to property owners as a letter in February 2023 informing them of the City's intention to move forward with the Blueprint planning process.

In August of 2023 the team sent out invitations to property owners and their representatives to attend either an in-person discussion about the Blueprint Plan on Thursday, September 28, 2023, or a virtual meeting (held via Zoom) on Thursday, September 28, 2023. The purpose of these discussions was to better understand the plans and ideas that owners have for the area regarding future access and a road/multi-modal transportation network in the area.

The following questions were asked as part of these discussions:

1. Do you have any plans for your property?
2. How do you envision this space in the future?
3. What do you see as potential issues or challenges for access?
 - a. Public v. Private Roadways
 - b. Topography
4. What do you see as the most important connections to surrounding roadways and destinations?



Figure 3. Notes from Stakeholder Meetings



Previous Plan Alignment



Figure 4. Elevate Las Cruces Future Development Map of subject property

The *Elevate Las Cruces Plan* (adopted in 2020) provides guidance on how the City and community envision the area around the Northrise properties in the future. As shown in Figure 4, the properties are primarily designated as “Suburban Neighborhood” with some land, primarily along the Alameda Arroyo, shown as “Open Space Reserve”.

Suburban Neighborhood: provides for low-to-moderate density residential land uses intermixed with areas of commercial development. Predominant land uses include single-family and multi-family development, retail and office uses, and other ancillary

institutional and public uses such as schools, parks, and places of worship.

Open Space Reserve: land to be maintained in a natural state and to remain primarily undeveloped. This place type includes public property and other areas principally set aside for habitat preservation or passive recreation, including preserves and other open spaces conserved in perpetuity.

The plan also provides direction for future streets in Suburban Neighborhoods. Key considerations include:

- Incorporate Complete Street features in a way that comfortably accommodates bicycling, walking, and transit use.
- Maximize street interconnectivity with emphasis on small block size.
- Create greater separations between motor vehicle travel lanes and parallel pedestrian pathways.
- Improve motor vehicle flow through ease of access management design features.
- Incorporate enhanced traffic stops that remove buses from travel lanes.

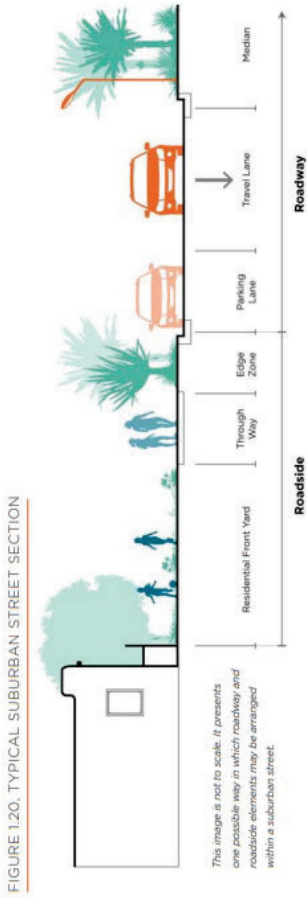
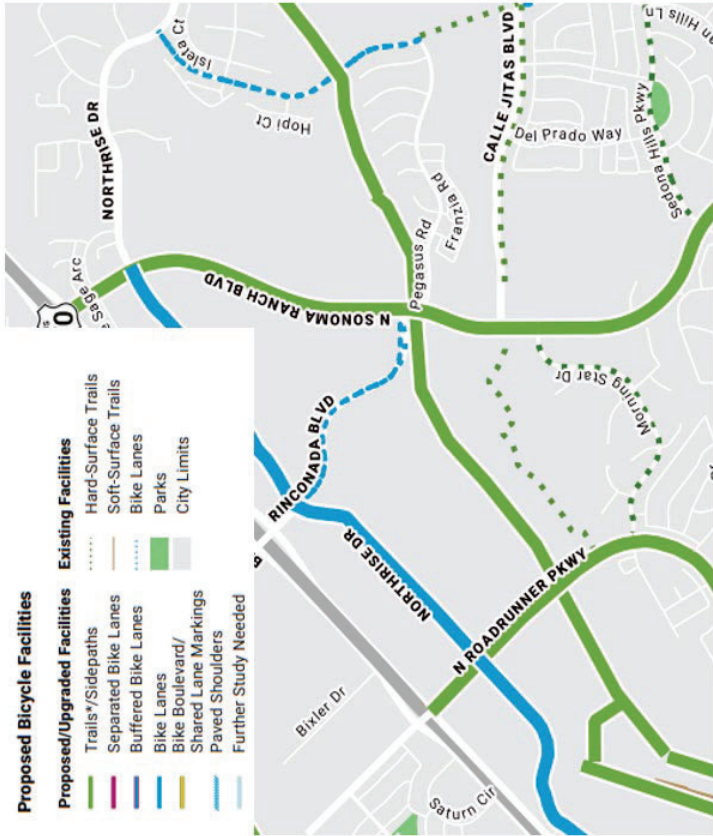


Figure 5. Typical Suburban Street Section as shown in ELC

LAS CRUCES ACTIVE TRANSPORTATION PLAN & COMPLETE STREETS



The 2018 Las Cruces Active Transportation Plan provides guidance for how the City can achieve its goal of making Las Cruces more accessible and safer for multi-modal transportation. The plan shown above notes several proposed trails and bike lanes that would buffer the project site. This plan also provides design recommendations for different types of streets and trails. Complete Street elements are noted here and include: sidewalks, bike lanes, or wide paved shoulders, special bus lanes, comfortable and accessible public transportation stops, frequent and safe crosswalks, median islands, accessible pedestrian signals, curb extensions, narrower travel lanes and roundabouts.

Complete Streets are streets that have been designed for all modes of transportation including walking, bicycling, riding the bus, and driving. They prioritize people over automobiles and can lead to improvements in safety, health, economic vitality, and community vibrancy.



Figure 6. Proposed pedestrian focus areas

Figure 6 notes priority pedestrian areas that are closest to the project area, including Camino Real Middle School and Doña Ana Community College to the east.

MESILLA VALLEY MPO PLANNING DOCUMENTS
The Mesilla Valley MPO Future Thoroughfares Map notes Northrise Drive and N Sonoma Ranch Boulevard as existing Principal Arterials. Roadrunner Parkway and Rinconada Boulevard are classified as existing Minor Arterials.

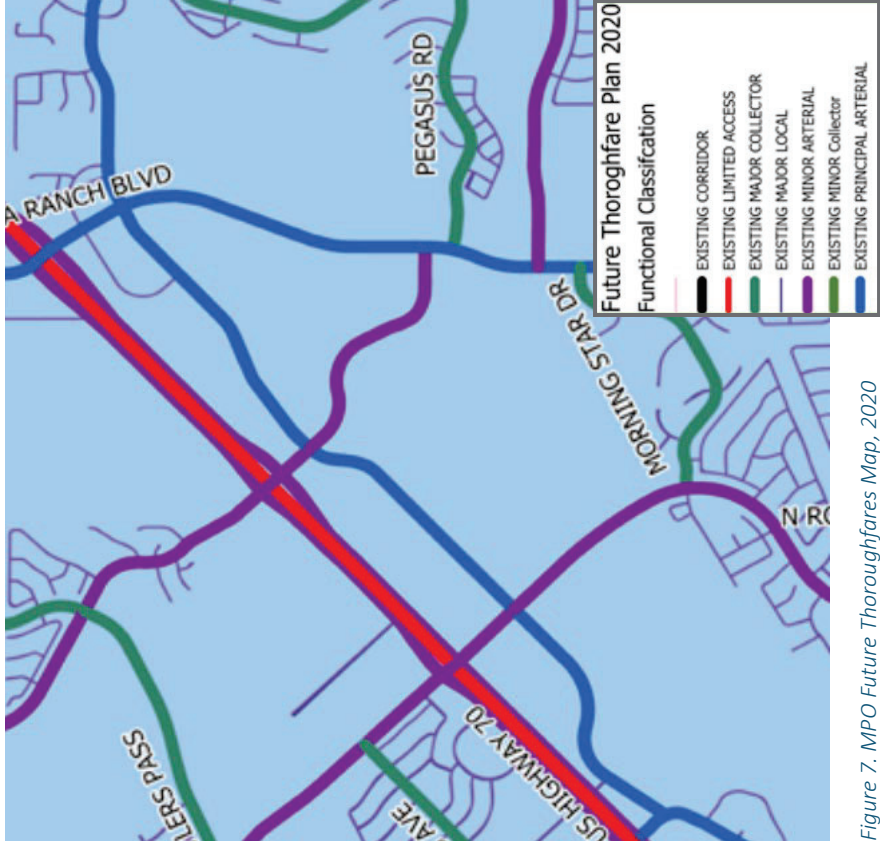


Figure 7. MPO Future Thoroughfares Map, 2020



Figure 8. MPO Transit System Priorities Map, 2020

The MPO Transit System Priorities Plan notes that Northrise Drive should be an express corridor for the RoadRUNNER transit system.

Existing Conditions

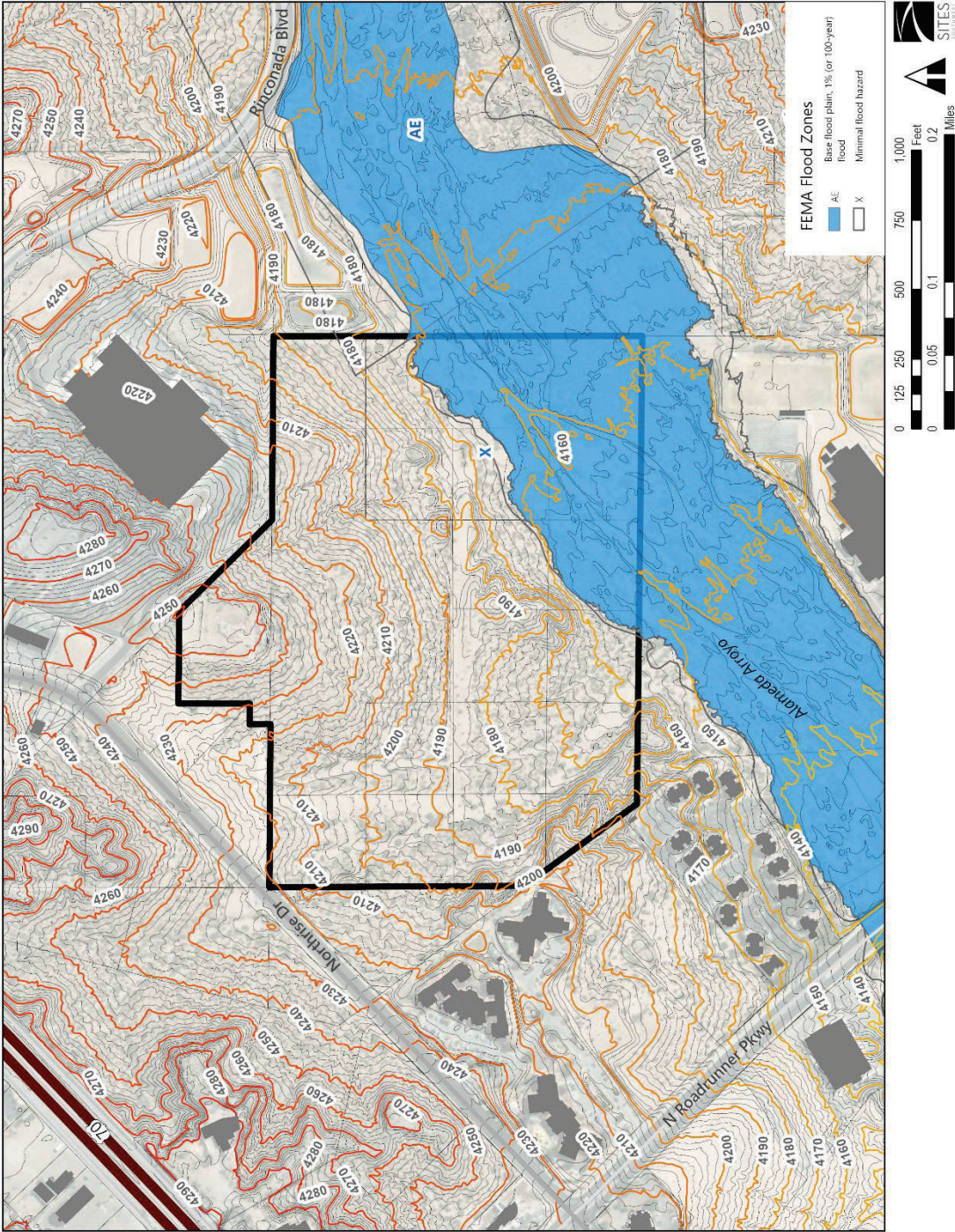
The following pages describe the overall existing conditions of the property, including the landscape and environment, topography and flood zone, land use, zoning, utilities, easements, circulation around the site, and property ownership. This information provides contextual information that is critical for recommendations for future access and connections throughout the site.

LANDSCAPE



Agenda Item #9.1.

TOPOGRAPHY & FLOODZONE



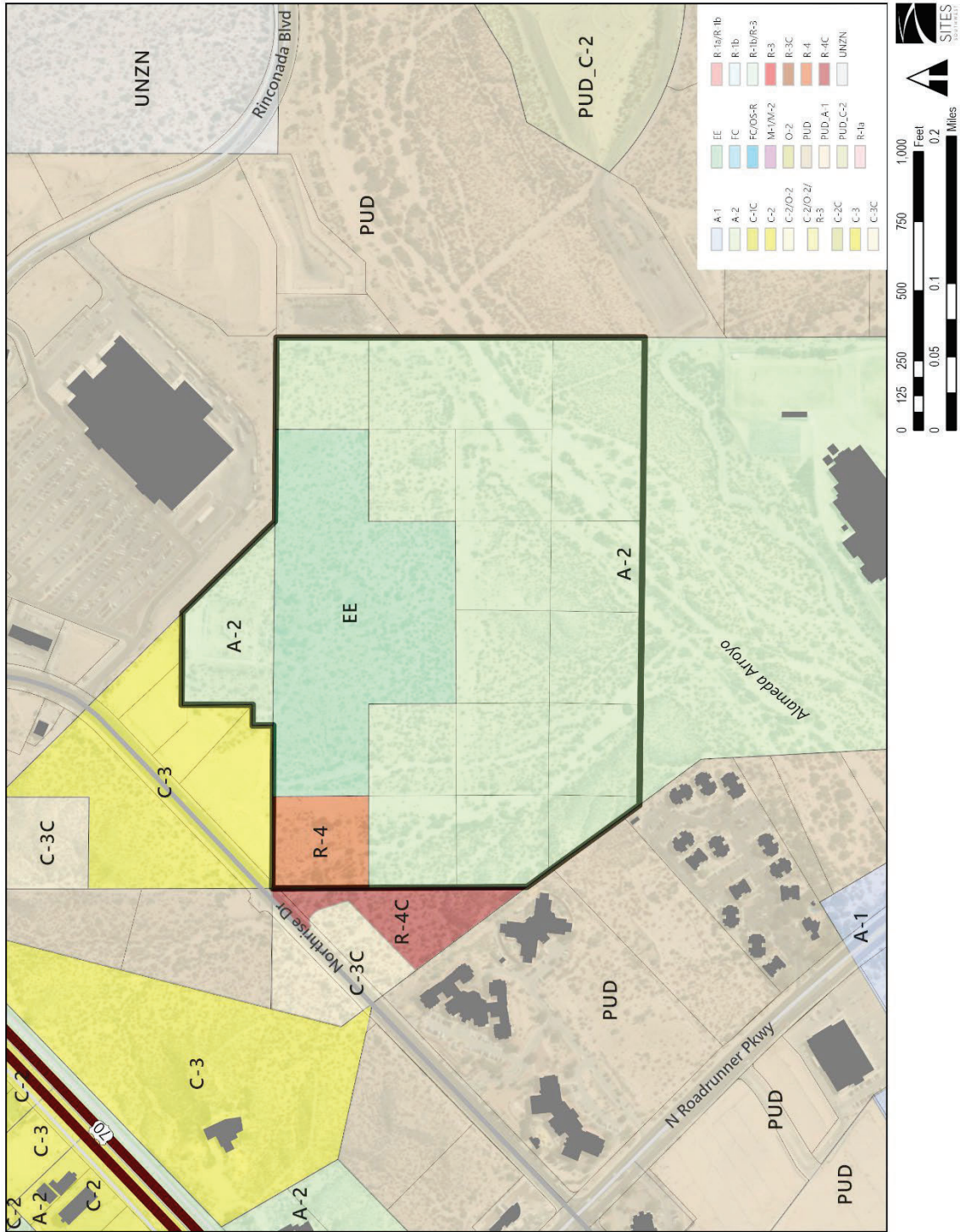
The properties that comprise the project area have varied, hilly topography that reaches its lowest point at the Alameda Arroyo. The Arroyo cuts diagonally through the project area, flowing from the east to the southwest.

Given that four of the subject properties lie fully or partly within the FEMA AE flood zone, future potential development here would be significantly restricted and have substantial development costs added in accordance with Section 34 of the City's Land Development Code.

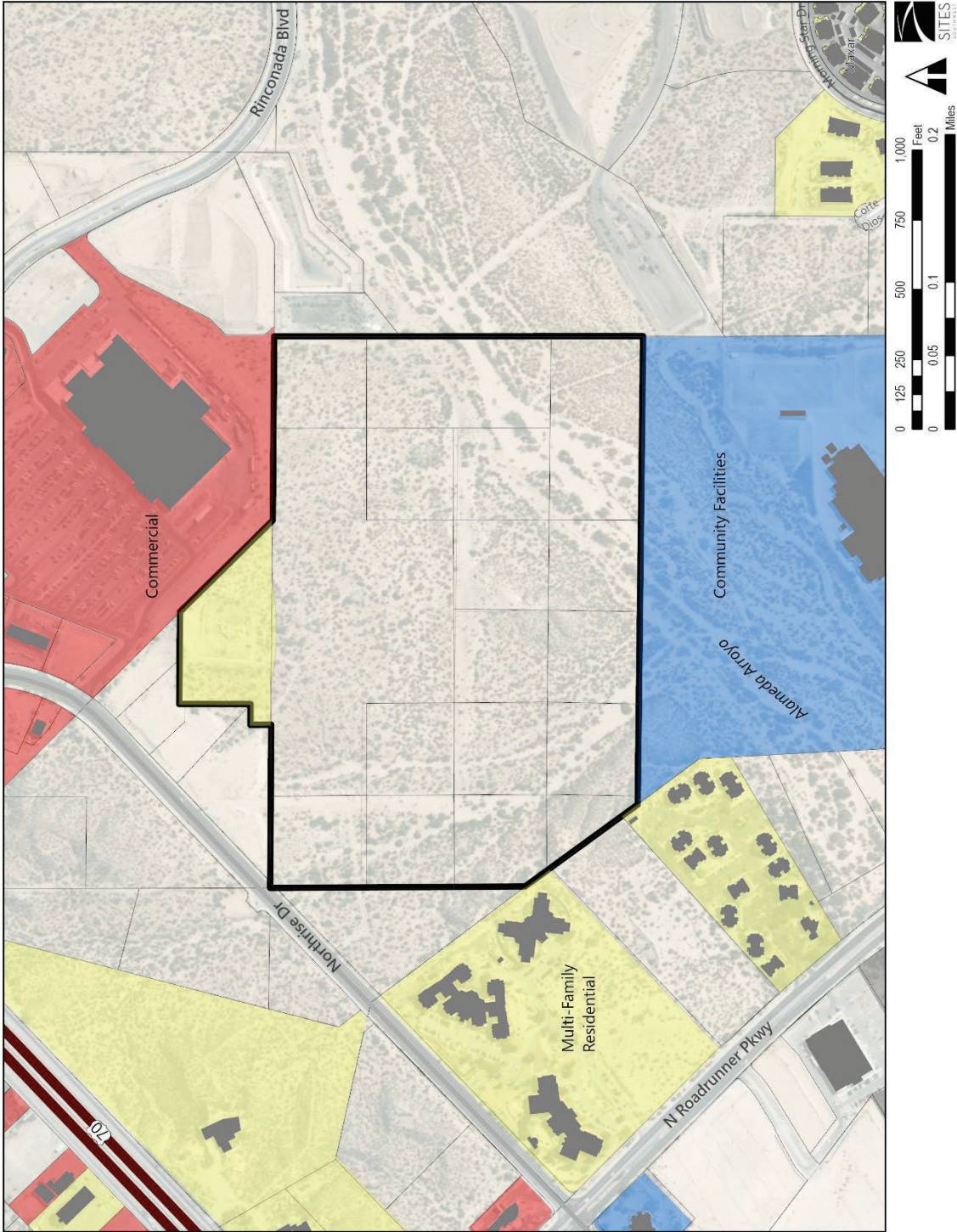
Agenda Item #9.1.

Zoning for the subject properties includes three categories. The first is the property in the northwest corner which is zoned R-4 (orange, Residential Medium/High Density). The largest interior property is zoned EE (light green, Equestrian Estate). Finally, the rest of the properties are zoned A-2 (also light green, Rural/Agricultural). The EE zoning could potentially be changed to allow for an increase in density. A-2 zoning is out of compliance with the 2001 Zoning Code and needs to be updated.

ZONING



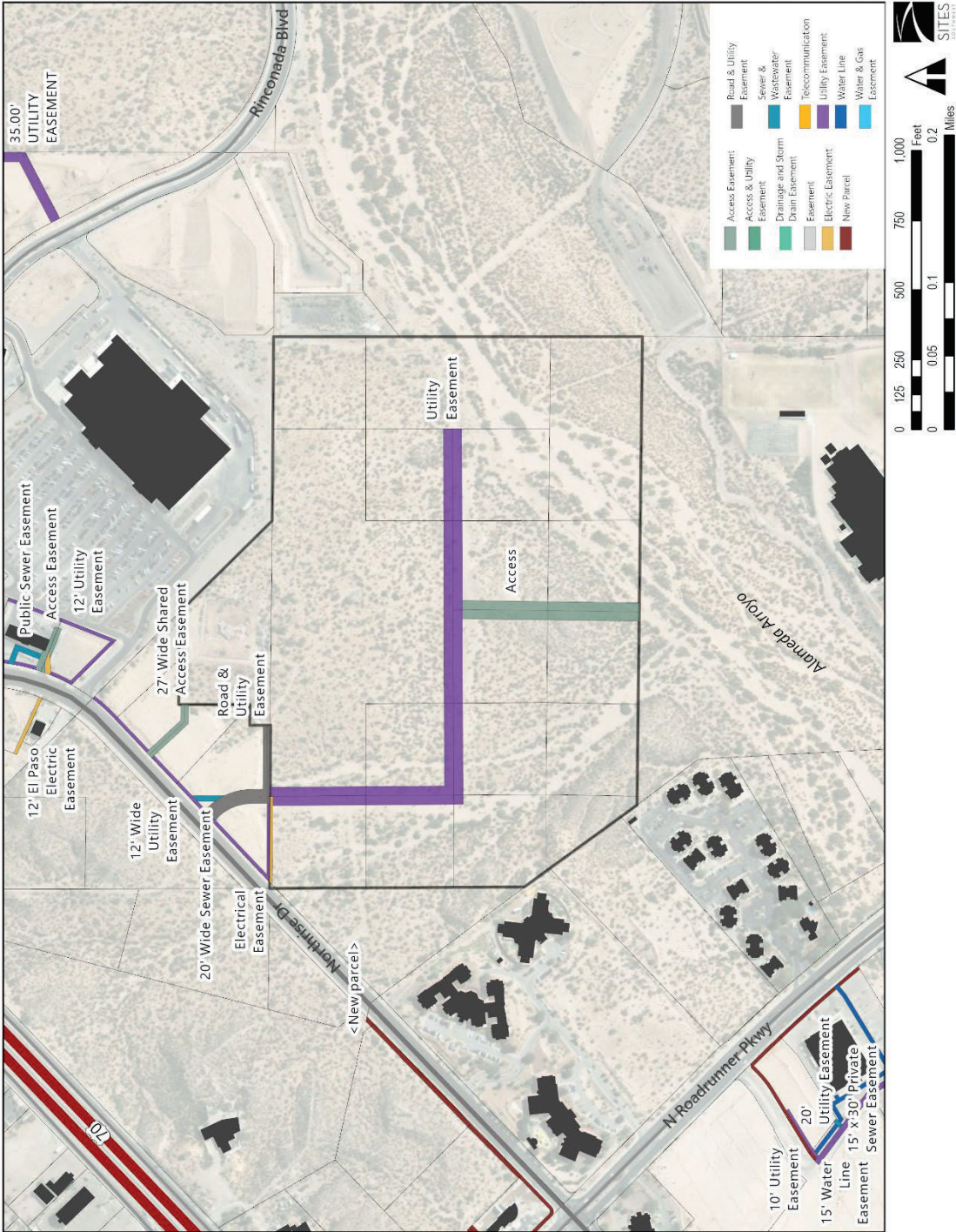
LAND USE



There are a diverse mix of land uses around the subject property. Shown in red in the image to the left, there is primarily commercial development and existing land uses along Northrise Drive and Rinconada Boulevard. However, on the north side of Northrise Drive and along North Roadrunner Parkway there is primarily residential with multi-family complexes. Further to the south there is a condo development and larger single-family homes, primarily along Morningstar Drive.

Finally, Camino Real Middle School to the south provides an institutional anchor for the area.

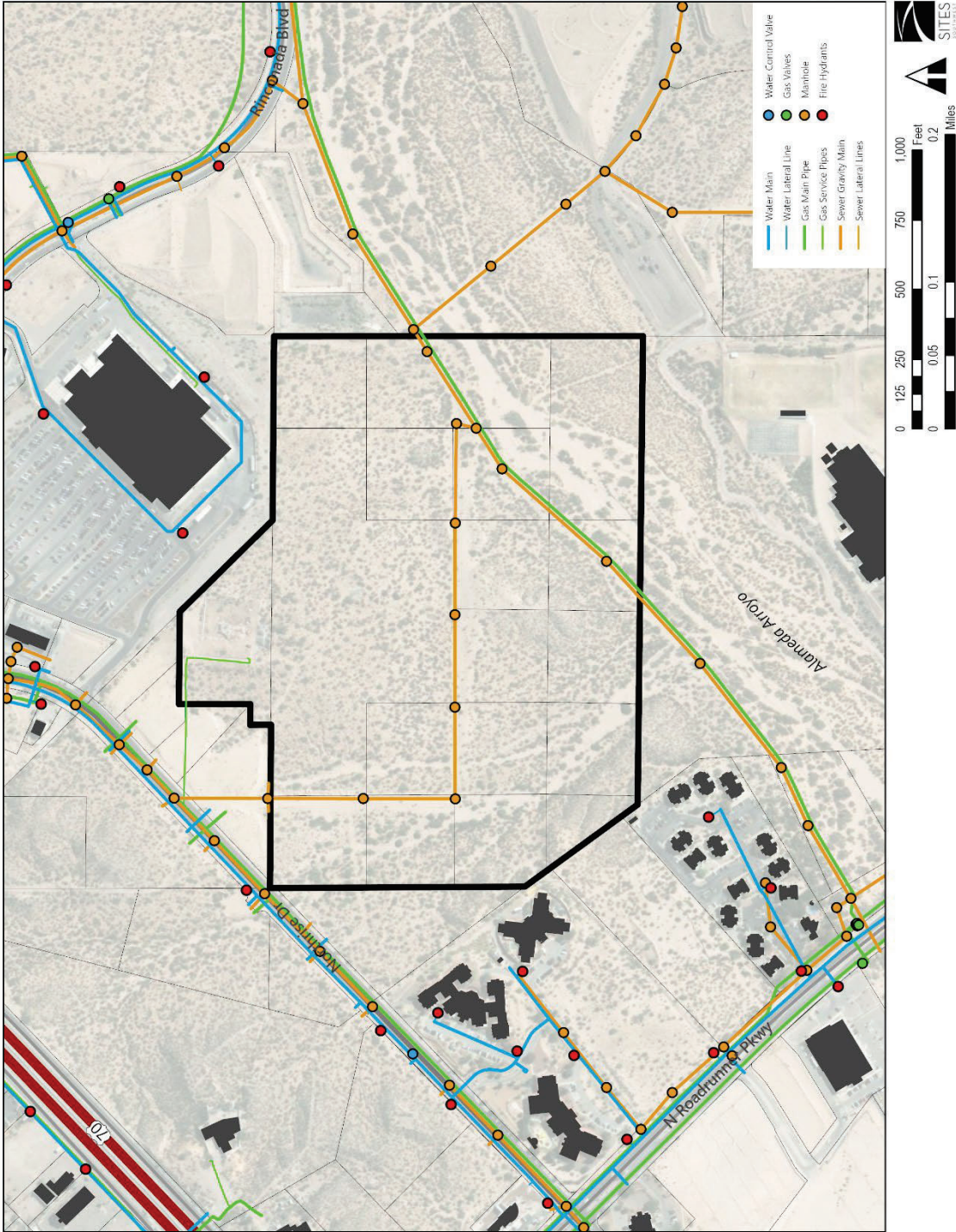
EASEMENTS



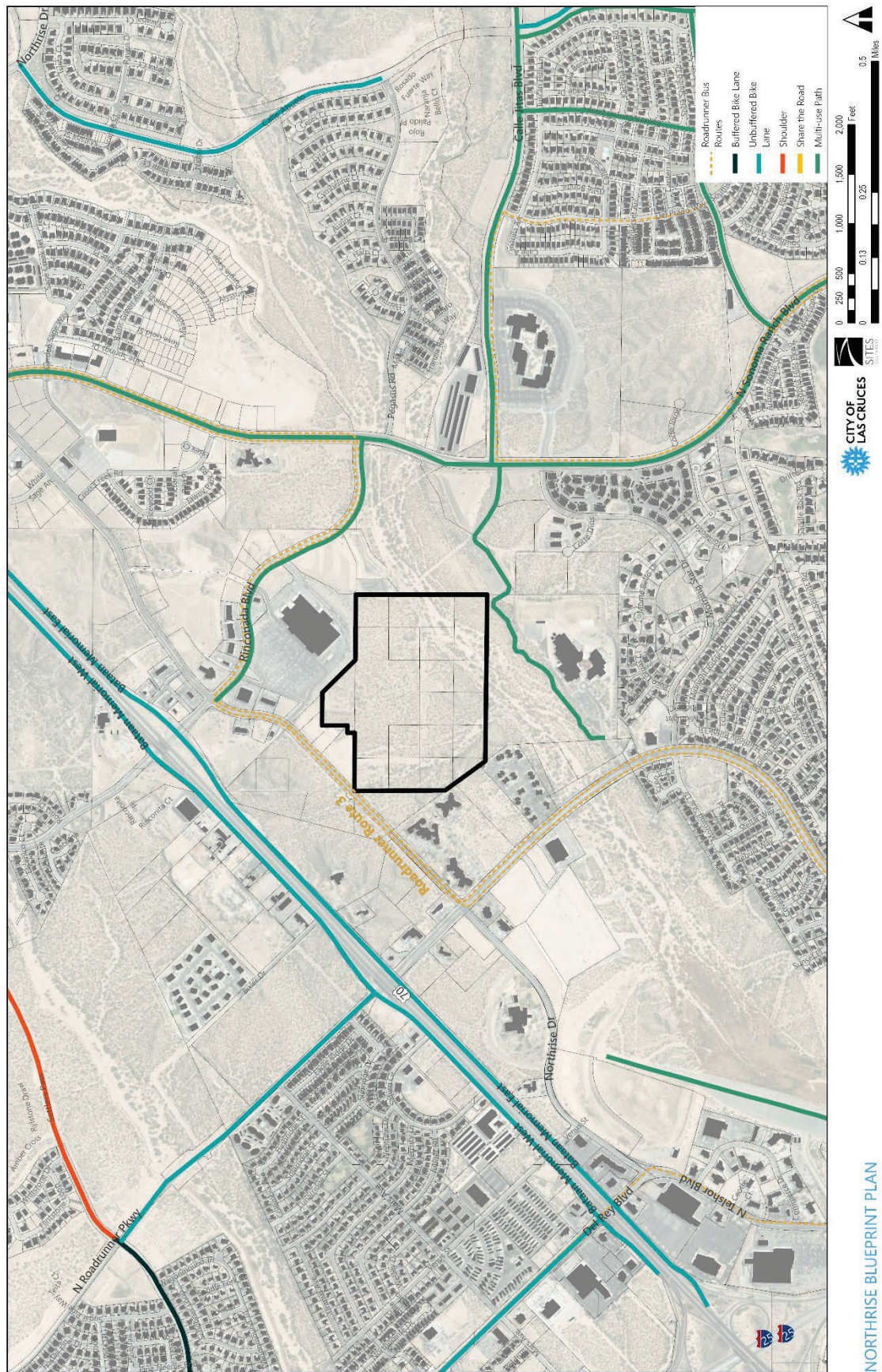
Many of the properties in question have some kind of existing easement connecting to them. There is a 33' road and utility easement (shown in purple) on both sides of the property line that connects south from Northrise Drive and turns east, connecting to several properties along their northern borders.

There is also a road and utility easement (shown in dark grey) that connects Northrise Drive to the northernmost interior property. We see this as having potential to be a primary entry point to the subject area.

UTILITIES



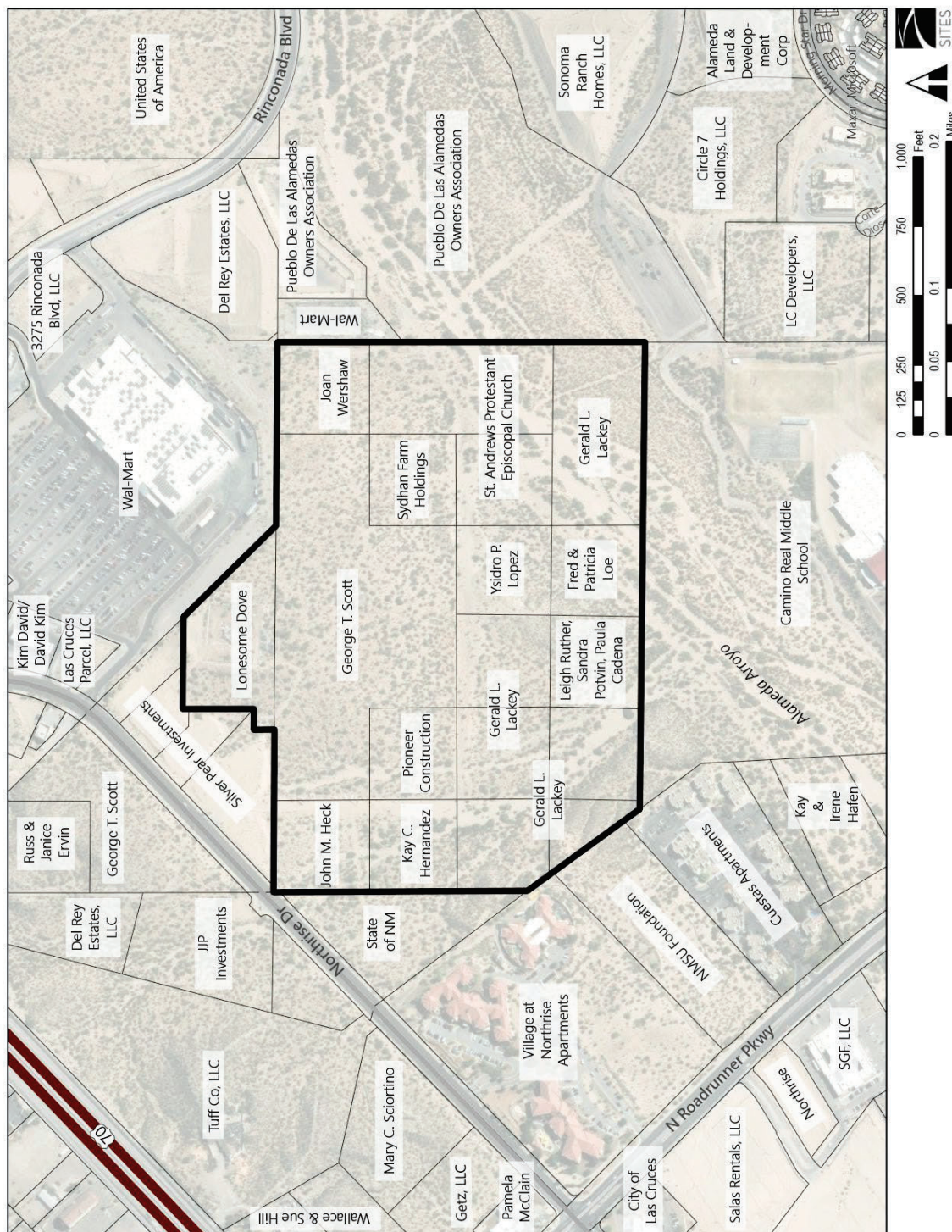
The existing utility lines on and around the Northrise properties primarily following the surrounding roads and developments. There are also gas and sewer lines that follow the Alameda Arroyo and a sewer line that cut through the properties, forming an L-shape and shown in orange in the map to the left.



Agenda Item #9.1.

There are 18 unique parcels in the subject area with 12 different property owners. The majority of these properties are held in trust. The team has conducted outreach to all property owners and their representatives as part of this planning process. They have provided invaluable insight regarding what they hope to see here in the future, and where they see potential challenges and opportunities for property access.

OWNERSHIP



Conceptual Framework and Action Plan

Issues and Opportunities

LANDLOCKED

The primary challenge as it relates to the goals for the Northrise Blueprint Plan stems from the fact that the subject properties are landlocked beyond two easement connections near the northwest corner that provide access to Northrise Drive. This means that any recommendations for future access and a transportation network will depend on collaboration with surrounding property owners. These include the State Land Office, who owns property along Northrise Drive, west of the Heck property and Silver Pear Investments, who is currently building a commercial building on Northrise Drive, east of the Heck property.

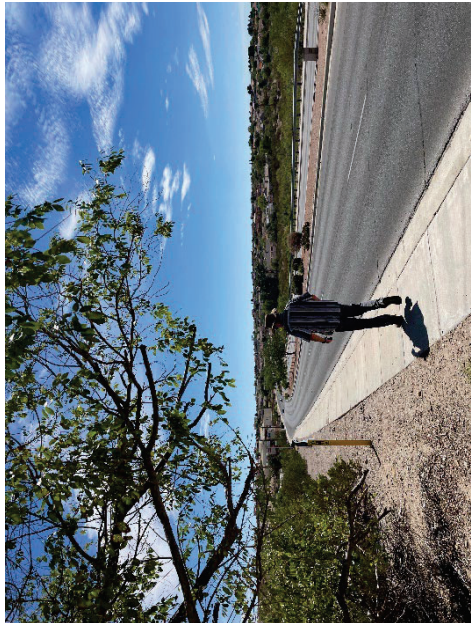


Figure 9. Possible connection point to N Roadrunner Parkway

Along North Roadrunner Parkway, the New Mexico State University (NMSU) Foundation, the Hafen family and Camino Real Middle School all own property that could offer connections to this roadway.

To the east, there are possible connections to Rinconada Boulevard from either the Walmart property or south along the Pueblo de las Alamedas Owners Association property.

TOPOGRAPHY & DRAINAGE



Figure 10. Drainage pond east of project area, south of Walmart

The variable topography of the project site presents opportunities as they are related to the views of the nearby mountain ranges and city to the south. In general, the site has a gradual drop from the north side of

the properties toward the arroyo in the southeast corner. The Alameda Arroyo also is a potential asset in that it provides a lovely natural buffer to the subject area that is host to natural flora and fauna. It also already has a multi-use trail that runs along the south side of the arroyo, near the Camino Real Middle School.

However, the topography, natural drainage paths and arroyo also present some challenges for what might be most appropriate or even possible for future development in these locations. FEMA requires a permit before construction or development within flood zone and any future development must follow the requirements of the National Flood Insurance Program (NFIP) and local floodplain management ordinance.

TRAFFIC IMPACTS

According to the Mesilla Valley MPO Traffic Flow data, the 2017 Average Annual Weekday Traffic for the primary roads around the subject area are as follows:

- Northrise Drive – 10,116
- N Roadrunner Parkway – 10,922
- Rinconada Boulevard – 4,464
- N Sonoma Ranch Boulevard – 8,877
- Morning Star Drive – 1,391

Anecdotally, this area also receives a daily fluctuation in traffic for student drop-off and pick-up at Camino Real Middle School. This primarily impacts N Roadrunner Parkway, with a secondary access point for bus drop-off and pick-up just off N Sonoma Ranch Boulevard.

With this in mind it will be important that any proposed vehicular network within the project site designate through connections, while limiting cul-de-sacs and dead ends as much as possible. It would also

benefit the plan to connect to any existing roads or access points that are opposite proposed entries to allow for the possibility of a signalized intersection (for example, at Calle Jitas Boulevard).

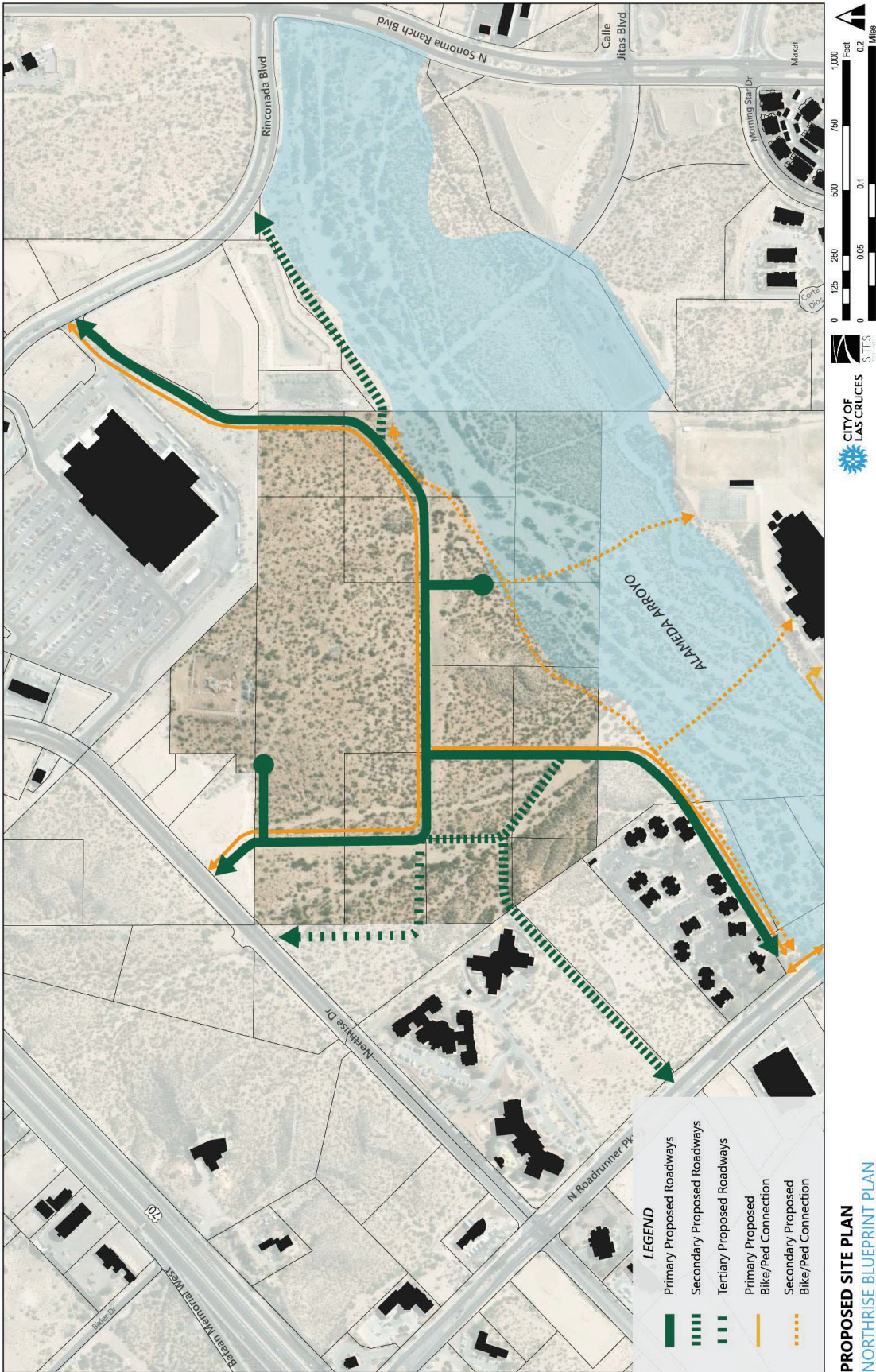


Figure 11. Rinconada Boulevard looking south

With these issues and opportunities taken into account, the following section explores possible future access points for both pedestrians and vehicular traffic, as well as the actions the City and property owners can take to realize this vision for an interconnected set of properties that are ready for future development.



Conceptual Framework & Circulation Alignments



VISION

The Northrise Blueprint Plan will provide a conceptual framework to guide future development of a transportation network that provides access to all properties on this site for vehicles, pedestrians, and bicyclists. This framework takes into consideration the unique challenges and opportunities in this area, including its topography and relationship to drainage flows, the unique nature of the division of parcels here, and the traffic flows of surrounding thoroughfares.

CONNECTIONS

The conceptual plan on the previous page provides proposed roadways and trail connections using a hierarchy of preferred (primary) connections, followed by secondary and tertiary, if those preferred connections are not available.

The primary roadway connections are shown as a solid green line and provide ingress/egress from Northrise Drive, N Roadrunner Parkway and Rinconada Boulevard. Secondary and tertiary connections for future roads are shown in densely dashed and spaced-out dashed lines, respectively.

Bicycle and Pedestrian connections are depicted in yellow, with the primary routes shown by the solid line and secondary routes illustrated by the dashed yellow lines.



Figure 12. Morning Star Drive - Example Collector Road

ILLUSTRATIVE MULTI-MODAL STREET SECTIONS

The design of the future transportation network should be aligned with guidelines from previous and ongoing planning efforts by the City; namely among them, the forthcoming *Realize Las Cruces* which is anticipated to be released in summer of 2024. The following page provides an example section for a Collector Road from the current City of Las Cruces Land Development Code – Design Standards.

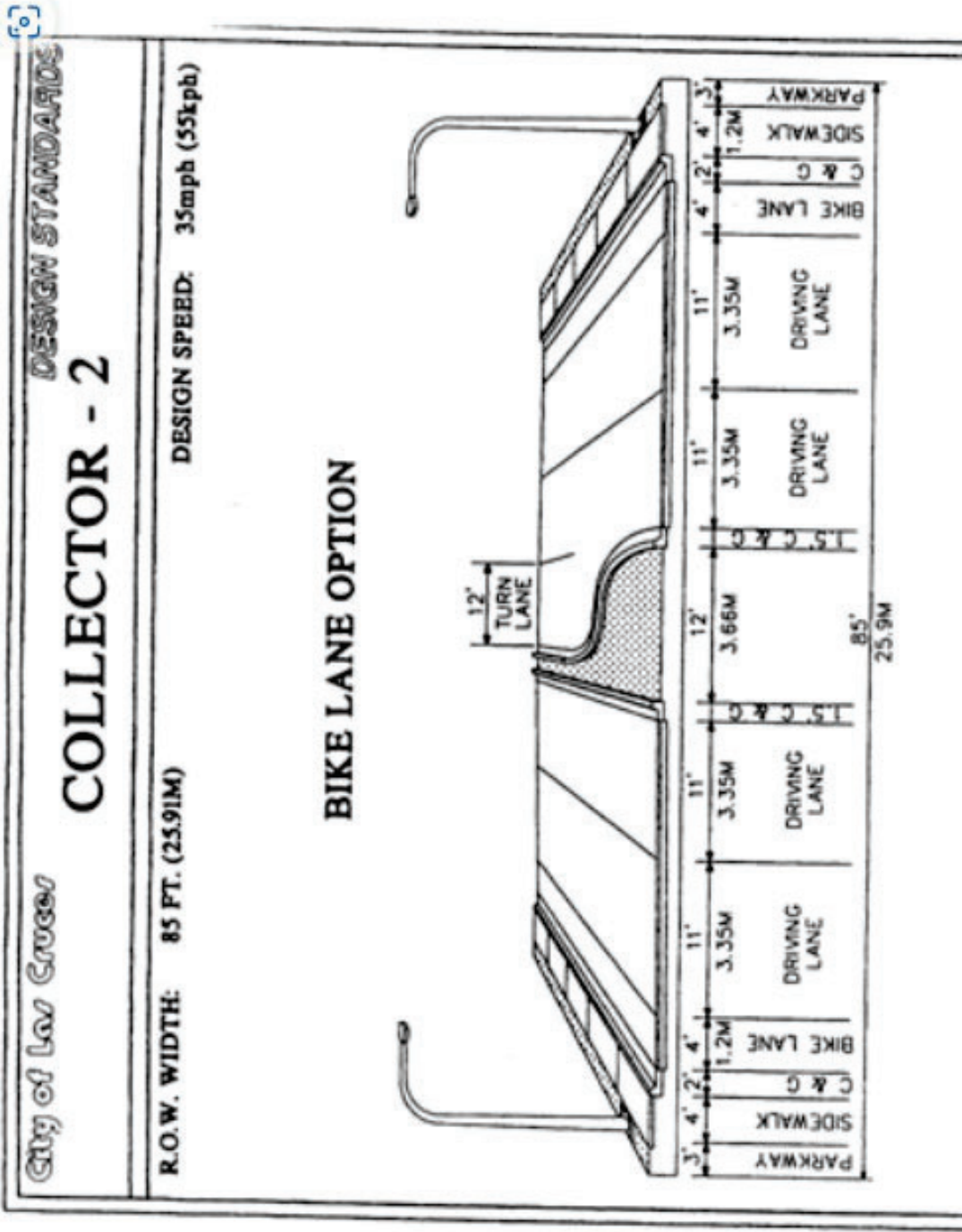


Figure 13. 85' Collector example from Las Cruces Land Development Code

Action Plan

The following Goals and Actions provide a path for the City to implement this framework and pave the way for development here in the future.

GOAL 1: Create an interconnected roadway network through the Northrise properties.

- ACTION 1.1:** Conduct Traffic Impact Study to determine appropriate level of roadway classification.
- ACTION 1.2:** Develop an appropriate roadway design using Complete Street guidelines and adopted recommendations from *Elevate Las Cruces*.
- ACTION 1.3:** Work with property owners to designate public right-of-way for the primary roadway connections.

GOAL 2: Provide a system of multi-modal connections that allows future residents and visitors to safely reach their destinations.

- ACTION 2.1:** Design streets with safe, multi-modal infrastructure, per *Elevate Las Cruces* Future Thoroughfare Map and current development standards.
- ACTION 2.2:** Pursue easement access for recommended trails on private property.
- ACTION 2.3:** Consider providing partial credits for developers for parkland dedication for trails with improvements that promote pedestrian and bicycle use.
- ACTION 2.4:** Work with Camino Real Middle School to pursue alignment and resources through Safe Routes to School program.

GOAL 3: Preserve natural drainage pathways and habitat in and around the Alameda Arroyo.

- ACTION 3.1:** Clearly define the edges of the arroyo according to flood zone maps.
- ACTION 3.2:** Preserve land, as much as possible, within the Alameda Arroyo according to guidelines within *Realize Las Cruces*.
- ACTION 3.3:** Work with property owners who have land in the flood zone and provide information about requirements for development within a flood zone, including possible channelization of the arroyo to meet MS4 (Municipal Separate Stormwater Sewer System) requirements and the filing of LOMR/CLOMR map revisions with FEMA.
- ACTION 3.4:** Encourage property owners and developers to incorporate on-site drainage and green infrastructure into future site plans throughout the planning area.
- ACTION 3.5:** Consider using Transfer of Development Rights (TDR) to work with developers and create tools to facilitate profitable development in areas that are considered a priority for future conservation (Alameda Arroyo and drainage areas).

GOAL 4: Prepare land for future development.

- ACTION 4.1:** Rezone Equestrian Estate (EE) and Agricultural (A-2) properties to allow for more flexible land uses in the future such as residential and small neighborhood commercial, in alignment with *Elevate Las Cruces* and current development standards.
- ACTION 4.2:** Consider conducting environmental and drainage reviews and the submittal of a grading plan for properties that include steep slopes.



Plan Adoption & Team

Blueprint Plan Purpose and Adoption Information

The following information is from the Community Blueprint Planning Initiative document for the City of Las Cruces.

A Community Planning Blueprint (Blueprint) is a policy plan for a defined area within the City's planning jurisdiction that further elaborates and promotes the vision of the City's Comprehensive Plan. A Blueprint planning effort is intended to address only a few issues unique to a particular geographic area or that require an atypical set of analyses and actions.

Individual Blueprints may serve as policy guides for City Council, Planning and Zoning Commission, City staff and the public and articulate the goals for the area regarding land use, economic development, aesthetics and urban design, resource protection, transportation and community services and/or the preservation of valued community resources. The Blueprint planning process is provided as a planning option other than the full-scale neighborhood or corridor plan process. A Blueprint requires less analysis and detail than a neighborhood or corridor plan, thus allowing for faster completion than these other more robust planning processes. However, not every area or neighborhood in Las Cruces will be appropriate for such a plan. The expectation is that this type of plan will be used for areas that are in transition, facing expanded development pressures, are concerned with maintaining their character, or other specific issues.

Community Planning Blueprints are policy documents adopted by resolution of the City Council and therefore are not development regulations or laws. Individual Blueprints will act as policy guides for activities within their called-out boundaries. A Blueprint will function to provide more fine-grained, in-depth analysis and direction tailored specifically for an area and its unique challenges or circumstances.

The approval of specific Blueprints will follow the standard plan adoption process of public input, staff preparation, public review, Planning and Zoning Commission recommendation and City Council adoption.

Acknowledgements

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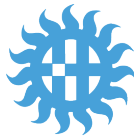
Tony Trevino, Deputy Director, Public Works

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Property Owners and Developers

Thank you to the property owners, representatives, developers and other stakeholders who participated in meetings to provide their input and review draft plans.





CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
December 19, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Connor Murray, Member
Vanessa Porter, Member

BOARD MEMBERS ABSENT:

Joaquin Acosta, Member

STAFF PRESENT:

David Weir, Deputy Director Community Planning
Sara Gonzales, Senior Planner
John Castillo, Planner
Brad Douglas, City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1.

10. NEW BUSINESS

10.2 BP-23-001: A request to approve a neighborhood plan known as the Northrise Blueprint that will address future access and conceptual road alignments on undeveloped land located generally south of Northrise Drive. These vacant properties are situated between Northrise Drive, N. Roadrunner Parkway, Rinconada Boulevard, and the Alameda Arroyo.

Kaiser: All right. We are now moving on if I can find my agenda, to the final item this evening which is under new business. This is item 10.1, a request to approve a neighborhood plan known as the Northrise Blueprint that will address future access and conceptual road alignments. So I will turn it over to staff for a presentation.

Weir: Good evening, Commission. This is David Weir again for you. If I can, the plan before you is known as a Blueprint. It's a planning document that's to address a specific area of the City and specific issue. It's use is one that can have a variety of needs. The slide goes from the resolution that adopted

1 the Blueprint and provided the framework. And so, it's very flexible in how
2 it's used.

3
4 The particular Northrise, some of the other things that it can address are on
5 the second slide. This particular case was something that staff initiated.
6 The property in question was initially, we started to see a variety of people
7 asking to come in and develop it. There was limited access to it. And so,
8 we wanted to get a head of the proposals coming in. We wanted to propose
9 policies that would help the Commission, the City Council and staff
10 whenever someone wanted to develop that property to make sure that we
11 wouldn't create any landlocked parcels and that we could encourage its
12 development.

13
14 So the particular property itself is located between Northrise Drive and just
15 a little bit southeast of it. It's east of Roadrunner Parkway. It's, I guess,
16 southwest of Rinconada Boulevard, and roughly north of the Alameda
17 Arroyo. It's the property across the Arroyo from the middle school off of
18 Roadrunner Parkway.

19
20 It entails 62 acres. There are multiple property owners in it and it has also
21 multiple zoning. The area is close to the Arroyo are in the A-2, which is a
22 zoning district we no longer, it's a legacy district. It's not in our current
23 Zoning Code so if development takes place, they'll have to amend that.
24 There's R-4 for multifamily development and limited commercial and office.
25 They had equestrian states which is a low density, residential type use.

26
27 This slide just kind of gives you a feel for the property itself. It's all vacant.
28 It's all pretty much untouched desert, there are some utilities that run
29 through it and that's the only disturbance that you'll see on that property.
30 Again, this is a topographical map of it. If you were to go out on the property,
31 the area along Northrise is the high point and then there's a drop off. And
32 in some areas a quite steep drop off down to the Arroyo.

33
34 Again, this slide reflects the zoning that the previous slide demonstrated.
35 So you can see there are uses anticipated along Northrise but you can also
36 see the limited access to a public street. It's pretty much limited to in this
37 area. This is a slide that shows the existing utilities. There is a large sewer
38 line that runs through it, but there are other utilities are in the area so there
39 wouldn't be that much of an extension to allow the property to develop in
40 that area.

41
42 So the Community Development Department hired Sites Southwest to do a
43 blueprint for this area. Through that process, they met with City staff. They
44 met with the State Land Office. They met with property owners. And they
45 came up with a series of goals and actions to facilitate growth in that area.
46 One of the primary ones was to make sure that there was access and that

1 there was a road network to allow all those properties be developed and
2 contribute to the City.

3
4 The second goal was that any of those transportation networks address all
5 modes of transportation whether that's pedestrian, biking, transit, or again
6 vehicle use. The third goal was that in the development of that property, all
7 steps would be taken to make sure that the arroyo is preserved or at least
8 was honored and any development would take place to limit or mitigate any
9 damage to that.

10
11 And then basically, as I kind of started the presentation, was that we would
12 make sure that there would be planned development in that area and then
13 the City, any of the property owners would know that there was
14 consideration on making sure that the property would have access and that
15 there could be guidance for them.

16
17 This slide reflects the actual layout that Sites Southwest and staff are
18 proposing for that. The heavy green line is what we would propose be
19 constructed as development takes place. An access point to Northrise, an
20 access point to Rinconada, and then an access point to Roadrunner. The
21 dashed green lines are alternatives that could also be looked at. This
22 particular property is owned by the New Mexico State University Foundation
23 and I believe also Northern Arizona University and Arizona University. But
24 there is an opportunity for access through that, it's just maybe a little bit
25 more complicated. These other ways would be a little more feasible. And
26 then a secondary access along the arroyo to Sonoma Ranch.

27
28 And so the goals and this schematic layout of the access and road network
29 are really the recommendations of this plan. And so what staff is asking this
30 evening is if the Planning and Zoning Commission could recommend
31 approval of the blueprint. With that recommendation, staff could then take
32 it to the City Council and if they adopt it by resolution that would then
33 become the guiding steps whenever that property came forward, we would
34 make sure that they reviewed this and adhered to the goals of the plan as
35 development goes forward.

36
37 Also, noted that all the property owners and the adjacent property owners
38 were invited to participate in this plan. There was an in-person opportunity
39 for the property owners to come in. I think we had three come to the
40 meeting. And then there was also an opportunity for a virtual meeting. But
41 again, the property owners could come forward. At those meetings,
42 everyone was in support of this effort going forward. In fact, one of the
43 property owners had had a zone change that was presented to you roughly
44 the same time as the project started. We also reached out to the middle
45 school principal so that they would have an opportunity to speak about it,
46 the State Land Office which has some property, and all had an opportunity

1 to provide input into the plan.

2
3 This is a slide that shows kind of the input that was gleaned from them. A
4 series of questions were asked and they were provided an opportunity to
5 respond. This evening findings in support of our staff recommendation, staff
6 feels that the Blueprint is complementary to Elevate Las Cruces and the
7 suburban place type. We feel that it will assist owners as they come forward
8 and assuring that they'll have access and the ability to develop their
9 property. And that also if all of the guidelines for the development and
10 approval of a community blueprint.

11
12 Your options are your standard options. Vote "yes" and that would
13 recommend approval to the City Council, vote "no," that would deny, and
14 the other one is you could vote "yes" and you can either request
15 modifications to the plan or place any conditions, or if you felt you needed
16 more time to review it you could also table that to a subsequent meeting.
17 So with that I will rest and take any questions that you have. There may be
18 some property owners in the audience that may wish to speak about the
19 plan also.

20
21 Kaiser: Okay. Thank you. Any questions from the Commission? Commissioner
22 Smith.

23
24 Smith: I just wanted to commend staff on just how clear and concise this Blueprint
25 was. I actually enjoyed reading it.

26
27 Weir: Mr. Chair and Commissioner Smith. You can attribute that all to Senior
28 Planner Sara Gonzales and the consultant we hired. They did a really nice
29 job on this plan.

30
31 Kaiser: So I have a couple of questions. So I'm curious, because of the arroyo
32 that's there and the flood plain given its significant size, one, I guess I'm
33 curious how, what the expectation would be for those parcels that I guess
34 are southeast of this block that are predominantly in the flood plain. And
35 then you've got I guess the southeastern most parcel which is almost split
36 evenly between the actual channel and then the flood plain on the
37 southeast. How would development sort of progress in that area?

38
39 Weir: Mr. Chair. The plan primarily concentrated on the street network but it was
40 also cognizant of the, I guess the restrictions and the limitations those
41 properties would have. The City's policy is generally to keep arroyos as
42 natural as possible, but there is the potential they could engineer a solution
43 to use more of those properties even though the City does not encourage
44 that.

45
46 Again, the plan doesn't really address this but Elevate Las Cruces does. It

1 talks about pursuing the transfer of development rights. And so that maybe
2 another option that they could pursue in the future. And I guess another
3 option they could take is if they had property they could look at intensifying
4 a use on the property that they own. Another thing is they could look at
5 providing open space to the City to maintain that arroyo.
6

7 Kaiser: Okay. Yes, because the proposal is to have I guess a cul-de-sac of sorts
8 but it would be for each of these parcels should they develop they are likely
9 going to have interior road networks into themselves, correct?
10

11 Weir: Mr. Chairman. That is correct. What we were looking at primarily was to
12 make sure that if someone came in with a development and was going
13 through the subdivision and we would either recommend rezoning or it will
14 be rezoned through the Realize Las Cruces effort. But when the individual
15 building of those parcels take place, they would have to make sure that
16 those roads were built and access provided.
17

18 Kaiser: Okay. But then presumably, I mean maybe not every single parcel, but
19 especially the big, I guess T block that's kind of in the middle, it would have
20 additional roads that would need to then connect some form or fashion to
21 the primary proposed roadways?
22

23 Weir: Yes. I believe that the way the road was proposed and the cul-de-sac was
24 to make sure that the plan provided a roadway that would access every one
25 of those properties. So there maybe some of those blocks are owned by
26 the same property owner. And so that's why the arrangement is put
27 forward. But if they were to sell that then they would have to provide an
28 interior road off of this, what you see on the schematic plan.
29

30 Kaiser: Okay. I guess my only comment on sort of the proposal would be, I think
31 there was discussion somewhere in the document about sort of reducing
32 the number of cul-de-sacs, and yet you know we proposed two of them
33 more or less. So it would be nice if that cul-de-sac, you can go back to the
34 slide that you had the proposal it might be easier for me to explain.
35

36 Weir: Okay.
37

38 Kaiser: Yes. So the northern most cul-de-sac if that continued all the way across
39 and you actually guaranteed a physical connection to you know kind of
40 running parallel across that boundary. Does that make sense?
41

42 Weir: Yes. And I think for once a cul-de-sac might meet those intent they're
43 providing. There's a steep drop off in this area, and so in this instance a
44 cul-de-sac might make sense rather than providing a loop road down, it may
45 be difficult just the elevation change. So this would provide some access
46 into areas. Unfortunately, these lots are pretty much built out and so there's

1 limited access because that would be another way you could treat it is loop
2 a road up this way. But they weren't really in the planning area.

3
4 Kaiser: Okay. And continuing it all the way to the east isn't feasible because of
5 topography or, that was what I was kind of alluding to is why not just
6 continue that, so you at least guarantee you've got one big grid.

7
8 Weir: Yes. I'm going to let Ms. Gonzales address that question.

9
10 Gonzales: Mr. Chair. To go back to the original question regarding the flood zone area.
11 One of the things that we looked at through Public Works was to say if an
12 engineer can channelize that that is something that could also be
13 addressed. So if they can channelize the arroyo and make it in a way to
14 where it can be engineered properly. There are actually co-roads at the
15 end of Roadrunner that they can actually connect to. Those co-roads would
16 actually go in across, underneath Roadrunner and go to an actual drainage
17 site. So it does give the opportunity but it would cost a lot of money for the
18 engineering of that design. And so that's one opportunity from the flood
19 zone.

20
21 Also, it could be whenever there is a property within the flood zone, it does
22 have to have a LOMAR, CLOMAR and actually be brought out in order for
23 the City to allow development to take place. That also takes funding as well
24 as development standards as well. So there's some very different issues
25 with those properties because they are at the lowest point. Being that we
26 go from the 4210 along Northrise down to 4160, there's definitely a grade
27 difference when we walked out there. So you can see that there's definitely
28 going to be a lot of dirt removal, topography issues whenever development
29 comes in. So they may be limited too, and you know and staff is looking at
30 this possibly that residential because there is so much commercial that is
31 around this property that residential maybe that intent. And you may see
32 larger lots. It maybe something that you see in Picacho area where you
33 have a built-out area for the home but the rest stays as natural topography.
34 Some of those are what we are looking at.

35
36 As far as the access points going up there. The property that's located in
37 the corner on the northeast side that's Walmart. They have built basically
38 a wall all the way around their property because it's retaining. So in order
39 to get that connection, we have to go directly to the other side in which the
40 consultants proposed to connect. That property that is along the south side
41 of Walmart is the next connection we'd have but it would be going through
42 someone else's property for that roadway.

43
44 We are trying to work with Walmart in order to get that connection to go
45 along their property line and possibly through there because after that it
46 then falls into a drainage channel. So there was a lot of issues or constraints

1 that we're working with as far as getting a roadway network.

2
3 The planning parcels to look at though is a lot of the property owners only
4 own 2.5 to five acres. So this was primarily, yes, there's cul-de-sacs. And
5 Planning staff really does not like cul-de-sacs to stop at, but this was just to
6 say, if this parcel gets developed, you have an accessible road to get to.
7 We were trying to just make sure that our last point of egress or ingress is
8 coming in off of Northrise, and if we lose that basically the rest of the
9 properties become landlocked. They don't have any chance of
10 development. So it's putting this into place so that when development
11 comes in, we can say, hey, you've got to work together and build this road
12 out to where you guys all have access.

13
14 Kaiser: Thank you for that. And I definitely, I was out there and it's not an easy site
15 for sure. My last comment on the proposed road network. The connection
16 down to north Roadrunner. Is that even feasible? No, the primary one.
17 Because you're basically, I don't think there's anyway you can construct a
18 road outside of the flood plain. And then I guess there's even a parcel that
19 is sitting right there that you would probably be almost entirely building a
20 roadway on it. So the two points are was there any analysis done on the
21 impact to the arroyo? Because I'm pretty sure as you alluded to Elevate
22 Las Cruces is saying sort of the opposite. And there is a parcel there that
23 seems like the roadway would almost entirely eat up that parcel.

24
25 Weir: Mr. Chair. I think that parcel is about 50 feet in width and I believe it's owned
26 by the City of Las Cruces. And so, while this would be a secondary access
27 point, it probably wouldn't be built to any industrial or commercial standard.
28 It would be like a local street within that 50-foot right-of-way. But that was
29 analyzed and looked at and a street could be in there to City standards. It
30 would be just like a local type of street.

31
32 But it's only loaded on one side and actually this apartment complex is
33 already built out, and so it may not have any access at all. So it would be
34 something that would assist the emergency services getting into that area.

35
36 Kaiser: Yes. I mean it almost seems like at that point you'd be looking at that
37 secondary proposed route which in my mind it seems like I would be
38 shooting for that. That is your primary and making what's now the primary
39 the secondary. But I appreciate that.

40
41 The last comment I was going to make or I guess two more comments. The
42 trail that currently exists south of the arroyo. It appears that it almost
43 touches the southeastern corner of this block, but yet all of the proposed
44 connections are looked at from a secondary perspective. So I'm just curious
45 why not? Since it's already built. It's right there. It provides connectivity to
46 the rest of the network. Why not make a primary recommendation that that

gets connected in some form or fashion?

Weir: Mr. Chair. The only reason I can think of is that all this area out here was outside of the planning area. I think as these parcels come forward for development, we would encourage the extension of that. I think we were just looking at logical connections from this area here that tied right into the school property.

Kaiser: Yes. And that's what I'm referring to. So where we have the secondary connections, why not make one of those a primary because in my mind the way that you described it the primary is kind of that's what you're aiming for and then everything else is kind of like a Plan B. But my comment would be why not make that physical connection to access the school and that trail a Plan A.

Weir: Mr. Chair. I think it was just the difficulty of making a permanent improvement crossing the channel. I think if you come down this way, you can connect right to it and you already have an arroyo crossing that I think some of it played into the cost. I know there was one consideration of making another entrance way this way, but when we talked with the property owners and engineering department, or Public Works, it was very cost prohibitive. Just the whole length of it and then building in a flood plain. And so, my guess is that's was primarily it. Do you recall?

Gonzales: Mr. Chair and Commission. Some of the other aspects that we had to look at especially from the trail system. We were also trying to get to where you could get onto Sonoma Ranch or Roadrunner through, there is actually a bus turnaround, that was one of the options. It became cost prohibitive because then someone would actually have to build a bridge over the arroyo to not disturb that area because that is the primary flow of water.

Some of the trail systems would have to be elevated some of them. Right now, the way the trail system works is because they're naturally created. As you get development that are coming in some of that trail system is going to be disturbed or changed or evaluated in a different way. Some of the primaries that were given were the best opportunities from property owners or easements that we could possibly get to get road access or some kind of access points to the property.

The secondaries were given because like the property that is owned by NMSU is actually up for sale right now. And so, unless there's someone that's going to invest in that then we can work with them coming forward, that's why it became a secondary. So some of the properties we're working with on the outside border make it very different. And then the arroyo makes it very cost prohibitive for some of the options to actually take place.

- 1 Kaiser: Okay. Thank you. And then my last comment. In the document there's
2 reference to the development. Let me see if I can quickly find it. It was the
3 cross section from the Development Code. I guess my only modification
4 would be to scratch that particular figure because the Development Code is
5 under review and I think having the illustrative example is probably better to
6 communicate the intent and goals rather than to have an archaic cross
7 section that we would prefer not to have. So I don't know if that's a
8 correction we can make tonight.
9
- 10 Weir: Mr. Chair. That was something that we were going to just do it at staff level.
11 We were going to go back to the consultant and ask if they could provide a
12 different cross section. We were going to do that between your
13 recommendation and going to City Council so.
14
- 15 Kaiser: Okay. And I'm on record so, and you are too, so that does that presentation.
16
- 17 Gonzales: Mr. Chair. There wasn't really a great graphic. But the roadway was too
18 large to expect property owners for these properties to actually go and put
19 that expense into there. And so working with Fire Department, they were
20 looking for a collector roadway that it actually attaches to your arterial
21 roadways through this development. So finding something that's 85 feet.
22 We had to go back to what our code currently has until we can get that new
23 design done. And it maybe something we want to reference Realize as part
24 of our process. However, we don't know when that time gets adopted. So
25 we need something in place to say, this is what we expect the road to
26 somewhat look like by providing all modes of transportation.
27
- 28 Kaiser: Yes. But conceptually though, I mean ...
29
- 30 Weir: Mr. Chair. What I would recommend is that you say that we can pretty up
31 the picture we have now. And then I would say or a future adopted cross
32 section by the City that would still meet those needs.
33
- 34 Kaiser: Yes. I mean at a minimum I think this should follow whatever the current
35 standard is. I mean this road is not getting constructed next year.
36
- 37 Weir: Yes. The graphic that you have is a current standard. And so, but I think I
38 would recommend that you make that a condition that you provide the plan,
39 the ability to, or a future cross section adopted by the City to meet those
40 needs. And that way we can capture what we're working on with Realize
41 Las Cruces or the update of the Land Development Codes.
42
- 43 Kaiser: Okay. Because I thought there was also another graphic in here from
44 Elevate. Am I incorrect in that?
45
- 46 Gonzales: You are correct, Mr. Chair. There is the standard but it doesn't provide the

1 actual dimensions or cross section. It was a picture that came out of Elevate
2 Las Cruces showing that they were trying to create complete streets. And
3 so it's just a guide. It doesn't actually have dimensions. This provides
4 dimensions so that way when a builder comes in or a developer comes in,
5 we can say, this is what the road should have because you're trying to meet
6 all of these modes of transportation, that's what we were going for. So it's
7 more defined as opposed to where it shows just in Elevate that's a cross
8 section that meets all modes but it doesn't define it.
9

10 Kaiser: Okay. I mean I guess other blueprints didn't define the road cross sections.
11 Like the Apodaca one had just the conceptual. This is the vision. These
12 are the goals. I don't understand why we would treat this differently.
13

14 Weir: Mr. Chair. And Sara can help me on this. I think that was at the request of
15 the Fire Department. They wanted to say at minimum you'll do this. And it
16 wasn't that it precluded some other cross section. But they wanted some
17 confidence. There was quite a discussion about how they would service
18 this area and what type of roadways that they wanted.
19

20 Gonzales: Mr. Chair. That was correct. The Fire Department reviewed it because we
21 did have all staff review the plan as well being that they would have to
22 implement it and use it whenever we go forward. The major concern was
23 that we needed some type of collector roadway to attach to and what was
24 that going to look like.
25

26 And so, they wanted to ensure that they were going to have enough lanes
27 if they had to go through a different site, if there was only the access points
28 what would these roadways be used in order for them to access any of the
29 properties. Because if you look at the roadways, if you only get the one off
30 of Northrise and Roadrunner then you put a longer length onto the extended
31 roadway that's going towards the east side. So they need to make sure that
32 there's enough clearance in order for them to get in and then traffic can still
33 move.
34

35 Kaiser: Okay. Well, I'll craft my condition to propose while we work through this. I
36 appreciate all the conversation.
37

38 Weir: Mr. Chair. If you would like to go to a more conceptual discussion or
39 description of that, I mean that's definitely within your authority as the P&Z
40 of what you want to recommend to City Council.
41

42 Kaiser: Okay. Thank you. All right. Any other questions from Commission?
43 Comments? All right. I will go to the public. Is there anybody here tonight
44 who wishes to speak on this item? I see one gentleman here. You want to
45 come forward. If could state your name for the record.
46

1 Lopez: Isidro Lopez.

2
3 Kaiser: And do you swear or affirm that the testimony you're about to give is the
4 truth and nothing but the truth under penalty of law?
5

6 Lopez: I do.

7
8 Kaiser: I'll give you three minutes. Go ahead.
9

10 Lopez: Okay. I own 2.5 acres in the middle of that conglomerate. And Dr. Lowe
11 owns another 2.5 a little further down. He's more into the arroyo. So I was
12 telling him, I'm an engineer. So what I was telling him is to get some
13 (*inaudible*) on the south side and the west side so that we can sort of bring
14 it direct to the arroyo in some extent, you know. And so that was our thought
15 that, and the other thing about it is that my idea which is a concept is to do
16 a RV park. And it's under you know small housing. You could say it's
17 whatever, R-3, R-2, you know. But it's still not on concrete.
18

19 But and then the roads. I'm glad that we have a one to the east, one to the
20 west and one to the north. It's a perfect thing. And the slope, if you really
21 look at it, you're looking at less than a 5% grade, you know. It would
22 probably be more like a 2.5% grade, but you have some engineering done
23 before you know it can determine exactly what it is. You know, so my
24 thought was is to maybe in the next couple of years just to do a study for an
25 RV park and then do a study for the road, you know. So that's my idea.
26

27 So you want any, I think I talked to you, didn't I? Yes. And so, if you want
28 any information, we can work together and maybe put something together
29 you know and get it done, you know. But it will be including everybody that's
30 there, you know. I know that Mrs. Lacky has some property there. I know
31 that me and Dr. Lowe and a couple of other guys, we have property in that
32 area so we're willing to work together to get it done.
33

34 So I think the best thing right now is to get a preliminary engineer study and
35 then go from there. You know, so we can do that. What's your name again?
36

37 Gonzales: My name is Sara.

38
39 Lopez: Sara.

40
41 Gonzales: Yes.

42
43 Lopez: Yes. Okay. And I can talk to Sara and see what we can do.
44

45 Gonzales: Works for us.
46

1 Lopez: I thank you.
2
3 Kaiser: Thank you very much. Anybody else who wishes to speak on this item this
4 evening? All right. Seeing none. I will come back to the Commission. All
5 right so I'm going to throw out a condition and hopefully someone agrees
6 with me and wants to make it part of the motion. But my condition would be
7 all roads shall be developed as complete streets consistent with the Active
8 Transportation Plan and in accordance with the current development
9 standards. And that would take the place of the figure on page 21.
10
11 Porter: I'll second.
12
13 Kaiser: I need a motion first. Yes. Here I can give you my piece of paper.
14
15 Murray: I make a motion to approve what is it, 9.3 with conditions that ...
16
17 Kaiser: This is 10.1.
18
19 Murray: 10.1. My bad. With conditions that the proposed plan is built with complete
20 streets.
21
22 Kaiser: Can I just make the motion? Is that not a thing? Okay. So we will do a
23 motion for approval and before it seconds, okay. So I need a motion to
24 approve and we'll do a second. And then I will amend it with my condition.
25 Does that work for everybody?
26
27 Murray: I make a motion to approve 10.1.
28
29 Smith: I'll second.
30
31 Kaiser: And I'll make a motion to amend to approve item 10.1 with the condition that
32 all roads shall be developed as complete streets consistent with the Active
33 Transportation Plan and in accordance with the current development
34 standards. And this would take the place of the figure on page 21.
35
36 Bennett: I'll second.
37
38 Baum: Okay. Board Member Smith.
39
40 Smith: Yes, based on staff recommendation.
41
42 Baum: Board Member Murray.
43
44 Murray: Yes, based staff recommendation.
45
46 Baum: Board Member Porter.

Agenda Item #9.1.

1
2 Porter: Yes, based on staff recommendations, Elevate Las Cruces and also with
3 (*inaudible*) in that area, I believe it's going to be a plus to our City.
4
5 Baum: Board Member Bennett.
6
7 Bennett: Yes, based on staff recommendation.
8
9 Baum: Chair Kaiser.
10
11 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
12 Cruces.
13
14 Kaiser: All right. So now we're voting on the original motions to approve. I'm sorry.
15 I messed this whole thing up, all on my own, to have complete streets.
16
17 Baum: Board Member Smith.
18
19 Smith: I vote yes, based on Commissioner Kaiser's approval.
20
21 Baum: Board Member Murray.
22
23 Murray: Yes.
24
25 Baum: Board Member Porter.
26
27 Porter: Yes.
28
29 Baum: Board Member Bennett.
30
31 Bennett: Yes.
32
33 Baum: Chair Kaiser.
34
35 Kaiser: Yes.
36
37 Baum: Both motions passed.
38
39 Kaiser: We're ending 2023 on a very strong note. That does it for new business
40 this evening.



24-081

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	Adopted: February 5, 2024		
Drafter:	Virginia Barela	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure-to-Pay
Title:	A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 19-20-077A POLICE AUDITOR SERVICES, WITH MICHAEL J. GENNACO DBA OIR GROUP, LLC, OF PLAYA DEL REY, CALIFORNIA, ADDING UP TO FOUR (4) COMMUNITY OUTREACH MEETINGS PER FISCAL YEAR (PROCUREMENT NO. 19-20-077A).		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
Contract amendment authorization.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) required proposals for police auditing services. On November 2, 2020, the City advertised Request for Proposals for Procurement No. 19-20-077A. The Purchasing program received three (3) proposals. The proposals were reviewed and evaluated by the Selection Advisory Committee (SAC) on December 17, 2020. The recommendation of the committee was to award the contract to Michael J. Gennaco dba OIR Group (OIR), LLC, of Playa del Rey, California.

The City entered into a professional services agreement on March 4, 2021. As outlined in the agreement (Attachment "A") these services would enhance police accountability by making periodic public reports based on monitoring and auditing activities. This has contributed to increased transparency for police-compliant procedures. Additionally, semi-annual presentations to the City Council were performed to outline findings and other relevant information.

The City and OIR mutually desire to modify the terms of this agreement to add up to four (4) community outreach meetings per fiscal year. The additional community outreach meetings will not amend the original contract amount.

SUPPORT INFORMATION:
[Exhibit "A" - 19-20-077A Police Auditor Services Amendment](#)
[Attachment "A" - 19-20-077A Police Auditor Services](#)

PLAN(S):
None

COMMITTEE/BOARD REVIEW:

Agenda Item #9.2.

None

DOES THIS AMEND THE BUDGET?:

- ☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

- ☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

- ☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution authorizing the amendment to the Police Auditor Services agreement with Michael J. Gennaco dba OIR Group, LLC, of Playa del Rey, CA, adding up to four (4) yearly community outreach meetings per fiscal year.
2. Vote "No"; this will deny the amendment to the Police Auditor Services agreement with Michael J. Gennaco dba OIR Group, LLC, of Playa del Rey, CA.
3. Vote to "Amend"; this could modify the Resolution, and City Council will need to provide alternative direction to City staff.
4. Vote to "Table"; this could delay authorizing the Resolution and the amendment to the agreement.

RESOLUTION 24-081

A RESOLUTION APPROVING AN AMENDMENT TO PROFESSIONAL SERVICE AGREEMENT 19-20-077A POLICE AUDITOR SERVICES, WITH MICHAEL J. GENNACO DBA OIR GROUP, LLC, OF PLAYA DEL REY, CALIFORNIA, ADDING UP TO FOUR (4) COMMUNITY OUTREACH MEETINGS PER FISCAL YEAR (PROCUREMENT NO. 19-20-077A).

The City Council is informed that:

WHEREAS, the City of Las Cruces required proposals for police auditing services; and

WHEREAS, on March 4, 2021, the City of Las Cruces entered into Professional Service Agreement 19-20-077A with Michael J. Gennaco dba OIR Group, LLC, of Playa del Rey, California; and

WHEREAS, the City of Las Cruces and Michael J. Gennaco dba OIR Group, LLC mutually desire to modify the terms of this agreement to add up to four (4) community outreach meetings per fiscal year.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT the Resolution authorizing the amendment to the 19-20-077A Police Auditor Services Agreement as shown in Exhibit "A" attached hereto and made part of this resolution is hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

FIRST AMENDMENT TO PROFESSIONAL SERVICES AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND OIR GROUP, LLC (19-20-077A)

Effective March 4, 2021, the City of Las Cruces, New Mexico (CITY) and OIR GROUP, LLC (CONTRACTOR), collectively hereinafter referred to as the PARTIES, entered into a Professional Services Agreement. On March 15, 2023, the PARTIES extended the Professional Services Agreement through March 2, 2024.

WITNESSETH

WHEREAS, the PARTIES desire to renew and extend the Professional Services Agreement, and

WHEREAS, the PARTIES desire to modify the terms and conditions of the Professional Services Agreement.

Accordingly, effective _____, 2023 the PARTIES amend the Professional Services Agreement as follows:

- 1. The Professional Services Agreement is hereby extended from March 2, 2024 through March 3, 2025.
- 2. Paragraph 2 of the Professional Services Agreement is deleted and replaced with the following:
 - a. SCOPE OF SERVICES. In a manner satisfactory and proper to the CITY, CONTRACTOR will perform SERVICES, as proposed in response to the CITY’S RFP No. 19-20-077A and as set forth in Exhibit A attached to and made a part of the Professional Services Agreement. Additionally, at the discretion and direction of the CITY, CONTRACTOR agrees to conduct up to four community outreach meetings per fiscal year.

Subject to the modifications set forth in the above Amendment to the Professional Services Agreement, the Professional Services Agreement dated effective March 4, 2021 is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed the signatures below.

OIR GROUP, LLC

CITY OF LAS CRUCES, NEW MEXICO

By: _____
Michael Genaco, Principal

By: _____
Alicia Hernandez, Purchasing Manager

Date

Date

Approved as to form:


Linda A. Samples, City Attorney



City of Las Cruces®

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 4th day of March, 2021 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and OIR Group, LLC, of 7142 Trask Avenue, Playa del Rey, CA 90293, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Police Auditor Services

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.19-20-077A, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount not to exceed \$75,000.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices monthly. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project that is required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of one (1) year and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1) year terms.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit B.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
- a. \$1,000,000 per occurrence
 - b. Coverage must be for “owned, leased, hired, and non-owned autos” or “any autos.”
3. Workers Compensation and Employers Liability
- a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR’S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Viola Perea

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: OIR Group, LLC
 7142 Trask Avenue
 Playa Del Rey, CA 90293
 ATTENTION: Michael Gennaco

23. SCOPE OF AGREEMENT

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

24. SEVERABILITY

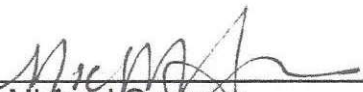
The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

OIR GROUP, LLC

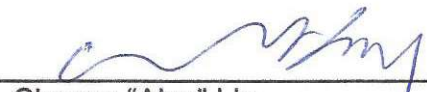
BY:


Michael Gennaco
Principal

February 23, 2021
Date

CITY OF LAS CRUCES

BY:


Chenyu "Alex" Liu
Purchasing Manager

3/4/2021
Date

APPROVED AS TO FORM

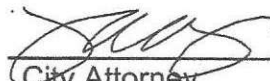
 for JVB 01/20/2021
City Attorney

EXHIBIT A

SERVICES

Police Auditor duties to be performed by CONTRACTOR include:

1. **Audits of the Complaint Investigation Process:** The audit process shall include a review and report on all formal citizen and internally initiated complaints and investigations, and investigations of law enforcement complaints received on the City's anonymous hotline, by the Internal Affairs (IA) Program to ensure investigations were complete, objective, thorough, and fair and that findings and actions taken in response to the investigations were appropriate. CONTRACTOR may be required to review and report on additional allegations of a non-serious nature categorized as EI-C3 complaints, as requested by the Las Cruces Police Department (LCPD), City Manager, City Attorney, and/or City Council.

The LCPD IA Program reported a 5-year average (2014 to 2018) of 32 formal and 39 non-serious C-3 complaints. Formal complaints may include, but are not limited to:

- a. Code of Conduct / Code of Ethics
 - b. Recording Devices
 - c. Physical Arrests
 - d. Search & Seizure
 - e. Use of Force
 - f. Bias-based Policing
 - g. Vehicle Pursuits
2. **Audits of Police Operations:** CONTRACTOR shall review and report on policies, procedures, and training issues growing from a complaint investigation and make recommendations for improvement to increase police accountability and transparency in the complaint process.
3. **Evaluation of Tort Claim Notices and/or Noticed Civil Actions:** CONTRACTOR shall review and report on all tort claim notices and/or noticed civil actions. The information contained in the report shall include information related to matters that have been litigated or disposed and are no longer pending and shall include, but not be limited to, offender and victim demographics, location of incidents, criminal charges associated with the

incidents, disposition of the case, policy violations and dispositions, and police officer's demographics.

4. **Follow-Up Audits:** CONTRACTOR shall conduct follow-up audits, as requested, for specific instances or complaints to evaluate implementation of recommendations or existence of procedural, practical, or other barriers that serve to suppress or discourage reporting of complaints.
5. **Statistical and Trend Analysis:** CONTRACTOR shall on a semi-annual basis, compile statistics and report on trends based on new and historical data resulting from complaint investigations. The statistical and trend analysis shall include, but not be limited to, offender and victim demographics, location of incidents, criminal charges associated with the incidents, disposition of cases, policy violations and dispositions, police officers' demographics, and other statistics related to the complaint investigations.
6. **Comparative Analysis:** CONTRACTOR shall compare data for Items 1 through 5 to the overall statistics and number of incidents the Police Department responds to where no complaints were received.
7. **On-Site Presentations:** CONTRACTOR shall on a semi-annual basis, present findings, recommendations, and statistical/trend/comparative analysis to City Council, City Management, and general public.

At least one week prior to each semi-annual on-site presentation, CONTRACTOR shall schedule a meeting with the Chief of Police, City Manager, City Attorney, and other City Staff, as applicable, to discuss outcomes and recommendations.

Reporting Requirements:

1. CONTRACTOR shall submit written audit and evaluation reports electronically within 30 days of receiving the complaint or notice, which shall be distributed to the Chief of Police, IA Program Manager (i.e., currently the IA Lieutenant), City Attorney, and City Auditor.

Each report shall include an outline of positive actions, dispositions, and/or findings with recommendations for strategies to promote accountability, to correct deficiencies, and improve complaint and investigative procedures based on best practices, industry standards, and case reviews.

2. CONTRACTOR'S written semi-annual reports must be submitted electronically within 30 days of the close of the reporting period and shall be distributed to the City Council, City Manager, Chief of Police, IA Program Manager, City Attorney, and City Auditor. Reporting shall comply with the City of Las Cruces

Accountability in Government ordinance when possible and shall be coordinated through the City's Internal Audit Division.

3. CONTRACTOR'S on-site presentations must be conducted within 60 days of the close of the reporting period.

Written semi-annual reports and presentations must include:

- Number of audit/investigation requests received during each semi-annual period,
- Number of audits/investigations completed during each semi-annual period,
- Summary of all dispositions, non-complaint actions, positive actions, findings, and recommendations reported during each semi-annual period, in addition to statistical, trend, and comparative analysis of new and historical data,
- The demographics of the audits/investigations as they relate to offender and victim demographics, location of incidents, criminal charges associated with the incidents, disposition of cases, policy violations and dispositions, police officer's demographics.

CONTRACTOR shall be responsible for protecting the confidentiality of LCPD files and records to which it has been provided access. The Police Auditor shall not identify the subject of an investigation in any public report and shall maintain confidentiality required by law.

All work completed by CONTRACTOR is subject to the New Mexico Inspection of Public Records Act (IPRA).

CONTRACTOR shall use electronic submission for investigation documentation. The exchange of all data between CONTRACTOR and the LCPD is to be encrypted at a level equivalent to, or greater than, AES 256 at all times during transit utilizing SCP, Secure FTP, or equivalent, or using encrypted disposable media, with any encryption key(s) being sent separately. Data sent via encrypted disposable media will only occur upon the written request of the City, or upon the cancellation of the service contract.

EXHIBIT B

SCHEDULE

INITIAL PHASE – FIRST 60 DAYS: ASSESSMENT & RELATIONSHIP BUILDING		
Meetings	Review	Establish
• City leadership • Police Chief and command staff • Community leaders and other stakeholders • Goal is to gain perspective on state of the police department and identifying any specific concerns • Gather input from Department and stakeholders to identify future areas of audits	• Las Cruces PD policies and procedures • Training protocols	• Systems for complaint intake and handling • Schedule for on-site “office hours” • Work with Department to develop protocols to ensure: • Prompt notice of critical incidents • Prompt notice of new complaints • Expectations for inclusion at key meetings • Efficient referral of complaints to the IA Program

**SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 2 OF 5
RFP No. 19-20-077A Police Auditor Services**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Police Auditor Services Service Agreement (Agreement) dated March 4, 2021 between the City of Las Cruces (City) and OIR Group, LLC (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin March 4, 2022 and terminate March 3, 2023. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

OIR GROUP, LLC

CITY OF LAS CRUCES

 2.23.22
Signature Date

 02/23/22
Chenyu "Alex" Liu Date
Purchasing Manager Alfredo R. Pacheco
Interim

MICHAEL J. GENNARO
Printed Name/Title
PRINCIPAL, OIR GROUP

**SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 3 OF 5
RFP No. 19-20-077A Police Auditor Services**

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the Police Auditor Services Service Agreement (Agreement) dated March 4, 2021 between the City of Las Cruces (City) and OIR Group, LLC (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin March 4, 2023 and terminate March 2, 2024. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

OIR GROUP, LLC


Signature

3.2.23
Date

MICHAEL GONNACO, PRINCIPAL
Printed Name/Title

CITY OF LAS CRUCES


Alicia Hernandez
Purchasing Manager

3/15/2023
Date



24-082

City Council Action and Executive Summary

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	Adopted: February 5, 2024		
Drafter:	Virginia Barela	Department:	Financial Services
Program:	Purchasing	Line of Business:	Procure-to-Pay
Title:	A RESOLUTION TO AWARD A PROFESSIONAL SERVICE AGREEMENT FOR METROPOLITAN REDEVELOPMENT AREA PLAN DEVELOPMENT SERVICES TO PLACES SOUTHWEST INC. DBA SITES SOUTHWEST LTC CO., OF ALBUQUERQUE, NEW MEXICO IN AN AMOUNT NOT TO EXCEED \$220,482.00, PLUS GROSS RECEIPTS TAX AS APPLICABLE (PROCUREMENT NO. 22-23-015).		

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
To award a professional service agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) has designated two areas within the Las Cruces city limits as Metropolitan Redevelopment Areas (MRA) in an effort to address the issue of blight and poverty in several areas of the community. An assessment of the City's infill area was conducted, and multiple areas were identified as meeting the criteria for designation. As a result, the recommendation was made to designate the El Paseo/South Solano Corridors with approximate boundaries of Lohman Avenue on the north, Solano Drive on the east, Main Street on the west, and University Avenue on the south.

On June 9, 2023, the City advertised Request for Proposals for Procurement No. 22-23-015. The Purchasing program received three (3) proposals that were evaluated and scored by the Selection Advisory Committee (SAC) on September 13, 2023. The recommendation of the committee was to award the professional service agreement to Places Southwest Inc. dba Sites Southwest (Sites SW) LTC Co., of Albuquerque, New Mexico.

This award to Sites SW will continue the City's prioritized efforts to alleviate poverty in the community, and the addition of two new MRA designations, in conjunction with the current downtown MRA, will provide significant resources to assist those efforts in addition to providing support to local businesses, options for quality of life projects, and affordable housing. The MRA plan will define the City's vision for the designated area and will help identify priority catalytic projects to revitalize each area.

SUPPORT INFORMATION:
[Exhibit "A" - 22-23-015 MRA Dev Services](#)

COMMITTEE/BOARD REVIEW:
SAC

DOES THIS AMEND THE BUDGET?:

- ☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

- ☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

- ☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and award the professional service agreement to Places Southwest Inc. dba Sites Southwest (Sites SW) LTC Co., of Albuquerque, New Mexico, in an amount not to exceed \$220,482.00, plus gross receipts tax as applicable.
2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternate direction.
3. Vote to "Amend"; this could modify the Resolution, and City Council will need to provide alternative direction to City staff.
4. Vote to "Table"; this could delay awarding a contract for Metropolitan Redevelopment Area Plan Development Services.

RESOLUTION 24-082

A RESOLUTION TO AWARD A PROFESSIONAL SERVICE AGREEMENT FOR METROPOLITAN REDEVELOPMENT AREA PLAN DEVELOPMENT SERVICES TO PLACES SOUTHWEST INC. DBA SITES SOUTHWEST LTC CO., OF ALBUQUERQUE, NEW MEXICO IN AN AMOUNT NOT TO EXCEED \$220,482.00, PLUS GROSS RECEIPTS TAX AS APPLICABLE (PROCUREMENT NO. 22-23-015).

The City Council is informed that:

WHEREAS, City of Las Cruces (City) has designated two areas within the Las Cruces city limits as Metropolitan Redevelopment Areas (MRA) in an effort to address the issue of blight and poverty in several areas of the community; and

WHEREAS, the El Paseo/South Solano Corridors with approximate boundaries of Lohman Avenue on the north, Solano Drive on the east, Main Street on the west, and University Avenue on the south; and

WHEREAS, on June 9, 2023, the City of Las Cruces advertised Request for Proposals for Procurement No. 22-23-015 receiving three (3) proposals that were evaluated and scored by the Selection Advisory Committee (SAC) on September 13, 2023, which made the recommendation to award the professional service agreement to Places Southwest Inc. dba Sites Southwest (Sites SW) LTC Co., of Albuquerque, New Mexico; and

WHEREAS, this award to Sites SW will continue the City's prioritized efforts to alleviate poverty in the community, and the addition of two new MRA designations, in conjunction with the current downtown MRA, will provide significant resources to assist those efforts in addition to providing support to local businesses, options for quality of life projects, and affordable housing.

NOW, THEREFORE, Be it Resolved by the Governing Body of the City of Las Cruces:

(I)

THAT a professional service agreement is hereby awarded to Places Southwest Inc. dba Sites Southwest (Sites SW) LTC Co., of Albuquerque, New Mexico, in an amount not to exceed \$220,482.00, plus gross receipts tax as applicable, as shown in Exhibit "A" attached hereto and made part of this resolution.

(II)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of February, 2024 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Places Southwest Inc. dba Sites Southwest LTC Co., of 1700 Central SW, Suite B, Albuquerque, New Mexico, 87104 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Metropolitan Redevelopment Area Plan Development Services

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-015, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

The CONTRACTOR is authorized to extend the same terms and conditions of this Agreement to other governmental entities conditioned upon the procurement laws and regulations of those entities. The CITY shall not be a party nor have any liability relating to such extensions.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount \$ 220,482.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices monthly. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on date of award for a term of 18 months through June 30, 2025 and, pending mutual written agreement, may be extended.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit B.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance

Metropolitan Redevelopment Area Plan Development Services

- a. \$1,000,000 per occurrence / \$2,000,000 aggregate
- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
- c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
- d. Coverage must be primary and non-contributory.
- e. Coverage must be per project or per location.
- f. Coverage must be on an occurrence form.
- g. Subrogation must be waived.
2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for “owned, leased, hired, and non-owned autos” or “any autos.”
3. Workers’ Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR’S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

In the event that a dispute arises between CITY and CONTRACTOR under this Agreement or as a result of breach of this Agreement, the parties agree to act in good faith to attempt to resolve the dispute.

22. NOTIFICATION

All notices required or permitted under this Agreement shall be in writing and shall be deemed sufficiently served if served by Registered Mail addressed as follows:

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Chris Faivre

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Places Southwest, Inc. dba Sites Southwest LTD Co.
1700 Central SW, Suite B
Albuquerque, NM 87104
ATTENTION: Phyllis Taylor

23. SCOPE OF AGREEMENT

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

24. SEVERABILITY

The parties agree that each provision of this Agreement is severable and the invalidity or unenforceability of any one or more of the provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

25. CONFLICT OF INTEREST

CONTRACTOR represents and warrants that CONTRACTOR has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, that would conflict in any manner or degree with the performance of its obligations under this Agreement. If any such actual or potential conflict of interest arises under this Agreement, CONTRACTOR shall immediately inform the CITY in writing of such conflict. If, in the reasonable judgement of the CITY, such conflict poses a conflict to and with the performance of CONTRACTOR'S obligations under this Agreement, or is otherwise a violation of the CITY'S current policy or ordinances, then the CITY may terminate the Agreement immediately upon written notice to CONTRACTOR; such termination of the Agreement shall be effective upon the receipt of such notice by CONTRACTOR.

PLACES SOUTHWEST, INC. DBA
SITES SOUTHWEST LTD CO.

CITY OF LAS CRUCES

BY: _____
Phyllis Taylor
Principal

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 12/21/23

City Attorney

EXHIBIT A

I. SCOPE OF SERVICES

This MRA plan will define the City's vision for the designated area and will be used to help identify priority catalytic projects to revitalize each area, determined through a dynamic community participation, workshop, and engagement meeting process. The plan needs to examine existing conditions and assets, develop a physical land use plan with livability/design guidelines aligned with the City's Elevate Las Cruces Plan, designate specific redevelopment sites and projects, and identify sustainable implementation strategies and specific funding sources for each priority project for the MRA's future physical improvements, economic uses, and technical assistance. When adopted by the City Council, the MRA plan will become a living document that guides MRA revitalization and public and private sector investment for several years in those designated areas.

1. Scope of Planning Services to be Performed

The following tasks are identified as the Scope of Work that the planning consultant team will be requested to perform in preparing the MRA Plan.

2. Area Vision and MRA Plan

Through the community participation process, create a vision for the designated area that reflects its historical context and present opportunities and assets to serve as an aspiration for the community's future. This process will result in the preparation of Metropolitan Redevelopment Area (MRA) Plan as per New Mexico Redevelopment Code statute. Develop a MRA Plan that:

- i. Identifies priority catalytic projects that will stimulate revitalization efforts and attract private sector reinvestment into the selected areas. Projects should include increasing Las Cruces' job creation, economic redevelopment, livability, walkability, place making, and serve to support and enhance its authentic and unique sense of place.
- ii. Allocates new and future land uses and revitalization projects in the designated areas based on the community input and market study that will create a sustainable area.
- iii. Integrates the preservation and conservation of existing historic buildings and cultural properties into the planning and design of MRA projects and identify the potential for dedicating new nominations of historic buildings, cultural properties, state and/or national historic registered districts. Contact and coordinate with

Metropolitan Redevelopment Area Plan Development Services

NM Historic Preservation Division (HPD) staff for information related to historic buildings and districts.

- iv. Evaluates transportation/transit, traffic, and pedestrian issues related to the proposed improvements in the area creating walkable pedestrian-friendly environments through pedestrian enhancements and traffic calming measures.
- v. Determines vacant, underutilized and/or available land and buildings within the designated areas that could be redeveloped and recommends adaptive reuses of existing buildings or new development on vacant land.
- vi. Review the City Zoning Code and Infill Policy and recommend changes to the Code that will provide incentives, flexibilities, and foster implementation of the plans.

3. Implementation Strategies/Priorities

A prioritized and phased Implementation Plan will be developed consisting of revitalization projects and strategies that the City Council can follow for the successful implementation of the MRA Plans and the long-term sustainability of the MRA. Priority catalytic projects will range from small projects that can be implemented through partnerships with the City and the community using local volunteers and staff, to larger projects that may require capital outlay, legislative and/or federal funding. Project priorities will be determined through a community-based prioritization process.

4. Funding Sources

The State of New Mexico recently approved changes to the State MRA statute to include a tax increment funding mechanism. Include use of the tax increment when making recommendations regarding possible funding sources for the designated area. In conjunction, the consultant will identify additional funding sources applicable to the MRA and community to implement the plans including but not limited to CDBG, TIF, TIDD, LEDA, and other state and federal sources of funding. The narrative will be based on an evaluation of the municipality's financial capacity and the best financial tool(s) to accomplish priority projects within the MRA Plans. (MRA tax increment).

5. Community Participation Process

- i. Organize and conduct regular meetings with CLC staff regarding the MRA Planning process.
- ii. Conduct and facilitate:
 - 1. Up to eight (8) public participation, workshop, and engagement meetings that utilizes a dynamic planning process to solicit and record the communities' input on their ideas of revitalization projects and programs. This will

Metropolitan Redevelopment Area Plan Development Services

include at least one meeting to present a draft of the proposed MRA plan.

2. Up to two (2) Las Cruces City Council Work Sessions.
 3. One Las Cruces City Council Meeting to present for adoption.
- iii. Prepare a draft MRA Plan, and present to CLC staff and participants from the public meetings. Provide an opportunity for review and provide comment of the draft Plan.
 - iv. Present the final plan to CLC staff, participants from the public workshops, and City officials.
 - v. Provide all necessary web, social media, and print assets in both English and Spanish. Including content creation, design, translation and interpretation services.



Sites Southwest Professional Scope of Services/Cost Breakdown for City of Las Cruces - El Paseo/South Solano MRA Plan

July 6, 2023

Agenda Item #9.3.

7/5/2023	Sites Southwest											Subconsultants								Totals
Task Description	Principal		Senior Planner		Landscape Architect/ Designer		Planner 2		Production Assistant/ Admin Assistant 5		Sites Southwest Subtotals	Civic Plan Studio		RCLCO		Wilson and Co.		Subconsultant Subtotals*		
	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate	Hours	Rate		Hours	Rate	Hours	Rate					
	\$180.00		\$110.00		\$100.00		\$85.00		\$75.00			\$150.00		\$250.00		\$192.00				
Task 1: Project Initiation and Site Evaluation																				
Kickoff Meeting and Site Tour	8	\$1,440	20	\$2,200	8		12	\$1,020		\$0	\$4,660	24	\$3,600	7	\$1,750	2	\$384	\$6,307	\$10,967	
Background Review		\$0	8	\$880	2	\$200	4	\$340		\$0	\$1,420	16	\$2,400	3	\$750	0	\$0	\$3,465	\$4,885	
Subtotal	8	\$1,440	28	\$3,080	10	\$1,000	16	\$1,360	0	\$0	\$6,080	40	\$6,000	10	\$2,500	2	\$384	\$9,772	\$15,852	
Task 2: Existing Conditions Assessment																				
Review and summarize previous planning efforts		\$0	6	\$660		\$0	12	\$1,020		\$0	\$1,680	20	\$3,000	2	\$500	0	\$0	\$3,850	\$5,530	
Demographic and socioeconomic analysis		\$0	2	\$220		\$0	6	\$510		\$0	\$730	4	\$600	4	\$1,000	0	\$0	\$1,760	\$2,490	
Asset mapping facilities and services		\$0	8	\$880	10	\$1,000	16	\$1,360		\$0	\$3,240	16	\$2,400	3	\$750	0	\$0	\$3,465	\$6,705	
Infrastructure and transportation analysis		\$0	4	\$440		\$0	4	\$340		\$0	\$780	10	\$1,500	1	\$250	80	\$15,360	\$18,821		
Vacant/underutilized property identification		\$0	6	\$660		\$0	8	\$680		\$0	\$1,340	10	\$1,500	4	\$1,000.00	0	\$0	\$2,750		
Visioning and goals	2	\$360	12	\$1,320		\$0	16	\$1,360		\$0	\$3,040	24	\$3,600	3	\$750	0	\$0	\$4,785	\$7,825	
Subtotal	2	\$2,880	38	\$75,240	10	\$8,000	62	\$42,160	0	\$0	\$10,810	84	\$12,600	17	\$4,250	80	\$15,360	\$35,431	\$46,241	
Task 3: Strategic Engagement and Staff Coordination																				
Team meetings with Staff	8	\$1,440	18	\$1,980	8	\$800	8	\$680		\$0	\$4,900	16	\$2,400	4	\$1,000	4	\$768	\$4,585	\$9,485	
Staff Coordination		\$0	24	\$2,640		\$0		\$0		\$0	\$2,640	24	\$3,600	4	\$1,000		\$0	\$5,060	\$7,700	
Advisory Group Meetings (6)	6	\$1,080	18	\$1,980	6	\$600		\$0		\$0	\$3,660	12	\$1,800	3	\$750	4	\$768	\$3,650	\$7,310	
Project website	1	\$180	6	\$660	1	\$100	4	\$340	8	\$600	\$1,880	0	\$0		\$0		\$0	\$0		
Community Design Workshop	36	\$6,480	60	\$6,600	36	\$3,600	40	\$3,400		\$0	\$20,080	88	\$13,200	2	\$500	24	\$4,608	\$20,139	\$40,219	
Planning and Zoning Commission	8	\$1,440	12	\$1,320	4	\$400	4	\$340	2	\$150	\$3,650	0	\$0	2	\$500		\$0	\$550		
City Council Work Sessions and Hearing	8	\$1,440	12	\$1,320	4	\$400	4	\$340	2	\$150	\$3,650	0	\$0	3	\$750		\$0	\$825		
Subtotal	67	\$12,060	150	\$16,500	59	\$5,900	60	\$5,100	8	\$600	\$33,160	140	\$21,000	18	\$4,500	32	\$6,144	\$34,808	\$67,968	
Task 4: Redevelopment Market Analysis and Calibration																				
Market Analysis		\$0	2	\$220		\$0		\$0		\$0	\$220	4	\$600	60	\$15,000		\$0	\$17,160	\$17,380	
Land Use Scenarios	2	\$360	16	\$1,760	8	\$800	8	\$680		\$0	\$3,600	28	\$4,200	10	\$2,500		\$0	\$7,370	\$10,970	
Identification of Development Opportunities	2	\$360	12	\$1,320		\$0	10	\$850		\$0	\$2,530	24	\$3,600	15	\$3,750		\$0	\$8,085	\$10,615	
Subtotal	4	\$720	30	\$3,300	8	\$800	18	\$1,530	0	\$0	\$6,350	56	\$8,400	85	\$21,250	0	\$0	\$32,615	\$38,965	
Task 5: Plan Development																				
Identify priority catalytic projects	2	\$360	12	\$1,320	6	\$600	8	\$680		\$0	\$2,960	20	\$3,000	4	\$1,000		\$0			
Develop land use recommendations	2	\$360	8	\$880	4	\$400	4	\$340		\$0	\$1,980	14	\$2,100	4	\$1,000		\$0			
Historic resources and opportunities		\$0	6	\$660		\$0	2	\$170		\$0	\$830	10	\$1,500	0	\$0		\$0			
Transportation, access and mobility improvements	2	\$360	8	\$880	4	\$400	4	\$340		\$0	\$1,980	10	\$1,500	0	\$0	80	\$15,360			
Recommendations for zoning code and infill policy	2	\$360	4	\$440	2	\$200	4	\$340		\$0	\$1,340	28	\$4,200	2	\$500		\$0			
Draft Plan	4	\$720	40	\$4,400	8	\$800	40	\$3,400	20	\$1,500	\$10,820	32	\$4,800	10	\$2,500		\$0	\$8,030	\$18,850	
Subtotal	4	\$720	78	\$8,580	8	\$800	40	\$3,400	20	\$1,500	\$19,910	114	\$17,100	20	\$5,000	80	\$15,360	\$8,030	\$27,940	
Task 6: Finalize Plan and Recommendations																				
Revise Draft Plan		\$0.00	8	\$880.00		\$0.00	12	\$1,020.00		\$0.00		14	\$2,100	5	\$1,250		\$0			
Finalize Plan		\$0	4	\$440		\$0	8	\$680		\$0	\$1,120	14	\$2,100	7	\$1,750		\$0	\$4,235	\$5,355	
Subtotal	0	\$0	12	\$1,320	0	\$0	8	\$680	0	\$0	\$1,120	28	\$4,200	12	\$3,000	0	\$0	\$4,235	\$5,355	
Reimbursables (Direct Costs)																				
- Mileage/travel											\$5,000		\$7,000		\$3,500		\$160.00			
- Materials/Printing/Website/Public Meeting Provisions											\$500				\$2,000					
Reimbursables Subtotal											\$5,500		\$7,000		\$5,500		\$160	\$12,660	\$18,160	
TOTAL ALL PHASES	85	\$17,820	336	\$108,020	95	\$16,500	204	\$54,230	28	\$2,100	\$82,930	462	\$76,300	162	\$46,000	194	\$37,408	\$137,552	\$220,482	
NM Gross Receipts Tax (7.75%)											\$6,531								\$17,087.34	
Total Including NMGR											\$89,461								\$237,569	

*Sites Southwest includes a 10% mark-up for sub-consultant management

EXHIBIT B

Project Time Schedule





**3061; Council
Bill 24-019**

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	January 16, 2024	Adopted:	February 5, 2024
Drafter:	Lisa LaRocque	Department:	City Manager's Office
Program:	Sustainability	Line of Business:	Sustainability
Title:	AN ORDINANCE AMENDING CHAPTER 27, TRAFFIC, ARTICLE I AND ARTICLE VI OF THE LAS CRUCES MUNICIPAL CODE (LCMC) 1997 BY ADDING NEW DEFINITIONS AND REGULATION OF ELECTRIC VEHICLE CHARGING PARKING SPACES		

TYPE OF ACTION: ☐ Administrative ☒ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:

To amend the municipal code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City adopted a Climate Action Plan in 2020 with strategies necessary to transition to a carbon-free economy. The transportation sector contributes 53% of greenhouse gas emissions (GHG) and is the largest contributor of emissions in Las Cruces. The City has installed 8 public chargers to encourage the adoption of electric vehicles and reduce vehicle GHG emissions. Parking spots designated for electric vehicle charging require regulated use to deter improper use by non-charging vehicles. To support the efficient use of electric vehicle chargers and further adoption of electric vehicles, the City proposes to amend the municipal codes for new parking regulations of designated electric vehicle charger parking areas.

SUPPORT INFORMATION:

[Exhibit "A" - Chapter 27](#)

PLAN(S):

City Council Strategic Plan, Other, Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

TSI PRC

DOES THIS AMEND THE BUDGET?:

- ☐ Yes
☒ No

Does this action amend the Capital Improvement Plan (CIP)?

- ☐ Yes

Agenda Item #9.4.

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" this will approve to amend Chapter 27, Traffic, to include regulation of electric vehicle charging spaces.
2. Vote "No" this will disapprove to amend Chapter 27, Traffic, to include regulation of electric vehicle charging spaces.
3. Vote to "Amend" this would allow the City Council to modify the ordinance.
4. Vote to "Table" this would postpone consideration of the ordinance and staff would require further direction from City Council

REFERENCE INFORMATION:

CE 8.2.7 - Install additional EV charging stations

ORDINANCE 3061; COUNCIL BILL 24-019

AN ORDINANCE AMENDING CHAPTER 27, TRAFFIC, ARTICLE I AND ARTICLE VI OF THE LAS CRUCES MUNICIPAL CODE (LCMC) 1997 BY ADDING NEW DEFINITIONS AND REGULATION OF ELECTRIC VEHICLE CHARGING PARKING SPACES

The City Council is informed that:

WHEREAS, the City adopted a Climate Action Plan in 2020 with strategies necessary to transition to a carbon-free economy; and

WHEREAS, the transportation sector contributes 53% of greenhouse gas emissions and is the largest contributor of emissions in Las Cruces; and

WHEREAS, the City has installed 8 public chargers to encourage the adoption of electric vehicles and reduction of vehicle emissions as outlined in the Climate Action Plan; and

WHEREAS, parking spots designated for electric vehicle charging require regulated use to deter improper parking or idling by non-charging vehicles; and

WHEREAS, the designation of electric vehicle charging parking spots requires that they are used appropriately to not unnecessarily impede an EV owner from obtaining electric vehicle charging; and

WHEREAS, to support the efficient use of electric vehicle chargers and further adoption of electric vehicles, the City proposes to amend the municipal codes for new parking regulations of designated electric vehicle charger parking areas.

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

THAT the changes to Chapter 27, Traffic, Article I and Article VI, of the Las Cruces Municipal Code are hereby amended and adopted to include new definitions and regulation of electric vehicle parking spaces, as shown in Exhibit A.

(II)

THAT this ordinance will take effect April 1, 2024.

(III)

THAT City staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

Agenda Item #9.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

PART II - MUNICIPAL CODE
Chapter 27 - TRAFFIC
ARTICLE I. DEFINITIONS

ARTICLE I. DEFINITIONS

Sec. 27-12-1-1. Definition of words and phrases.

- A. The following words and phrases when used in this chapter shall, for the purpose of this chapter, have the meanings respectively ascribed to them in this section.
- B. When in a specific section of this chapter a different meaning is given for a term defined for general purposes in this section, the specific section's meaning and application of the term shall control. (NMSA 1978, § 66-1-4)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-2. Abandoned vehicle.

"Abandoned vehicle" means a vehicle or motor vehicle which has been determined by a New Mexico law enforcement agency:

- A. To have been left unattended on either public or private property for at least 30 days;
- B. Not to have been reported stolen;
- C. Not to have been claimed by any person asserting ownership; and
- D. Not to have shown by normal record checking procedures to be owned by any person. (NMSA 1978, § 66-1-4.1)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-3. Administrator.

"Administrator" means the chief executive employee of the municipality; including but not limited to the manager, clerk or administrator, or his designated representative.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-4. Alley.

"Alley" means a street intended to provide access to the rear or side of lots or buildings in urban districts and not intended for the purpose of through vehicular traffic.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-5. Authorized emergency vehicle.

"Authorized emergency vehicle" means any vehicle of the fire department, police vehicles, ambulances and such emergency vehicles of municipal departments or public service corporations as are designated or authorized by the chief of the New Mexico state police or the administrator. (NMSA 1978, § 66-1-4.1)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-6. Bicycle.

27-12-1-6.1 Bicycle.

"Bicycle" means a device upon which any person or persons may ride, propelled exclusively by human power through a belt, chain, or gears, and having one or more wheels.

27-12-1-6.2 Electrical-assisted bicycle.

"Electrical-assisted bicycle" means a vehicle primarily propelled by human power applied to pedals upon which a person may ride having two or more wheels and a supplemental electric motor not exceeding 750 watts of power, and a top motor-powered speed of 20 miles per hour.

27-12-1-6.3 Pedicab.

"Pedicab" means either of the following: (a) a bicycle that has three or more wheels, that transport, or is capable of transporting, passengers on seats attached to the bicycle, that is operated by a person, and that is being used for transporting passengers for hire; (b) a bicycle that pulls a trailer, sidecar, or similar device, that transports, or is capable of transporting, passengers on seats attached to the trailer, sidecar, or similar device, that is operated by a person, and that is being used for transporting passengers for hire.

27-12-1-6.4 Bicycle facility.

A "bicycle facility" includes a wide variety of physical infrastructure including: bicycle lanes, shared-use lanes, multi-use paths or trails, bicycle boulevards, or cycle tracks. The definitions for these facilities can be found in the Manual on Uniform Traffic Control Devices, as amended, and the American Association of State Highway and Transportation Officials - Guide for the Development of Bicycle Facilities, as amended.

(Ord. No. 2121, § I, 7-19-04; Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-1-7. Bus.

"Bus" means every motor vehicle designed and used for the transportation of persons; and every motor vehicle, other than a taxicab, designed and used for the transportation of persons for compensation. (NMSA 1978, § 66-1-4.2)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-8. Business district.

"Business district" means the territory contiguous to and including a street and within 300 feet from the street where there are buildings in use for business or industrial purposes, including but not limited to hotels, banks, or office buildings, railroad stations, and public buildings which occupy at least 50 percent of the frontage on one side or 50 percent of the frontage collectively on both sides of the street. (NMSA 1978, § 66-1-4.2)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-9. Cancellation.

"Cancellation" means that a driver's license is annulled and terminated because of some error or defect or because the licensee is no longer entitled to such license, but cancellation of a license is without prejudice and application for a new license may be made at any time after such cancellation. (NMSA 1978, § 66-1-4.3)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-10. Combination.

"Combination" means any connected assemblage of a motor vehicle and one or more semi-trailers, trailers, or semi-trailers converted to trailers by means of a converter gear. (NMSA 1978, § 66-1-4.3)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-10.1. Commercial motor vehicle.

"Commercial motor vehicle" means a self-propelled or towed vehicle, other than special mobile equipment, used on public highways in commerce to transport passengers or property when the vehicle: is operated interstate and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, or 4,536 kilograms, or 10,001 pounds or more; or is operated only in intrastate commerce and has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 26,001 or more pounds. (NMSA 1978, § 66-1-4.3J)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-11. Controlled access street.

"Controlled access street" means every highway, street or roadway in respect to which owners or occupants of abutting lands and other persons have no legal right of access to or from the same except at such points only and in such manner as may be determined by the public authority having jurisdiction over the highway, street or roadway. (NMSA 1978, § 66-1-4.3)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-12. Converter gear.

"Converter gear" means any assemblage of one or more axles with a fifth wheel mounted thereon, designed for use in a combination to support the front end of a semi-trailer but not permanently attached thereto. A converter gear shall not be considered a vehicle, as that term is used in NMSA 1978, ch. 66, but weight attributable thereto shall be included in declared gross weight. (NMSA 1978, § 66-1-4.3.)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-13. Crosswalk.

"Crosswalk" means:

- A. That part of a street at an intersection included within the connections of the lateral lines of the sidewalks on opposite sides of the street measured from the curbs or, in the absence of curbs, from the edges of the traversable roadway.
- B. Any portion of a street at an intersection or elsewhere distinctly indicated for pedestrian crossing by lines or other markings on the surface. (NMSA 1978, § 66-1-4.3)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-14. Curb loading zone.

"Curb loading zone" means a space adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers or materials.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-15. Daytime.

"Daytime" means from a half hour before sunrise to a half hour after sunset. (NMSA 1978, § 66-7-301)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-16. Dealer.

"Dealer" means any person who sells or solicits or advertises the sale of new or used motor vehicles, house trailers or trailers subject to registration in this state. Dealer shall not include:

- A. Receivers, trustees, administrators, executors, guardians or other persons appointed by or acting under judgment, decree or order of any court;
- B. Public officers while performing their duties as such officers;
- C. Persons making casual sales of their own vehicles duly registered and licensed to them by the State of New Mexico;
- D. Finance companies, banks and other lending institutions covering sales of repossessed vehicles; or
- E. Licensed brokers under the Manufactured Housing Act who for a fee, commission or valuable consideration engage in brokerage activities related to the sale, exchange or lease-purchase of pre-owned manufactured homes on a site installed for a consumer. (NMSA 1978, § 66-1-4.4)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-17. Director.

"Director" means the secretary of the state taxation and revenue department. (NMSA 1978, § 66-1-4.4)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-18. Divided street.

"Divided street" means any street containing a physical barrier, intervening space or clearly indicated dividing section so construed to impede vehicular traffic and separating vehicular traffic traveling in opposite directions.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-19. Division.

"Division" without further specification, "division of motor vehicles" or motor vehicles division means the department. (NMSA 1978, § 66-1-4.4)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-20. Driveaway-towaway operation.

"Driveaway-towaway operation" means any operation in which any motor vehicle, new or used, constitutes the commodity being transported, when one set or more of wheels of any such motor vehicle is on the street during the course of transportation, whether or not the motor vehicle furnishes the motive power. (NMSA 1978, § 66-1-4.4)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-21. Driver.

"Driver" means every person who drives or is in actual physical control of a motor vehicle, including a motor-driven cycle, upon a street or who is exercising control over, or steering, a vehicle being towed by a motor vehicle or who operates or is in actual physical control of an off-highway motor vehicle. (NMSA 1978, § 66-1-4.4K)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-22. Driver's license.

"Driver's license" means a license or a class of license issued by a state or other jurisdiction to an individual that authorizes the individual to drive a motor vehicle. (NMSA 1978, § 66-1-4.4)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-23. Explosives.

"Explosives" means any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion and which contains any oxidizing and combustive units or other ingredients in such proportions, quantities, or packing that an ignition by fire, friction, concussion, percussion, or detonator of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. A further definition of explosives is contained in NMSA 1978, § 66-3-861. (NMSA 1978, § 66-1-4.5)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-24. Farm tractor.

"Farm tractor" means every motor vehicle designed and used primarily as a farm implement for drawing plows and mowing machines and other implements of husbandry. (NMSA 1978, § 66-1-4.6)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-25. First offender.

"First offender" means a person who for the first time under state or federal law or municipal ordinance has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug which renders him incapable of safely driving a motor vehicle regardless of whether the person's sentence was suspended or deferred. (NMSA 1978, § 66-1-4.6)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-26. Flammable liquid.

"Flammable liquid" means any liquid which has a flash point of 70 degrees Fahrenheit, or less, as determined by a tagliabue or equivalent closed-up test device. (NMSA 1978, § 66-1-4.6)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-27. Freight curb loading zone.

"Freight curb loading zone" means a space adjacent to a curb for the exclusive use of vehicles during the loading or unloading of freight.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-28. House trailer.

"House trailer" means a manufactured home. (NMSA 1978, § 66-1-4.8)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-29. Implement of husbandry.

"Implement of husbandry" means every vehicle which is designed for agricultural purposes and exclusively used by the owner thereof in the conduct of his agricultural operations. (NMSA 1978, § 66-1-4.9)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-30. Intersection.

A. "Intersection" means:

- (1) The area embraced within the prolongation or connection of the lateral curb lines, or, if none, then the lateral boundary lines of the roadways or two streets which join one another at, or approximately at,

right angles, or the area within which vehicles traveling upon different streets joining at any other angle may come in conflict.

- (2) Where a street includes two roadways 30 feet or more apart, every crossing of each roadway of such divided street by an intersecting street shall be regarded as a separate intersection. In the event the intersecting street also includes two roadways 30 feet or more apart, every crossing of two roadways of such highways shall be regarded as a separate intersection. (NMSA 1978, § 66-1-4.9)

B. The junction of an alley with a roadway shall not constitute an intersection.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-31. Interstate highway.

"Interstate highway" means any public highway which has been designated as an interstate highway by the Government of the United States.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-32. Laned roadway.

"Laned roadway" means a roadway which is divided into two or more clearly marked lanes for vehicular traffic. (NMSA 1978, § 66-1-4.10)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-33. License or license to operate a motor vehicle.

"License" or "license to operate a motor vehicle" means any driver's license or any other license or permit to operate a motor vehicle issued under, or granted by, the laws of this state including:

- A. Any temporary license or instruction permit;
- B. The privilege of any person to drive a motor vehicle whether or not the person holds a valid license; and
- C. Any nonresident's operating privilege as defined herein.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-34. Metal tire.

"Metal tire" means every tire the surface of which in contact with the street is wholly or partly of metal or other hard nonresilient material, except that for the purposes of this chapter a snow tire with metal studs designed to increase traction on ice or snow shall not be considered a metal tire. (NMSA 1978, § 66-1-4.11)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-35. Mobile home.

"Mobile home" means a house trailer, other than one held as inventory for sale or resale, that exceeds either a width of eight feet or a length of 40 feet, when equipped for the road.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-36. Moped.

"Moped" means a two-wheeled or three-wheeled vehicle with an automatic transmission and a motor having a piston displacement of less than 50 cubic centimeters, which is capable of propelling the vehicle at a maximum speed of not more than 30 miles an hour on level ground at sea level. (NMSA 1978, § 66-1-4.11)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-37. Motorcycle.

"Motorcycle" means every motor vehicle having a seat or saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor. (NMSA 1978, § 66-1-4.11)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-38. Motor driven cycle.

"Motor driven cycle" means every motorcycle, motor scooter and moped having an engine with less than 100 cubic centimeters displacement.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-39. Motor scooter.

"Motor scooter" means a motor-driven cycle as defined in this section.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-40. Motor vehicle.

"Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from batteries or from overhead trolley wires, but not operated upon rails; but for the purposes of the Mandatory Financial Responsibility Act (NMSA 1978, §§ 66-5-201—66-5-239), "motor vehicle" does not include "special mobile equipment." (NMSA 1978, § 66-1-4.11)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-41. Nighttime.

"Nighttime" means the hours from a half hour after sunset to a half hour before sunrise.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-42. Nonresident.

"Nonresident" means every person who is not a resident of this state. (NMSA 1978, § 66-1-4.27)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-43. Official time standard.

"Official time standard" means whenever certain hours are named in this chapter they shall mean standard time or daylight-saving time as may be in current use in this municipality.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-44. Official traffic-control devices.

"Official traffic-control devices" means all signs, signals, markings and devices not inconsistent with this chapter placed or erected by authority of a public body or official having jurisdiction, for the purpose of regulating, warning, or guiding traffic. (NMSA 1978, § 66-1-14.13)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-45. Operator.

"Operator" means "driver," as defined in this section. (NMSA 1978, § 66-1-4.13)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-46. Owner.

"Owner" means a person who holds the legal title of a vehicle and may include a conservator, guardian, personal representative, executor or similar fiduciary or, in the event a vehicle is the subject of an agreement for the conditional sale or lease thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or lessee, or, in the event a mortgagor of a vehicle is entitled to possession, then such conditional vendee or lessee or mortgagor. (NMSA 1978, § 66-1-4.13)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-47. Park or parking.

"Park" or "parking" means the standing of a vehicle, whether occupied or not, other than temporarily for the purpose of and while actually engaged in loading and unloading. (NMSA 1978, § 66-1-4.14)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-48. Passenger curb loading zone.

"Passenger curb loading zone" means a place adjacent to a curb reserved for the exclusive use of vehicles during the loading or unloading of passengers.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-49. Pedestrian.

"Pedestrian" means any natural person on foot. (NMSA 1978, § 66-1-4.14)
(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-50. Person.

"Person" means every natural person, firm, copartnership, association, corporation, or other legal entity.
(NMSA 1978, § 66-1-4.14)
(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-51. Pole trailer.

"Pole trailer" means any vehicle without motive power, designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach or pole or by being boomed or otherwise secured to the towing vehicle and ordinarily used for transporting long or irregularly shaped loads such as poles, structures, pipes or structural members capable, generally, of sustaining themselves as beams between the supporting connections.
(NMSA 1978, § 66-1-4.14)
(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-52. Police or peace officer.

"Police or peace officer" means every officer authorized to direct or regulate traffic or to make arrests for violations of this chapter. (NMSA 1978, § 66-1-4.14)
(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-53. Private road or driveway.

"Private road or driveway" means every way or place in private ownership used for vehicular travel by the owner and those having express or implied permission from the owner, but not other persons. (NMSA 1978, § 66-1-4.14)
(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-54. Public holidays.

"Public holidays" means New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, or any other day designated a holiday by the governing body of this municipality.
(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-55. Railroad.

"Railroad" means a carrier of persons or property upon cars operated upon stationary rails. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-56. Railroad sign or signal.

"Railroad sign or signal" means any sign, signal, or device erected by authority of a public body or official or by a railroad and intended to give notice of the presence of railroad tracks or the approach of a railroad train. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-57. Railroad train.

"Railroad train" means a steam engine, electric or other motor, with or without cars coupled thereto, operated upon rails. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-58. Recreational vehicle.

"Recreational vehicle" means a vehicle with a camping body that has its own motive power, is affixed to or is drawn by another vehicle and includes motor homes, travel trailers and truck campers. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-59. Registration number.

"Registration number" means the number assigned by the motor vehicle division to the owner of a vehicle or motor vehicle required to be registered by the motor vehicle code. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-60. Registration plate.

"Registration plate" means the plate, marker, sticker or tag assigned by the motor vehicle division for the identification of the registered vehicle. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-61. Residence district.

"Residence district" means the territory contiguous to and including a street not comprising a business district when the property on the street for a distance of 300 feet or more is in the main improved with residences or residences and buildings in use for business. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-62. Revocation.

"Revocation" means that the driver's license and privilege to drive a motor vehicle on the public streets are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted upon by the division after the expiration of at least one year after date of revocation. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-63. Right-of-way.

"Right-of-way" means the privilege of the immediate use of the roadway. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-64. Road tractor.

"Road tractor" means every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any load thereon, either independently or as any part of the weight of a vehicle or load so drawn. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-65. Roadway.

"Roadway" means that portion of a street improved, designed, or ordinarily used for vehicular travel, exclusive of the berm or shoulder. In the event a street includes two or more separate roadways, the term "roadway" as used in this chapter refers to any such roadway separately but not to all such roadways collectively. (NMSA 1978, § 66-1-4.15)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-66. Safety zone.

"Safety zone" means the area or space officially set apart within a street for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all times while set apart as a safety zone. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-67. School bus.

"School bus" means any motor vehicle operating under the jurisdiction of the state board of education or private school or parochial school interests which is used to transport children, students or teachers to and from schools or to and from any school activity, but not including any vehicle:

- A. Operated by a common carrier, subject to and meeting all requirements of the state corporation commission but not used exclusively for the transportation of students;

- B. Operated solely by a government-owned transit authority, if the transit authority meets all safety requirements of the state corporation commission but is not used exclusively for transportation of students; or
- C. Operated as a per capita feeder as defined in NMSA 1978, § 22-16-6.

State law reference(s)—Similar provisions, NMSA 1978, § 66-1-4.16.

(Ord. No. 2121, § I, 7-19-04; Ord. No. 2228, § I, 8-15-05)

Sec. 27-12-1-68. Semi-trailer.

"Semi-trailer" means any vehicle, without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-69. Sidewalk.

"Sidewalk" means that portion of a street between the curb lines, or the lateral lines of a roadway, and the adjacent property lines, intended for the use of pedestrians. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-70. Solid tire.

"Solid tire" means every tire of rubber or other resilient material which does not depend upon compressed air for the support of the load. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-71. Stand or standing.

"Stand" or "standing" means the halting of vehicle, whether occupied or not, otherwise than temporarily for the purpose of and while actually engaged in receiving or discharging passengers.

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-72. State.

"State" means a state, territory or possession of the United States, the District of Columbia, or any province of the Dominion of Canada. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-73. State highway.

"State highway" means any public highway which has been designated as a state highway by the legislature, the state transportation commission or the secretary of the state transportation department. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-74. Stop.

"Stop," when required, means complete cessation from movement. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-75. Stop, stopping or standing.

"Stop," "stopping" or "standing," when prohibited, means any stopping or standing of a vehicle, whether occupied or not, except when necessary to avoid conflict with other traffic or in compliance with the directions of a police officer or traffic-control sign or signal. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-76. Street or highway.

"Street" or "highway" means every way or place generally open to the use of the public as a matter of right for the purpose of vehicular travel, even though it may be temporarily closed or restricted for the purpose of construction, maintenance, repair or reconstruction. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-77. Subsequent offender.

"Subsequent offender" means a person who was previously a first offender and who again, under state law, federal law, or municipal ordinance, has been adjudicated guilty of the charge of driving a motor vehicle while under the influence of intoxicating liquor or any drug which rendered the person incapable of safely driving a motor vehicle regardless of whether the person's sentence is suspended or deferred.

(Ord. No. 2121, § I, 7-19-04; Ord. No. 2228, § II, 8-15-05)

State law reference(s)—Similar provisions, NMSA 1978, § 66-1-4.16.

Sec. 27-12-1-78. Suspension.

"Suspension" means that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn. (NMSA 1978, § 66-1-4.16)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-79. Taxicab.

"Taxicab" means a motor vehicle used in the transportation of persons for hire, having a normal seating capacity of not more than seven persons. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-80. Through street.

"Through street" means every street or portion thereof at the entrance to which vehicular traffic from intersecting streets is required by law to stop before entering or crossing the same when stop signs are erected as provided in this chapter. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-81. Traffic.

"Traffic" means pedestrians, ridden or herded animals, vehicles, and other conveyances either singly or together using any street for purposes of travel. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-82. Traffic-control signal.

"Traffic-control signal" means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-83. Trailer.

"Trailer" means any vehicle, without motive power, designed for carrying persons or property and for being drawn by a motor vehicle, and so constructed that no part of its weight rests upon the towing vehicle. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-84. Trial court.

"Trial court" means the magistrate, municipal or district court which tries the case concerning an alleged violation of a provision of the Uniform Traffic Ordinance and the motor vehicle code. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-84.1. Tribe.

"Tribe" means an Indian nation, tribe or pueblo that is located wholly or partially in New Mexico. For purposes of violators resulting in suspension or revocation of licenses and for DWI offenses (NMSA 1978, § 66-5-25, 26, 30 and 66-8-102), "tribe" is further defined as one that has executed an intergovernmental agreement with the state pursuant to NMSA 1978, § 66-5-27.1. (NMSA 1978, §§ 66-1-4.17, 66-5-1.2)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-85. Truck.

"Truck" means every motor vehicle designed, used or maintained primarily for the transportation of property. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-86. Truck tractor.

"Truck tractor" means every motor vehicle designed and used primarily for drawing other vehicles and not so constructed as to carry a load other than a part of the weight of the vehicle and load so drawn. (NMSA 1978, § 66-1-4.17)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-87. Validating sticker.

"Validating sticker" means the tab or sticker issued by the division to signify, upon a registration plate, renewed registration. (NMSA 1978, § 66-1-4.19)

(Ord. No. 2121, § I, 7-19-04)

Sec. 27-12-1-88. Vehicle.

27-12-1-88.1 Vehicle.

"Vehicle" means every device in, upon, or by which, any person or property is or may be transported or drawn upon a street, including any frame, chassis, body or unitized frame and body of any vehicle or motor vehicle, except devices moved by human power or used exclusively upon stationary rails or tracks.

27-12-1-88.2 Electric vehicle (EV).

"Electric vehicle (EV)" means an on-road motor vehicle that draws propulsion using a traction battery that has at least four kilowatt hours of capacity and uses an external source of electric energy to charge or recharge the battery.

27-12-1-88.3 Electric vehicle (EV) charging station.

"Electric vehicle (EV) charging station" means a public or private parking space that is served by charging equipment that has its primary purpose the transfer of electric energy to a battery or other energy storage device in an electric vehicle.

(Ord. No. 2121, § I, 7-19-04; Ord. No. 2228, § III, 8-15-05)

State law reference(s)—Similar provisions, NMSA 1978, § 66-1-4.19.

Sec. 27-12-1-89. Vulnerable user of a public way.

"Vulnerable user of a public way" or "vulnerable user" means a pedestrian, a person with disabilities, a highway worker, tow truck operator, utility worker, any other worker with legitimate business in or near the road or right-of-way, or stranded motorist or passenger. This definition also includes a person riding an animal or a

person operating any of the following on a public way, crosswalk or shoulder of the highway: (1) a farm tractor or implement of husbandry; or (2) a bicycle.

(Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-1-90. Any other term.

Any other term used in this chapter is used in its commonly accepted meaning except where such term has been defined elsewhere in this chapter or defined in NMSA 1978, §§ 66-1-4.1—66-1-4.20.

(Ord. No. 2121, § I, 7-19-04; Ord. No. 2670, § I(exh. A), 11-5-12)

ARTICLE VI. TRAFFIC REGULATIONS

Sec. 27-12-6-1. Speed regulations.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-1.1. Basic rule.

No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard to the actual and potential hazards then existing. Consistent with the foregoing, every person shall drive at a safe and appropriate speed when approaching and crossing an intersection or railroad grade crossing, when approaching and going around a curve, when approaching a hill crest, when traveling upon any narrow or winding street and when special hazards exist with respect to pedestrians or other traffic or by reason of weather or highway conditions.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-1.2. Speed limits.

- A. No person shall drive a vehicle on a street or detour at a speed greater than:
- (1) Fifteen miles per hour on all streets when passing a school while children are going to, or leaving school, and when the school zone is properly posted;
 - (2) Thirty miles per hour in any business or residence district (NMSA 1978, § 66-7-301); or
 - (3) The lawfully posted speed limit when signs are erected giving notice of the speed limit.
 - (4) The posted speed limit in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the municipality or highway and transportation department, provided that the posted speed limit be determined by an engineering study performed by the state highway and transportation department.
- B. In every event, speed shall be so controlled as may be necessary:
- (1) To avoid colliding with any person, vehicle or other conveyance on, or entering, the street;
 - (2) To comply with legal requirements as may be established by the municipality, the state highway department or the New Mexico state police, and the duty of all persons to use due care; and

- (3) To protect workers in construction zones posted as double fine zones or other safety zones posted as double fine zones as designated by the municipality or highway and transportation department. (NMSA 1978, § 66-7-301)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-1.3. Establishment of speed zones.

- A. Whenever the administrator determines, upon the basis of an engineering survey and traffic investigation, that any speed limit permitted under state law or local ordinance is greater or less than is reasonable or safe under the conditions found to exist upon any part of a street within his jurisdiction, he may declare a speed limit for that part which is effective at times determined, when appropriate signs giving notice thereof are erected at the particular part of the street.
- B. Alteration of speed limits on state highways by the administrator are not effective until approved by the state highway commission. (NMSA 1978, § 66-7-303)
- C. The administrator shall adhere to and abide by all applicable state statutes in making his determination of speed limits in the municipality.
- D. Whenever the administrator declares a speed limit, he shall submit a schedule of the speed limit to the police department, the municipal judge, the municipal clerk and the municipal attorney.
- E. Speed zones may be marked by a sign containing a flashing yellow light and, when the light is in operation, the speed limit, instructions or regulations on the sign are in effect.
- F. The provisions of subsection A. of this section shall not apply to changes of speed limit in construction zones authorized pursuant to 27-12-6-1.3 G. through K. of this section.
- G. When construction, repair or reconstruction of any street or highway is being done, the administrator or other governmental authority with jurisdiction over that street or highway is authorized to designate as a construction zone that portion of the street or highway where construction, reconstruction or repair is being done and to close the construction zone to traffic or to provide for a single lane of traffic on any two-lane or four-lane highway in the construction zone.
- H. The administrator or other governmental authority closing all or a portion of a street or highway or providing for a single lane of traffic on any two-lane or four-lane street or highway pursuant to subsection G. of this section shall erect or cause to be erected traffic-control devices or barricades to warn and notify the public of any change in speed limit and that such street or highway is closed or limited to a single lane of traffic.
- I. Every pedestrian or person who operates a vehicle on any street or highway shall obey all signs, signals, markings, flagmen or other traffic-control devices which are placed to regulate, control and guide traffic through a construction zone.
- J. No person shall remove, change, modify, deface or alter any traffic-control device or barricade which has been erected on any street or highway pursuant to this section.
- K. Any person who violates any provision of subsection I. or J. of this section is guilty of a petty misdemeanor and upon conviction shall be sentenced in accordance with this code. (NMSA 1978, § 66-7-303)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-1.4. Regulation of speed by traffic signals.

The administrator is authorized to regulate the timing of traffic signals so as to permit the movement of traffic in an orderly and safe manner at speeds slightly at variance from the speeds otherwise applicable within the district or at intersections and shall erect appropriate signs giving notice thereof.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-1.5. Minimum speed regulation.

- A. No person shall drive a motor vehicle at such slow speed as to impede the normal and reasonable movement of traffic except when reduced speed is necessary for safe operation or in compliance with this chapter.
- B. Whenever the administrator determines on the basis of an engineering and traffic investigation that slow speeds on any part of a street consistently impede the normal and reasonable movement of traffic, the administrator may determine and declare a minimum speed limit below which no person shall drive a vehicle except when necessary for safe operation or in compliance with this chapter. (NMSA 1978, § 66-7-305)
- C. Police officers may enforce this section by directions to drivers. In the event of apparent willful disobedience to this section and refusal to comply with directions of an officer in accordance herewith, the continued slow operation by a driver is a violation of this section.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-1.6. Charging violations.

- A. In every charge of violation of any speed regulation under this chapter, the complaint and the uniform traffic citation shall specify the speed at which the defendant is alleged to have driven and the maximum speed applicable within the district or at the location.
- B. Provisions of this chapter for maximum speed limitations shall not be construed to relieve the plaintiff in any civil action from the burden of proving negligence on the part of the defendant as the proximate cause of an accident. (NMSA 1978, § 66-7-307)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-1.7. Special speed limitations.

- A. Subject to the requirements of section 27-12-10-1.5 of this chapter, no person shall drive any vehicle equipped with solid rubber or cushion tires at a speed greater than a maximum of ten miles per hour.
- B. No person shall drive a vehicle over any bridge or other elevated structure constituting a part of a street at a speed which is greater than the maximum speed which can be maintained with safety to such bridge or structure, when such structure is signposted as provided in NMSA 1978, § 66-7-306(C).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2. Driving on right side of street—Overtaking and passing—Use of street.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.1. Drive on right side of street—Exceptions.

- A. Upon all streets of sufficient width, a vehicle shall be driven upon the right half of the street, and where practicable, entirely to the right of the center thereof, except as follows:
 - (1) When overtaking and passing another vehicle proceeding in the same direction under the rules governing such movement (NMSA 1978, § 66-7-308);
 - (2) When an obstruction exists making it necessary to drive to the left of the center of the street, provided that any person driving to the left shall yield the right-of-way to all vehicles traveling in the proper direction on the unobstructed portion of the street;
 - (3) When the right half of the street is closed to traffic while under construction or repair (NMSA 1978, § 66-7-308)
 - (4) Upon a street divided into three marked lanes for traffic under the rules applicable thereon; or
 - (5) Upon a street designated and signposted for one-way traffic.
- B. Upon all streets any vehicle proceeding at less than the normal speed of traffic at the time and place and under the conditions then existing shall be driven in the right-hand lane then available for traffic, or as close as practicable to the right-hand curb or edge of the street except when overtaking and passing another car proceeding in the same direction or when preparing for a left turn at an intersection or into a private road or driveway. (NMSA 1978, § 66-7-308)
- C. Upon any street having four or more lanes for moving traffic and providing for two-way movement of traffic, no vehicle shall be driven to the left of the centerline of the street, except when authorized by official traffic-control devices designating certain lanes to the left side of the center of the street for use by traffic not otherwise permitted to use such lanes, or except as permitted under subsection 27-12-6-2.1A(2). However, this section shall not be construed as prohibiting the crossing of the centerline in making a left turn into or from an alley, private road or driveway.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.2. Passing vehicles proceeding in opposite direction.

Drivers of vehicles proceeding in opposite directions shall pass each other to the right, and upon streets having width for not more than one line of traffic in each direction each driver shall give to the other at least one-half of the main-traveled portion of the street as nearly as possible. (NMSA 1978, § 66-7-309).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.3. Overtaking a vehicle on the left.

The following rules shall govern the overtaking and passing of vehicles proceeding in the same direction, subject to those limitations, exceptions and special rules hereinafter stated:

- A. The driver of a vehicle overtaking another vehicle proceeding in the same direction shall pass to the left thereof at a safe distance and shall not again drive to the right side of the street until safely clear of the overtaken vehicle; and
- B. Except when overtaking and passing on the right is permitted, the driver of an overtaken vehicle shall give way to the right in favor of the overtaking vehicle on audible signal and shall not increase the speed of his vehicle until completely passed by the overtaking vehicle. (NMSA 1978, § 66-7-310)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.4. Limitations on overtaking on the left.

No vehicle shall be driven to the left side of the center of the street in overtaking and passing another vehicle proceeding in the same direction unless such left side is clearly visible and free of oncoming traffic for a sufficient distance ahead to permit such overtaking and passing to be completely made without interfering with the safe operation of any vehicle approaching from the opposite direction or any vehicle overtaken. In every event the overtaking vehicle must return to the right-hand side of the street before coming within 100 feet of any vehicle approaching from the opposite direction. (NMSA 1978, § 66-7-312)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.5. Further limitations on driving on left of center of street.

- A. No vehicle shall at any time be driven to the left side of the street under the following conditions:
- (1) When approaching the crest of a grade or upon a curve in the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction;
 - (2) When approaching within 100 feet of or traversing any intersection or railroad grade crossing; or
 - (3) When the view is obstructed upon approaching within 100 feet of any bridge, viaduct, or tunnel. (NMSA 1978, § 66-7-313)
- B. The foregoing limitations shall not apply:
- (1) Upon a one-way street;
 - (2) Under the conditions described in 27-12-6(b)(1)a.2.; nor
 - (3) To the driver of a vehicle turning left into or from an alley, private road or driveway.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.6. When overtaking on the right is permitted.

- A. The driver of a vehicle may overtake and pass upon the right of another vehicle only under the following conditions:
- (1) When the vehicle overtaken is making or about to make a left turn;
 - (2) Upon a street or highway with unobstructed pavement not occupied by parked vehicles of sufficient width for two or more lines of moving vehicles in each direction; or
 - (3) Upon a one-way street, or upon any roadway on which traffic is restricted to one direction of movement, where the street is free from obstructions and of sufficient width for two or more lines of moving vehicles.
- B. The driver of a vehicle may overtake and pass another vehicle upon the right only under conditions permitting such movement in safety. In no event shall such movement be made by driving off the pavement or main-traveled portion of the street. (NMSA 1978, § 66-7-311)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.7. No passing zones and restrictions on passing.

- A. The administrator may determine those portions of any street or highway under his jurisdiction where overtaking and passing or driving on the left of the street would be especially hazardous and may, by appropriate signs or markings on the street indicate the beginning and end of such zones. When the signs or markings are in place and clearly visible to an ordinarily observant person, every driver of a vehicle shall obey the direction thereof.
- B. Where signs or markings are in place to define a no-passing zone as set forth in subsection A. of this section, no driver shall at any time drive on the left side of the street within the no-passing zone or on the left side of any pavement striping designed to mark the no-passing zone throughout its length. This section does not apply under the conditions described in section 27-12-6-2.1A(3) or to the driver of a vehicle turning left into or from an alley, private road or driveway. (NMSA 1978, § 66-7-315)
- C. When double yellow lines are painted on a pavement, no driver shall drive any vehicle across the lines except the driver of a vehicle turning left into or from an alley, private road or driveway.
- D. No driver shall overtake and pass any other vehicle proceeding in the same direction in a school zone when the school zone signs are in place.
- E. Whenever a vehicle is stopped at a marked crosswalk or an unmarked crosswalk at an intersection to permit a pedestrian to cross the street, the driver of the vehicle approaching from the rear shall not overtake and pass the stopped vehicle.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.8. Authority to designate one-way streets and alleys.

- A. The administrator may designate and sign streets and alleys as one-way streets and alleys. The designation shall be made only upon the basis of engineering and traffic investigation.
- B. Signs indicating the direction of lawful traffic movement shall be placed at every intersection, where movement of traffic in the opposite direction is prohibited. No regulation as to one-way traffic shall be effective unless signs are in place indicating the direction of the flow of traffic.
- C. The administrator shall maintain a schedule of all streets and alleys which have been established as one-way and shall provide copies of the schedule to the police department, municipal clerk, municipal judge and municipal attorney.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.9. Obedience to signs designating one-way streets and alleys.

- A. Upon those streets and parts of streets and in those alleys restricted to movement in one direction, vehicular traffic shall move only in the indicated direction when signs indicating the direction of traffic are erected and maintained at every intersection where movement in the opposite direction is prohibited.
- B. Failure to comply with such signs is a violation of this chapter.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.10. Rotary traffic islands.

A vehicle passing around a rotary traffic island shall be driven only to the right of such island. (NMSA 1978, § 66-7-316)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.11. Restricted direction of movement on streets during certain periods.

- A. The administrator may determine and designate streets, parts of streets or specific lanes upon which vehicular traffic shall proceed in one direction during one period of the day and the opposite direction during another period of the day. This designation shall be made only upon the basis of engineering and traffic investigation.
- B. Appropriate markings, signs, barriers or other devices shall be placed to give notice of the restricted movement.
- C. Signs may be placed temporarily designating lanes to be used by traffic moving in particular direction, regardless of the centerline of the street.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.12. Driving on streets laned for traffic.

Whenever any street has been divided into two or more clearly marked lanes for traffic the following rules in addition to all others consistent herewith shall apply:

- A. A vehicle shall be driven as nearly as practicable entirely within a single lane and shall not be moved from such lane until the driver has first ascertained that such movement can be made with safety;
- B. Upon a street which is divided into three lanes a vehicle shall not be driven in the center lane except when overtaking and passing another vehicle where the street is clearly visible and such center lane is clear of traffic within a safe distance, or in preparation for a left turn or where such center lane is at the time allocated exclusively to traffic moving in the direction the vehicle is proceeding and is signposted to give notice of such allocation;
- C. Official signs may be erected directing slow-moving traffic to use a designated lane or designating those lanes to be used by traffic moving in a particular direction regardless of the center of the street and drivers of vehicles shall obey the directions of every such sign (NMSA 1978, § 66-7-317); and
- D. Official traffic-control devices may be installed prohibiting the changing of lanes on sections of streets, and drivers of vehicles shall obey the directions of every such device.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.13. Following too closely.

- A. The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway.
- B. The driver of any motor truck or motor vehicle drawing another vehicle when traveling upon a street outside of a business or residence district shall not follow another motor truck or motor vehicle drawing another

vehicle within 300 feet, except that this shall not prevent a motor truck or motor vehicle drawing another vehicle from overtaking and passing any like vehicle or other vehicle.

- C. Motor vehicles being driven upon any street outside of a business or residence district in a caravan or motorcade whether or not towing other vehicles shall not follow the preceding vehicle closer than 300 feet. This provision shall not apply to funeral processions, nor shall it apply within or outside of a business or residence district to motor vehicle escort vehicles of a motor vehicle escort service, which may, if necessary to maintain the continuity of the escorted unit or units, precede or follow at a distance closer than 300 feet to the escorted unit or units. (NMSA 1978, § 66-7-318)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.14. Driving on divided streets.

- A. Whenever any street has been divided into two roadways by leaving an intervening space or by a physical barrier or clearly indicated dividing section so constructed as to impede vehicular traffic, every vehicle shall be driven only upon the right-hand segment of the divided street (NMSA 1978, § 66-7-319), unless directed or permitted to use another segment by official traffic-control devices or police officers.
- B. No vehicle shall be driven over, across, or within any such dividing space, barrier, or section, except through an opening in such physical barrier or dividing section or space or at a crossover or intersection established by public authority. (NMSA 1978, § 66-7-319)
- C. Where recessed cut-outs are provided in dividers to facilitate left turns, all vehicles, except those having a turning radius precluding use of such recessed cut-outs, shall execute a left turn by occupying the recess or cut-out prior to entering the intersection.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.15. Controlled access.

No person shall drive a vehicle onto or from any controlled-access street except at such entrances and exits as are established by public authority. (NMSA 1978, § 66-7-320)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-2.16. Restrictions on use of controlled-access streets.

- A. No pedestrian, bicycle or other non-motorized traffic shall use any controlled-access street, but notwithstanding this provision, drivers of vehicles using the controlled-access street are not relieved of responsibility for exercising due care.
- B. In addition to the provisions of paragraph A, the local governing body may, by ordinance, regulate or prohibit the use of any controlled-access street within its jurisdiction by any class or kind of traffic which is found to be incompatible with the normal and safe movement of traffic.
- C. No driver shall stop a vehicle upon any controlled-access street for the purpose of taking on or discharging passengers, freight or merchandise.
- D. The administrator has the authority to erect and maintain official traffic-control devices on the controlled-access street on which the restrictions are applicable, and when such traffic-control devices are in place, no person shall disobey the restrictions stated on the devices. (NMSA 1978, § 66-7-321)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-3. Designating stop and yield intersections.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-3.1. Through streets designated.

- A. The administrator, upon traffic and engineering study and investigation, may designate which streets shall be through streets.
- B. A schedule of the through streets shall be prepared by the administrator with copies furnished to the police department, municipal clerk, municipal judge and municipal attorney.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-3.2. Authority to erect stop and yield signs at through streets.

- A. Whenever the administrator designates and describes a through street, the city traffic engineer shall place and maintain a stop sign, or on the basis of an engineering and traffic investigation at any intersection a yield sign, on each and every street intersecting the through street unless traffic at any such intersection is controlled at all times by traffic-control signals.
- B. However, at the intersection of two through streets or at the intersection of a through street and heavy traffic street not so designated, stop signs shall be erected at the approaches to both of said streets in a manner determined by the administrator upon the basis of an engineering and traffic study.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-3.3. Authority to erect stop or yield signs at other intersections.

The administrator may determine and designate intersections other than through streets where particular hazards exist and determine:

- A. Whether vehicles shall stop at one or more entrances to the intersection, in which event he shall have erected a stop sign at every place where a stop is required; or
- B. Whether vehicles shall yield the right-of-way to vehicles on a different street at the intersection, in which event he shall have erected a yield sign at every place where obedience thereto is required.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-4. Right-of-way.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-4.1. Vehicle approaching or entering intersection.

- A. The driver of a vehicle approaching an intersection shall yield the right-of-way to a vehicle which has entered the intersection from a different street.
- B. When two vehicles enter an intersection from different streets at approximately the same time the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.

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- C. The right-of-way rules declared in subsections A. and B. are modified at through streets and otherwise as provided in this chapter. (NMSA 1978, § 66-7-328)
- D. The driver of a vehicle approaching or entering an interstate highway shall yield the right-of-way to the vehicles on the interstate highway.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-4.2. Vehicles turning left at intersection.

The driver of a vehicle within an intersection intending to turn to the left shall yield the right-of-way to any vehicle approaching from the opposite direction which is within the intersection or so close thereto as to constitute an immediate hazard, but said driver, having so yielded and having given a signal when and as required by this chapter, may make such left turn and the drivers of all other vehicles approaching the intersection from said opposite direction shall yield the right-of-way to the vehicle making the left turn. (NMSA 1978, § 66-7-329)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-4.3. Vehicle entering stop or yield intersection.

- A. Preferential right-of-way at an intersection may be indicated by stop signs or yield signs as authorized in this chapter.
- B. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop as required by section 27-12-6-4.3(D) and after having stopped shall yield the right-of-way to any vehicle which has entered the intersection from another street or which is approaching so closely on the street as to constitute an immediate hazard during the time when the driver is moving across or within the intersection.
- C. The driver of a vehicle approaching a yield sign shall, in obedience to the sign, slow down to a speed reasonable for the existing conditions, and shall yield the right-of-way to any vehicle in the intersection or approaching on another street so closely as to constitute an immediate hazard during the time the driver is moving across or within the intersection. If the driver is involved in a collision with a vehicle in the intersection, after driving past a yield sign without stopping, the collision shall be deemed prima facie evidence of his failure to yield right-of-way. (NMSA 1978, § 66-7-330)
- D. Except when directed to proceed by a police officer or traffic-control signal, every driver of a vehicle approaching a stop intersection indicated by a stop sign shall stop completely before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, shall stop at a clearly marked stop line, but if none, then at the point nearest the intersecting street before entering the intersection.
- E. The driver of a vehicle approaching a yield sign, if required for safety to stop, shall stop before entering the crosswalk on the near side of the intersection or, in the event there is no crosswalk, at a clearly marked stop line, but if none, then at the point nearest the intersecting street where the driver has a view of approaching traffic on the intersecting street. (NMSA 1978, § 66-7-345)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5. Turning and starting and signals on stopping and turning.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.1. Required position and method of turning at intersection.

The driver of a vehicle intending to turn at an intersection shall do so as follows:

- A. Both the approach for a right turn and a right turn shall be made as close as practicable to the right-hand curb or edge of the street.
- B. At any intersection where traffic is permitted to move in both directions on each street entering the intersection, an approach for a left turn, except where left-turn provisions are made, shall be made in that portion of the right half of the street nearest the centerline thereof and by passing to the right of such centerline where it enters the intersection and after entering the intersection the left turn shall be made so as to leave the intersection to the right of the centerline of the street being entered. Whenever practicable the left turn shall be made in that portion of the intersection to the left of the center of the intersection.
- C. Upon a street with two or more lanes for through traffic in each direction, where a center lane has been provided by distinctive pavement markings for the use of vehicles turning left from both directions, no vehicle shall turn left from any other lane. A vehicle shall not be driven in this center lane for the purpose of overtaking or passing another vehicle proceeding in the same direction. Any maneuver other than a left turn from this center lane will be deemed a violation of this section.
- D. At any intersection where traffic is restricted to one direction on one or more of the streets, the driver of a vehicle intending to turn left at any such intersection shall approach the intersection in the extreme left-hand lane lawfully available to traffic moving in the direction of travel of such vehicle and after entering the intersection the left turn shall be made so as to leave the intersection, as nearly as practicable, in the left-hand lane lawfully available to traffic moving in such direction upon the street being entered. (NMSA 1978, § 66-7-322)
- E. No person shall drive across any private or public property, including but not limited to parking areas, driveways and service station areas, for the purpose of avoiding any traffic control device or sign.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.2. Authority to place devices altering normal course for turns.

The administrator may cause markers, buttons or signs to be placed within or adjacent to intersections and thereby require and direct that a different course from that specified in section 27-12-6-5.1 be traveled by vehicles turning at an intersection, and when markers, buttons or signs are so placed no driver of a vehicle shall turn a vehicle at an intersection other than as directed and required by the markers, buttons or signs. (NMSA 1978, § 66-7-322)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.3. Authority to place restricted turn signs.

- A. The administrator may determine those intersections at which drivers of vehicles shall not make a right, left or U-turn and shall place proper signs at the intersections.
- B. The making of the turns may be prohibited between certain hours of the day and permitted at other hours, in which event the same shall be plainly indicated on the signs or they may be removed when the turns are permitted.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.4. Obedience to no-turn signs.

Whenever authorized signs are erected indicating that no right or left or U-turn is permitted, no driver of a vehicle shall disobey the directions of the sign.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.5. Limitations on turning around.

The driver of any vehicle shall not turn the vehicle so as to proceed in the opposite direction upon any street in a business district and shall not upon any other street so turn a vehicle unless the movement can be made in safety and without interfering with other traffic.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.6. Turning on curve or crest of grade prohibited.

No vehicle shall be turned so as to proceed in the opposite direction upon any curve, or upon the approach to, or near the crest of a grade, where such vehicle cannot be seen by the driver of any other vehicle approaching from either direction within 1,000 feet. (NMSA 1978, § 66-7-323)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.7. Starting parked vehicle.

- A. No person shall start a vehicle which is stopped, standing, or parked unless and until such movement can be made with reasonable safety. (NMSA 1978, § 66-7-324)
- B. No person shall move any parked vehicle without giving appropriate signals as prescribed in sections 27-12-6-5.8 through 27-12-6-5.10.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.8. Turning and stopping movements and required signals.

- A. No person shall turn a vehicle at an intersection unless the vehicle is in proper position upon the street as required in section 27-12-6-5.1 or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a street unless and until such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner hereinafter provided in the event any other traffic may be affected by such movement.
- B. Whenever a motorist is turning across a bicycle facility, such motorist shall yield the right-of-way to any bicyclist traveling in that bicycle facility which is so close as to constitute an immediate hazard.
- C. A signal of intention to turn right or left when required shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning.
- D. No person shall stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided herein to the driver of any vehicle immediately to the rear when there is opportunity to give such signal. (NMSA 1978, § 66-7-325)

- E. The signals provided for in this section shall be used to indicate an intention to turn, change lanes or start from a parked position and shall not be flashed on one side only on a parked or disabled car or flashed as a courtesy or "do pass" signal to operators of other vehicles approaching from the rear.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-6-5.9. Signals by hand and arm or signal device.

- A. Any stop or turn signal when required herein shall be given either by means of the hand and arm or by signal lamp or lamps or mechanical signal device except as otherwise provided in subsection B.
- B. Any motor vehicle in use on a street shall be equipped with, and required signal shall be given by, a signal lamp or lamps or mechanical signal device when the distance from the center of the top of the steering post to the left outside limit of the body, cab or load of such motor vehicle exceeds 24 inches, or when the distance from the center of the top of the steering post to the rear limit of the body or load thereof exceeds 14 feet. The latter measurement shall apply to any single vehicle, also to any combination of vehicles. (NMSA 1978, § 66-7-326)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-5.10. Method of giving hand and arm signals.

All signals herein required given by hand and arm shall be given from the left side of the vehicle in the following manner and such signal shall indicate as follows:

- A. Left turn: hand and arm extended horizontally;
- B. Right turn: hand and arm extended upward; and
- C. Stop or decrease speed: hand and arm extended downward. (NMSA 1978, § 66-7-327)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6. Stopping, standing and parking.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.1. Stopping, standing or parking prohibited in specified places.

- A. No person shall stop, stand or park a vehicle, except when necessary to avoid conflict with other traffic or in compliance with law or the directions of a police officer or traffic-control device, in any of the following places:
 - (1) On a sidewalk;
 - (2) In front of a public or private driveway;
 - (3) Within an intersection;
 - (4) Within 15 feet of a fire hydrant;
 - (5) On a crosswalk;
 - (6) Within 20 feet of a crosswalk at an intersection;

- (7) Within 30 feet upon the approach to any flashing beacon, stop sign, or traffic-control signal located at the side of a street;
 - (8) Between a safety zone and the adjacent curb or within 30 feet of points on the curb immediately opposite the end of a safety zone, unless the traffic authority indicates a different length by signs or markings;
 - (9) Within 50 feet of the nearest rail of a railroad crossing;
 - (10) Within 20 feet of the driveway entrance to any fire station and on the side of a street opposite the entrance to any fire station within 75 feet of said entrance, when properly sign posted;
 - (11) Alongside or opposite any excavation or obstruction when stopping, standing or parking would obstruct traffic;
 - (12) On the street side of any vehicle stopped or parked at the edge or curb of a street;
 - (13) Upon any bridge or other elevated structure upon a street or within a street tunnel;
 - (14) At any place where official signs prohibit stopping (NMSA 1978, § 66-7-351);
 - (15) On any railroad track;
 - (16) Between a curb and sidewalk or between a curb or lateral line of a roadway, and the adjacent property line; or
 - (17) Bicycle lane or multi-use path.
 - (18) In a public parking space where there is an EV charging station indicating that parking is for electric vehicle charging unless the vehicle is connected to the charging equipment and charging.
- B. No person shall move a vehicle not lawfully under his control into any such prohibited area or away from a curb such distance as is unlawful. (NMSA 1978, § 66-7-351)
- C. The foregoing provisions may be modified by the administrator or his designated representative upon the basis of an engineering and traffic investigation study by the use of appropriate markings, signs or parking meters.
- (Ord. No. 2121, § VI, 7-19-04; Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-6-6.2. Additional parking regulations.

- A. Except as otherwise provided in this chapter every vehicle stopped or parked upon a street where there are adjacent curbs shall be so stopped or parked with the right-hand wheels of such vehicle parallel to and within 18 inches of the right-hand curb. (NMSA 1978, § 66-7-352)
- B. Except when otherwise provided in this chapter, every vehicle stopped or parked on a one-way street shall be so stopped or parked parallel to the curb or edge of the street with its right-hand wheels within 18 inches of the right-hand curb or edge of the street or its left-hand wheels within 18 inches of the left-hand curb or edge of the street.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.3. Stopped or parked vehicles not to interfere with other traffic.

No motor vehicle shall be stopped, parked, or left standing, whether attended or unattended, upon the traveled portion of any street outside of a business or residence district, when it is practicable to stop, park, or

leave such vehicle off the traveled portion of the street. In the event that conditions make it impracticable to move such motor vehicle from the traveled portion of the street, the driver shall make every effort to leave all possible width of the highway opposite the standing vehicle for the free passage of other vehicles and he shall take care to provide a clear view of the standing vehicles as far as possible to the front and rear. (NMSA 1978, § 66-3-852)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.4. Parking in alleys.

No person shall park a vehicle within an alley in such a manner or under such conditions as to leave available less than ten feet of the width of the alley for the free movement of vehicular traffic, and no person shall stop, stand or park a vehicle within an alley in such a position as to block the driveway entrance to any abutting property.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.5. All-night parking prohibited.

No person shall park a vehicle on any street in a nonresidential area for a period of time longer than 30 minutes between the hours of 2:00 a.m. and 5:00 a.m. of any day, except physicians on emergency calls.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.6. Parking for certain purposes prohibited.

No person shall park a vehicle on any street for the principal purpose of:

- A. Displaying the vehicle for sale; or
- B. Washing, greasing or repairing the vehicle except repairs necessitated by an emergency.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.7. Parking adjacent to schools prohibited.

- A. The administrator may erect signs indicating no parking on either or both sides of any street adjacent to any school property when parking would, in his opinion, interfere with traffic or create a hazardous situation.
- B. When official signs are erected indicating no parking on either side of a street adjacent to any school property as authorized in this section, no person shall park a vehicle in any such designated place.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.8. Parking prohibited on narrow streets.

- A. The administrator may erect signs indicating no parking on any street when the width of the street does not exceed 24 feet or no parking upon one side of a street as indicated by such signs when the width of the street does not exceed 32 feet.
- B. When official signs prohibiting parking are erected on narrow streets as authorized in this section, no person shall park a vehicle on any such street in violation of the sign.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.9. Standing or parking on one-way streets.

- A. The administrator may erect signs on the left-hand side of any one-way street to prohibit the standing or parking of vehicles.
- B. When such signs are in place, no person shall stand or park a vehicle on such left-hand side in violation of any such sign.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.10. Standing or parking on divided streets.

- A. In the event a divided street includes two or more segments for vehicular traffic, and traffic is restricted to one direction on any such segment, no person shall stand or park a vehicle on the left-hand side of the one-way segment unless signs are erected to permit such standing or parking.
- B. The administrator may determine where standing or parking may be permitted on the left-hand side of any such one-way portion of a divided street and to erect signs giving notice thereof.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.11. No stopping, standing or parking near hazardous or congested places.

- A. The administrator may determine and designate by proper signs, places at intervals not exceeding 100 feet in length in which the stopping, standing or parking of vehicles would create an especially hazardous condition or would cause unusual delay to traffic.
- B. When official signs are erected at hazardous or congested places as authorized in subsection A., no person shall stop, stand or park a vehicle in any such designated place.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.12. Stopping, standing or parking restricted or prohibited on certain streets.

- A. The provisions of this section prohibiting the standing or parking of a vehicle shall apply at all times or at those times herein specified or as indicated on official signs except when it is necessary to stop a vehicle to avoid conflict with other traffic or in compliance with the directions of a police officer or official traffic-control device.
- B. The provisions of this section imposing a time limit on parking shall not relieve any person from the duty to observe other and more restrictive provisions prohibiting or limiting the stopping, standing or parking of vehicles in specified places or at specified times.
- C. The administrator may impose restrictions or prohibitions on standing, stopping or parking and they shall apply as follows:
 - (1) When signs are erected prohibiting parking at all times on certain streets, no person shall park a vehicle at any time upon any of the streets so designated;
 - (2) When signs are erected in each block giving notice that stopping, standing or parking is prohibited during certain hours on certain streets, no person shall stop, stand or park a vehicle between the hours specified on the sign on any day, except Sundays and public holidays, within the district or on any of the streets so designated; or

- (3) When signs are erected in each block giving notice that parking time is limited on certain streets, no person shall park a vehicle for longer than the time indicated on such signs between the hours of 8:00 a.m. and 6:00 p.m. of any day, except Sundays and public holidays, within the district or on any of the streets so designated.
- D. Whenever by this or any other ordinance of this municipality, any parking time limit is imposed or parking is prohibited on designated streets, it is the duty of the administrator to erect appropriate signs giving notice of the restrictions or limitations.
- E. No regulation authorized in this section shall be effective unless signs giving notice of prohibitions or limitations are erected and in place at the time of any alleged offense.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.13. Angle parking and permits for loading or unloading at an angle to the curb.

- A. The administrator may determine upon what streets angle parking is permitted and shall mark or sign such streets:
 - (1) Any designation of angle parking shall be made on the basis of engineering and traffic study and investigation;
 - (2) The administrator may permit angle parking on any street, except that angle parking shall not be permitted on any federal-aid or state highway unless the state highway commission has determined by resolution or ordered entered in its minutes that the street is of sufficient width to permit angle parking without interfering with the free movement of traffic; (NMSA 1978, § 66-7-352)
 - (3) Angle parking shall not be indicated or permitted at any place where passing traffic would thereby be caused or required to drive on the left side of the street; and
 - (4) On those streets which have been signed or marked by the administrator for angle parking, no person shall park or stand a vehicle other than at the angle to the curb or edge of the street indicated by signs or markings.
- B. The administrator may issue special permits to permit the backing of a vehicle to the curb for the purpose of loading or unloading merchandise or materials subject to the terms and conditions of the permit:
 - (1) The permits may be issued either to the owner or lessee of real property or to the owner of the vehicle and shall grant to the permit holder the privilege stated in the permit and authorized in this chapter; and
 - (2) No permittee or other person shall violate any of the special terms or conditions of a permit.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.14. Stopping, standing or parking outside of business or residence districts.

- A. Upon any street outside of a business or residence district no person shall stop, park, or leave standing any vehicle, whether attended or unattended, upon the paved or main-traveled part of the street when it is practicable to stop, park, or leave such vehicle off such part of said street, but in every event an unobstructed width of the street opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicles shall be available from a distance of 200 feet in each direction upon such street.

- B. This section shall not apply to the driver of any vehicle which is disabled while on the paved or main-traveled portion of a street in such manner and to such extent that it is impossible to avoid stopping and temporarily leaving such disabled vehicle in such position. (NMSA 1978, § 66-7-349)
- C. The state department of transportation, unless otherwise directed by an investigating police officer, or a police officer may remove or cause to be removed a vehicle or other obstruction from the paved or main-traveled part of a highway to the nearest place of safety if the vehicle or other obstruction obstructs traffic or poses a traffic hazard. (NMSA 1978, § 66-7-349C)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.15. Parking certain trucks restricted.

- A. No person shall park a semi-tractor and/or a semi-trailer whether connected or unconnected on any residential street within the city except for purposes of loading and unloading;
- B. It shall be unlawful for any person to leave any type of trailer, boat trailer, etc., unhitched upon a public way.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-6.16. Parking in fire lanes prohibited.

- A. The marking of fire lanes on private property devoted to public use and on public property shall be approved by the fire chief;
- B. It is unlawful to park any vehicle other than an authorized emergency vehicle in any fire lane established pursuant to this article, except as may be specifically permitted by the fire chief (i.e., an armored vehicle may park in the fire lane for a brief period of time during the performance of duty after obtaining a permit from the fire department);
- C. Nothing in this section shall prohibit a city bus from stopping briefly in a fire lane for the purpose of dropping off or picking up passengers;
- D. Violation of this subsection shall be enforced by the police department.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2508, § II, 3-2-09)

Sec. 27-12-6-6.17. Parking adjacent to public buildings.

- A. Except when necessary to avoid conflict with other traffic, or the directions of a police officer, no person shall stop, stand, or park a motor vehicle on any parking area adjacent to any public building which is owned or controlled by the city:
 - (1) Except within marked parking stalls provided for that purpose;
 - (2) At any place which would impede the movement of other vehicles;
 - (3) At any place that is properly signed and reserved for special vehicles;
 - (4) At any place where parking is prohibited by official sign.
- B. Vehicles in violation of this provision may be towed to the nearest storage area, at the expense of the owner of the vehicle.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2509, § I, 3-2-09)

Sec. 27-12-6-7. Special stops required.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.1. Emerging from alley, building, driveway or private road.

- A. The driver of a vehicle within a business or residence district emerging from an alley, driveway, or building shall stop such vehicle immediately prior to driving onto a sidewalk or the sidewalk area extending across any alleyway or driveway, and shall yield the right-of-way to any pedestrian as may be necessary to avoid collision, and upon entering the street shall yield the right-of-way to all vehicles approaching on said street. (NMSA 1978, § 66-7-346)
- B. The driver of a vehicle about to enter or cross a street from a private road or driveway shall yield the right-of-way to all vehicles approaching on said street. (NMSA 1978, § 66-7-331)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.2. Stop when traffic obstructed.

No driver shall enter an intersection or a marked crosswalk unless there is sufficient space on the other side of the intersection or crosswalk to accommodate the vehicle he is operating without obstructing the passage of other vehicles or pedestrians, notwithstanding any traffic-control signal indication to proceed.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.3. Stopping for school bus.

- A. The driver of a vehicle upon approaching or overtaking from either direction any school bus which has stopped on the street, with special school bus signals in operation, for the purpose of receiving or discharging any school children, shall stop the vehicle at least ten feet before reaching the school bus and shall not proceed until the special school bus signals are turned off, the school bus resumes motion or until signaled by the driver to proceed.
- B. Every bus used for the transportation of school children shall bear upon the front and rear thereof a plainly visible sign containing the words "School Bus" in letters not less than eight inches in height.
- C. The driver of a vehicle upon a street with separate roadways need not stop upon meeting or passing a school bus which is on a different roadway or when upon a controlled access street and the school bus is stopped in a loading zone which is a part of or adjacent to such street and where pedestrians are not permitted to cross the roadway. (NMSA 1978, § 66-7-347)
- D. It is unlawful to operate any flashing warning signal light on any school bus on any street except when the school bus is stopped or is about to stop on a street for the purpose of permitting school children to board or alight from the school bus. (NMSA 1978, § 66-7-348)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.4. Operation of vehicle on approach of authorized emergency vehicle; of oncoming vehicle—Yield right-of-way.

- A. Upon the immediate approach of an authorized emergency vehicle displaying flashing emergency lights or when the driver is giving audible signal by siren, exhaust whistle, or bell, the driver of every other vehicle shall yield the right-of-way and shall immediately drive to a position parallel to, and as close as possible to, the right-hand edge or curb of the street clear of any intersection and shall stop and remain in that position until the authorized emergency vehicle has passed except when otherwise directed by a police officer.

State law reference(s)—Similar provisions, NMSA 1978, § 66-7-332.

- B. Upon approaching a stationary authorized emergency vehicle displaying flashing emergency lights, unless otherwise directed, the driver of a vehicle shall:
- (1) If reasonably safe to do so, drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed of the vehicle to a speed that is reasonable and prudent under the circumstances and proceed with caution; or
 - (2) If it is not reasonably safe to drive in a lane not adjacent to where the authorized emergency vehicle is stopped, decrease the speed that is reasonable and prudent under the circumstances, proceed with caution and be prepared to stop.
- C. Upon the immediate approach of an oncoming vehicle overtaking or attempting to overtake a vehicle proceeding in the same direction, the driver of that vehicle shall yield the right-of-way and shall drive to a position to and as close as possible to the right-hand edge or curb of the roadway and shall remain as close as possible to the right-hand edge or curb of the roadway until the oncoming vehicle has passed.

State law reference(s)—Similar provisions, NMSA 1978, § 66-7-332.1.

- D. This section shall not operate to relieve the driver of an authorized emergency vehicle or the driver of an oncoming vehicle from the duty to drive with due regard for the safety of all persons using the highway.

State law reference(s)—Similar provisions, NMSA 1978, §§ 66-7-332 and 66-7-332.1.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2228, § IV, 8-15-05)

Sec. 27-12-6-7.5. Railroad-highway grade crossing violations-All drivers.

- A. A person driving a vehicle approaching a railroad-highway grade crossing shall:
- (1) Obey traffic control devices, crossing gates or barriers or the directions of an enforcement official at the crossing;
 - (2) Stop not more than 50 feet and not less than 15 feet from the nearest rail of a crossing if:
 - (a) A train is moving through or blocking the crossing;
 - (b) A train is plainly visible and approaching the crossing within hazardous proximity to the crossing;
 - (c) The sound of a train's warning signal can be heard; or
 - (d) A traffic control device, crossing gate, barrier or light or an enforcement official signals the driver to stop; and
 - (3) Proceed through the railroad-highway grade crossing only if it is safe to completely pass through the entire railroad-highway grade crossing without stopping.
- B. A person shall not:

- (1) Driver a vehicle through, around or under a crossing gate or barrier at a railroad-highway grade crossing while the gate or barrier is closed or being opened or closed;
- (2) Drive onto the railroad-highway grade crossing and stop; or
- (3) Enter a crossing if the vehicle being driven has insufficient undercarriage clearance to pass over the crossing.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.6. All vehicles must stop at certain railroad grade crossings.

The administrator, with the approval of the state highway commission, may designate particularly dangerous highway grade crossings of railroads and erect stop signs thereat. When such stop signs are erected the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such railroad and shall proceed only upon exercising due care. (NMSA 1978, § 66-7-342)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.7. Railroad-highway grade crossing violations—Certain vehicles required to always stop—Exceptions.

- A. Except as set forth in subsection D. of this section, a driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo, before entering a railroad-highway grade crossing, is required to stop no more than 50 feet and no less than 15 feet from the nearest rail of the railroad.
- B. While stopped, the driver shall:
 - (1) Look and listen in both directions along the track for an approaching train and for signals indicating that a train is approaching;
 - (2) Determine it is safe to proceed completely through the railroad-highway grade crossing before entering it; and
 - (3) Set the vehicle in a gear sufficiently low that gears will not need to be shifted before exiting the railroad-highway grade crossing.
- C. A driver shall not shift gears while in a railroad-highway grade crossing.
- D. A driver of a vehicle carrying passengers for hire, a school bus carrying school children or a vehicle carrying hazardous materials, radioactive or explosive substances or flammable liquids as cargo or as part of its cargo is not required to stop at:
 - (1) A railroad-highway grade crossing where a police officer directs traffic to proceed;
 - (2) A railroad-highway grade crossing where a stop-and-go traffic light controls movement of traffic;
 - (3) A railroad-highway grade crossing used exclusively for industrial switching purposes, within a business district as defined in NMSA § 66-1-4.2;
 - (4) A railroad-highway grade crossing where use of the railroad has been abandoned and there is a sign indicating that the railroad has been abandoned; or
 - (5) An industrial or spur line railroad-highway grade crossing marked with a sign reading "exempt crossing" that has been designated as exempt by appropriate state or local authorities.

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(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.8. Moving heavy equipment at railroad grade crossings.

- A. No person shall operate or move any crawler-type tractor, steam shovel, derrick, roller, or any equipment or structure having a normal operating speed of ten or less miles per hour or a vertical body or load clearance of less than one-half inch per foot of the distance between any two adjacent axles or in any event of less than nine inches, measured above the level surface of a street, upon or across any tracks at a railroad grade crossing without first complying with this section.
- B. Notice of any such intended crossing shall be given to a station agent of such railroad and a reasonable time be given to such railroad to provide proper protection at such crossing.
- C. Before making any such crossing the person operating or moving any such vehicle or equipment shall first stop the same not less than 15 feet nor more than 50 feet from the nearest rail of such railroad and while so stopped shall listen and look in both directions along such track for any approaching train and for signals indicating the approach of a train, and shall not proceed until the crossing can be made safely.
- D. No such crossing shall be made when warning is given by automatic signal or crossing gates or flagman or otherwise of the immediate approach of a railroad train or car. If a flagman is provided by the railroad, movement over the crossing shall be under his direction.
- E. This section shall not apply to the normal movement of farm equipment in the regular course of farm operation. (NMSA 1978, § 66-7-344)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-7.9. Vulnerable user of a public way laws.

(Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-6-7.9.1. Passing a vulnerable user.

An operator of a vehicle passing a vulnerable user operating on a highway or street shall:

- A. Vacate the lane in which the vulnerable user is located if the highway or street has two or more marked lanes running in the same direction; or
- B. Pass the vulnerable user at a safe distance.

(Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-6-7.9.2. Passing a vulnerable user at a safe distance.

For the purpose of subsection 27-12-6-7.9.1.B, when road conditions allow, safe distance is at least:

- A. Three feet if the operator's vehicle is a passenger car, light truck, or bicycle; or
- B. Six feet if the operator's vehicle is a truck, other than a light truck, or a commercial motor vehicle as defined by the New Mexico Uniform Traffic Ordinance, or when passing any other vulnerable user not already identified in subsections A or B.

(Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-6-7.10. Intimidating or harassing a vulnerable user.

An operator of a vehicle may not maneuver the vehicle in a manner that:

- A. Is intended to cause intimidation or harassment to a vulnerable user; or
- B. Threatens a vulnerable user.

(Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-6-7.11. Due care—Vulnerable users.

An operator of a vehicle shall exercise due care to avoid colliding with any vulnerable user in the public right-of-way.

(Ord. No. 2670, § I(exh. A), 11-5-12)

Sec. 27-12-6-8. Passenger and freight curb loading zones.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-8.1. Authority to designate curb loading zones.

The administrator may determine the location of passenger and freight curb loading zones, and he shall place and maintain appropriate signs indicating the zones and stating the hours during which the provisions of sections 27-12-6-8.1 through 27-12-6-8.4 are applicable.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-8.2. Permits for curb loading zones.

- A. The administrator shall not designate or sign any curb loading zone upon special request of any person unless the person makes application for a permit for the zone and for two signs to indicate the ends of each zone.
- B. After the administrator has granted a permit and before signs and markings as may be necessary are installed, the applicant shall pay to the city treasurer a service fee of \$25.00 per 22-foot stall plus \$0.25 per foot for additional space per year or fraction thereof.
- C. The administrator may impose conditions and general regulations for the use of the signs and for reimbursement of the city for the value thereof in the event of loss or damage and their return in the event of misuse or upon expiration of permit.
- D. Every permit shall expire at the end of each calendar year.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-8.3. Stopping, standing or parking in passenger curb loading zones.

No person shall stop, stand or park a vehicle for any purpose or period of time other than for the expeditious loading or unloading of passengers in any place marked as a passenger curb loading zone during hours when the

regulations applicable to the curb loading zone are effective and then only for a period not to exceed three minutes.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-8.4. Stopping, standing or parking in freight curb loading zones.

- A. No person shall stop, stand or park a vehicle for any purpose or length of time other than for the expeditious unloading and delivery or pick-up and loading of materials in any place marked as a freight curb loading zone during hours when the provisions applicable to freight curb loading zones are in effect. In no case shall the stop for loading and unloading of material exceed 30 minutes.
- B. The driver of a passenger vehicle may stop temporarily at a place marked as a freight curb loading zone for the purpose of and while actually engaged in loading or unloading passengers, when such stopping does not interfere with any motor vehicle used for the transportation of materials which is waiting to enter or about to enter the zone.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-9. Public carrier stops and stands.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-9.1. Authority to designate public carrier stops and stands.

- A. The administrator may establish bus stops, bus stands, taxicab stands and stands for other passenger common-carrier motor vehicles on such public streets in such places and in such number as he shall determine to be of the greatest benefit and convenience to the public.
- B. Every designated bus stop, bus stand, taxicab stand or other stand shall be designated by appropriate signs.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-9.2. Fees and permits for public carrier stops and stands.

The following fees shall be charged to each person, firm or corporation for the use of taxicab stands, and permits for the stands shall expire at the end of each calendar year:

- A. One hundred dollars per year or fraction thereof for each stand located within the central business district; and
- B. Twenty-five dollars per year or fraction thereof for each stall located in any area outside the central business district.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-9.3. Stopping, standing and parking of buses and taxicabs regulated.

The stopping, standing and parking of buses and taxicabs is regulated as follows:

- A. The operator of a bus shall not stand or park the vehicle on any street at any place other than a bus stand so designated as provided in this chapter.

- B. The operator of a bus shall not stop the vehicle on any street at any place for the purpose of loading or unloading passengers or their baggage other than at a bus stop, bus stand or passenger loading zone so designated as provided herein, except in cases of emergency.
- C. The operator of a bus shall enter a bus stop, bus stand or passenger loading zone on a public street in such a manner that the bus when stopped to load or unload passengers or baggage shall be in a position with the right front wheel of the vehicle not farther than 18 inches from the curb and the bus approximately parallel to the curb so as not to unduly impede the movement of other vehicular traffic.
- D. The operator of a taxicab shall not stand or park the vehicle upon any street at any place other than in a taxicab stand so designated as provided herein. This provision shall not prevent the operator of a taxicab from temporarily stopping in accordance with other stopping or parking regulations at any place for the purpose of and while actually engaged in the expeditious loading or unloading of passengers.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-9.4. Restricted use of bus and taxicab stands.

- A. No person shall stop, stand or park a vehicle other than a bus in a bus stop, or other than a taxicab in a taxicab stand when any such stop or stand has been officially designated and appropriately signed.
- B. However, the driver of a passenger vehicle may temporarily stop in a bus stop or taxicab stand for the purpose of and while actually engaged in loading or unloading passengers when such stopping does not interfere with any bus or taxicab waiting to enter or about to enter such zone.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-10. School crossings.

- A. Crosswalks may be established over streets abutting a school or the grounds adjacent thereto, and all children crossing the streets shall be required to do so within the marked crosswalks. The administrator, with advice of the local superintendent of schools, shall establish and mark, or cause to be marked, these street crossings.
- B. Crosswalks over streets not abutting on school grounds may be established by the administrator, with advice of the local superintendent of schools and after adequate assurance has been given that proper safety precautions, pursuant to regulations of the administrator, will be maintained at the crossings by the school authorities to enforce their use by children.
- C. At all school crossings except as provided in this section, appropriate signs shall be provided as prescribed by the administrator indicating the crossings and regulating traffic movement within the school zones. For the purpose of regulating traffic within a school zone, school zones shall be defined as the area between posted school zones approaching the crosswalks and the outer limits of the crosswalks when departing.
- D. School crossings are not required to be specifically posted when they are located:
 - (1) At a signalized intersection;
 - (2) At an intersection where traffic is controlled by a stop sign; or
 - (3) At a point where a pedestrian tunnel or overhead crossing is provided. (NMSA 1978, § 66-7-336)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-11. Excessive size and weight, slow-moving and hazardous vehicles.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-11.1. Permit for excessive size and weight—Special notification required on movement of manufactured homes.

- A. The department and local highway authorities may, in their discretion, upon application in writing and good cause being shown, issue a special permit in writing authorizing the applicant to operate or move a vehicle or load of a size or weight exceeding the maximum specified in NMSA 1978, §§ 66-7-401—66-7-416 on any highway under the jurisdiction of the state highway commission or local authorities. Except for the movement of manufactured homes, a permit may be granted, in cases of emergency, for the transportation of loads on a certain unit or combination of equipment for a specified period of time not to exceed one year, and the permit shall contain the route to be traversed, the type of load to be transported and other restrictions or conditions deemed necessary by the body granting the permit. In every other case, the permit shall be issued for a single trip and may designate the route to be transversed and contain any other restrictions or conditions deemed necessary by the body granting the permit. Every permit shall be carried in the vehicle to which it refers and shall be opened for inspection by any peace officer. It is a misdemeanor for any person to violate any of the conditions or terms of the special permit.
- B. The department shall charge and collect, when the movement consists of any load of a width of 20 feet or greater for a distance of five miles or more, the sum of \$300.00 a day or fraction thereof to defray the cost of state or local police escort. The permit issued and the fee charged shall be based upon the entire movement at one time with required police escort and not upon the number of vehicles involved.
- C. The department shall promulgate regulations in accordance with the State Rules Act pertaining to safety practices, liability insurance and equipment for escort vehicles provided by the motor carrier himself and for escort vehicles provided by a private business in this state.
 - (1) If a motor carrier provides his own escort vehicles and personnel, the department shall not charge an escort fee but shall provide the motor carrier escort personnel with a copy of applicable regulations and shall inspect the escort vehicles for the safety equipment required by the regulations. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the motor carrier holds a valid certificate of public convenience and necessity or permit, as applicable, issued pursuant to NMSA 1978, § 65-2-1 et seq., the department shall issue the special permit.
 - (2) If the escort service is a private business, the business shall have applied to the public regulation commission for and been issued a permit or certificate to operate as a contract or common motor carrier pursuant to NMSA 1978, § 65-2-1 et seq. The public regulation commission shall supply copies of applicable regulations to the business by mail and shall supply additional copies upon request. If the escort vehicles and personnel meet the requirements set forth in the regulations and if the escort service holds a certificate, the special permit shall be issued and the department shall not charge an escort fee.
 - (3) The movement of vehicles upon the highways of this state requiring a special permit and required to use an escort of the type noted in paragraphs (1) and (2) of this subsection is subject to department authority and inspection at all times.
 - (4) The state highway and transportation department shall conduct engineering investigations and engineering inspections to determine which four-lane highways are safe for the operation or movement of manufactured homes without an escort. After making that determination, the state highway and transportation department shall hold public hearings in the area of the state affected by

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- the determination, after which it may adopt regulations designating those four-lane highways as being safe for the operation or movement of manufactured homes without an escort. If any portion of such a four-lane highway lies within the boundaries of a municipality, the state highway and transportation department, after obtaining the approval of the municipal governing body, shall include such portions in its regulations.
- D. Except for the movement of manufactured homes, special permits may be issued for a single vehicle or combination of vehicles by the department for a period not to exceed one year for a fee of \$60.00. The permits may allow excessive height, length and width for a vehicle or combination of vehicles or load thereon and may include a provision for excessive weight if the operation is to be within the vicinity of a municipality. Utility service vehicles, operating with special permits pursuant to this subsection, shall be exempt from prohibitions or restrictions relating to hours or days of operation or restrictions on movement because of poor weather conditions. (NMSA 1978, § 66-7-413D)
- E. Special permits for a single trip for a vehicle or combination of vehicles or load thereon of excessive weight, width, length and height may be issued for a single vehicle for a fee of \$15.00.
- F. If the vehicle for which a permit is issued under this section is a manufactured home, the department or local highway authority issuing the permit shall furnish the following information to the property tax division of the department, which shall forward the information:
- (1) To the county assessor of any county from which a manufactured home is being moved, the date the permit was issued, the locations being moved from, the location being moved to if within the same county, the name of the owner of the manufactured home and the identification and registration numbers of the manufactured home;
 - (2) To the county assessor of any county in this state to which a manufactured home is being moved, the date the permit was issued, the location being moved from, the location being moved to, the name of the owner of the manufactured home and the registration and identification numbers of the manufactured home; and
 - (3) To the owner of a manufactured home having a destination in this state, notification that the information required in paragraphs (1) and (2) of this subsection is being given to the respective county assessors and that manufactured homes are subject to property tax.
- G. Except as provided in subsection H of this section, if the movement of a manufactured home originates in this state, no permit shall be issued under subsection F of this section until the owner of the manufactured home or his authorized agent obtains and presents to the department proof that a certificate has been issued by the county assessor or treasurer of the county in which the manufactured home movement originates showing that either:
- (1) All property taxes due or to become due on the manufactured home for the current tax year or any past tax years have been paid, except for manufactured homes located on an Indian reservation; or
 - (2) No liability for property taxes on the manufactured home exists for the current tax year or any past tax years, except for manufactured homes located on an Indian reservation.
- H. The movement of a manufactured home from the lot or business location of a manufactured home dealer to its destination designated by an owner-purchaser is not subject to the requirements of subsection G of this section if the manufactured home movement originates from the lot or business location of the dealer and the manufactured home was part of his inventory prior to the sale to the owner-purchaser; however, the movement of a manufactured home by a dealer or his authorized agent as a result of a sale or trade-in from a nondealer-owner is subject to the requirements of subsection G of this section whether the destination is the business location of a dealer or some other destination.

- I. No permit shall be issued under this section for movement of a manufactured home whose width exceeds 18 feet with no more than six-inch roof overhang on the left side or 12 inches on the right side in addition to the 18-foot width of the manufactured home. Manufactured homes exceeding the limitations of this section shall only be moved on dollies placed on the front and the rear of this structure.
- J. The secretary may by regulation provide for movers of manufactured homes to self-issue permits for certain sizes of manufactured homes over specific routes; however, in no case may the cost of each permit be less than \$15.00.
- K. The secretary may provide by regulation for dealers of implements of husbandry to self-issue permits for the movement of certain sizes of implements of husbandry from the lot or business location of the dealer over specific routes with specific escort requirements, if necessary, to a destination designated by an owner-purchaser or for purposes of a working demonstration on the property of a proposed owner-purchaser. The department shall charge a fee for each self-issued permit not to exceed \$15.00.
- L. Any private motor carrier requesting an oversize or overweight permit shall provide proof of insurance in at least the following amounts:
 - (1) Bodily injury liability, providing:
 - (a) Fifty thousand dollars for each person; and
 - (b) One hundred thousand dollars for each accident; and
 - (2) Property damage liability, providing \$25,000.00 for each accident.
- M. Any common motor carrier requesting an oversize permit shall produce a copy of a form "E" or other acceptable evidence that the common motor carrier maintains the insurance minimums prescribed by the public regulation commission.
- N. Farm carriers, as defined in NMSA 1978, §§ 65-2-82 and 65-1-116, may transport loads up to 12 feet in width on highways that are not national network highways without acquiring permits or escorts only if the load consists of hay tied in bales over five feet in either length or width and the load is not transported for any distance greater than 50 miles; provided that the farm carriers display a sign across the front and rear stating "WIDE LOAD" in large visible letters.
- O. No permit or fee required under this section is necessary for implements of husbandry, including farm tractors and farm trailers when not more than two such farm trailers are towed in tandem, being moved during daylight hours within a county or an adjacent county for a total distance, one way, of not more than 50 miles on any highway:
 - (1) Crossing the farm property of the owner; or
 - (2) Running between separate farm property of the owner. Any person responsible for the movement of implements of husbandry under the provisions of this section shall comply with all safety precautions set forth in this code and in regulations of the state highway commission.

State law reference(s)—Similar provisions, NMSA 1978, § 66-7-414.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-11.2. Slow-moving vehicle identification.

- A. As used in this section, "slow-moving vehicle" means any vehicle which is ordinarily moved, operated or driven at a speed less than 25 miles an hour.
- B. Each slow-moving vehicle moved, operated or driven on a highway which is open for vehicular travel shall display a slow-moving vehicle emblem or flashing amber light as required by NMSA 1978, § 66-3-887.

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- C. Use of the emblem is confined to slow-moving vehicles, and its use on any other type of vehicle or on any stationary object is prohibited. This section does not prohibit the use on slow-moving vehicles of red flags or lawful lighting devices in addition to the slow-moving vehicle emblem.
- D. No person shall sell, lease, rent or operate any slow-moving vehicle unless the slow-moving vehicle is equipped with a slow-moving vehicle emblem. (NMSA 1978, § 66-3-887)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-11.3. Escort to be furnished for movement of hazardous vehicles.

- A. When, in the judgment of the administrator, the movement of any vehicle is deemed a hazard to traffic upon a street over which the vehicle is to travel, the granting of permission for the movement thereof may be conditioned upon a special escort accompanying the hazardous vehicle.
- B. The special police car escort to safeguard traffic during the movement of the hazardous vehicle shall conform to the provisions of NMSA 1978, § 66-7-314. (NMSA 1978, § 66-7-314)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12. Driving regulations and offenses.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.1. Operating a motor vehicle under the influence of intoxicating liquor or drugs; chemical testing; officer to file statement; immediate license revocation.

- A. It is unlawful for any person who is under the influence of intoxicating liquor to drive any vehicle within this municipality.
- B. It is unlawful for:
 - (1) A person who has an alcohol concentration of 0.08 or more in the person's blood or breath to drive any vehicle within this municipality and the alcohol concentration results from alcohol consumed before or while driving the vehicle as established by a chemical test given within three hours of driving the vehicle.
 - (2) A person who has an alcohol concentration of 0.04 or more in the person's blood or breath to drive a commercial vehicle within this municipality and the alcohol concentration results from alcohol consumed before or while driving the vehicle as established by a chemical test given within three hours of driving the vehicle.
- C. It is unlawful for any person who is under the influence of any drug to a degree which renders the person incapable of safely driving a vehicle to drive any vehicle within this municipality. The fact that any person charged with a violation of this subsection is or has been entitled to use such drug under the laws of this state is not a defense against the charge.
- D. Aggravated driving while under the influence of intoxicating liquor or drugs consists of a person who:
 - (1) Has an alcohol concentration of 0.16 or more in the person's blood or breath while driving any vehicle within this municipality and the alcohol concentration results from alcohol consumed before or while driving the vehicle as established by a chemical test given within three hours of driving the vehicle;

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- (2) Has caused bodily injury to a human being as a result of the unlawful operation of a motor vehicle while driving under the influence of intoxicating liquor or drugs; or
 - (3) Refused to submit to chemical testing as provided for in the Implied Consent Act, NMSA 1978, §§ 66-8-105—66-8-112, and in the judgment of the court, based upon evidence of intoxication presented to the court, was under the influence of intoxicating liquor or drugs.
- E. Any person who operates a motor vehicle within this municipality shall be deemed to have given consent, subject to the provisions of the Implied Consent Act, to chemical tests of the person's breath or blood or both, approved by the scientific laboratory division of the department of health pursuant to the provision of NMSA 1978, § 24-1-22 as determined by a law enforcement officer, or for the purpose of determining the drug or alcoholic content of the person's blood, if arrested for any offense arising out of the acts alleged to have been committed while the person was driving a motor vehicle while under the influence of an intoxicating liquor or any drug.
- F. A test of blood or breath or both, approved by the scientific laboratory division of the department of health pursuant to NMSA 1978, § 24-1-22 shall be administered at the direction of a law enforcement officer having reasonable grounds to believe the person to have been driving a motor vehicle within this municipality, while under the influence of intoxicating liquor or drug.
- G. Any person who is dead, unconscious or otherwise in a condition rendering him incapable of refusal, shall be deemed not to have withdrawn the consent provided by section 27-12-6-12.1.E, and the test or tests designated by the law enforcement officer may be administered.
- H. Only the persons authorized by NMSA 1978, § 66-8-103 shall withdraw blood from any person for the purpose of determining its drug or alcohol content. This limitation does not apply to the taking of samples of breath.
- I. The person tested shall be advised by the law enforcement officer of the person's right to be given an opportunity to arrange for a physician, licensed professional or practical nurse, or laboratory technician or technologist who is employed by a hospital or physician, of the person's own choosing, to perform a chemical test in addition to any test performed at the direction of a law enforcement officer.
- J. Upon the request of the person tested, full information concerning the test or tests performed at the direction of the law enforcement officer shall be made available to the person as soon as it is available from the person performing the test.
- K. The law enforcement agency represented by the law enforcement officer at whose direction the chemical test is performed shall pay for the chemical test.
- L. If a person exercises his right under subsection I to have a chemical test performed upon him by a person of his own choosing, then the cost of that test shall be paid by the law enforcement agency represented by the law enforcement officer at whose direction the chemical test was administered under subsection F.
- M. The results of a test performed pursuant to the Implied Consent Act may be introduced into evidence in any civil action or criminal action arising out of the acts alleged to have been committed by the person tested for driving a motor vehicle while under the influence of intoxicating liquor or drugs.
- N. When the blood or breath of the person tested contains:
- (1) An alcohol concentration of less than 0.04 or less, it shall be presumed that the person was not under the influence of intoxicating liquor;
 - (2) An alcohol concentration of at least 0.04 but less than 0.08, no presumption shall be made that the person either was or was not under the influence of intoxicating liquor unless the person is driving a commercial vehicle and the amount of alcohol in the person's blood or breath may be considered with

- other competent evidence in determining whether or not the person was under the influence of intoxicating liquor; or
- (3) An alcohol concentration of 0.08 or more, the arresting officer shall charge the person with a violation of this section.
 - (4) An alcohol concentration of 0.04 or more if the person is driving a commercial vehicle, the arresting officer shall charge the person with a violation of this section.
- O. If the test performed pursuant to the Implied Consent Act is administered more than three hours after the person was driving a vehicle, the test result may be introduced as evidence of the alcohol concentration in the person's blood or breath at the time of the test and the trier of fact shall determine what weight to give the test result for the purpose of determining a violation of this section.
- P. The determination of alcohol concentration shall be based on the grams of alcohol in 100 milliliters of blood or grams of alcohol in 210 liters of breath.
- Q. The presumptions in subsection N of this section do not limit the introduction or consideration of other competent evidence concerning whether or not a person was under the influence of intoxicating liquor at the time of driving or whether or not the defendant's ability to operate a vehicle was impaired by the consumption of alcohol at the time of driving.
- R. Nothing in this section is intended to authorize any police officer, or any judicial or probation officer, to make any arrest or to direct the performance of a blood-alcohol test, except in the performance of his official duties and as otherwise authorized by law.
- S. If a person under arrest for violation of an offense enumerated in the Motor Vehicle Code refuses upon request of a law enforcement officer to submit to chemical tests designated by the law enforcement agency as provided in section 27-12-6-12.1.E and F, none shall be administered, except when a municipal judge, magistrate or district judge issues a search warrant authorizing chemical tests as provided in section 27-12-6-12.1.E and F, upon his finding in a law enforcement officer's written affidavit that there is probable cause to believe that the person has driven a motor vehicle while under the influence of intoxicating alcohol or drug thereby causing the death or great bodily injury of another person, or there is probable cause to believe that the person has committed a felony while under the influence of intoxicating alcohol or drug and that chemical tests as provided in section 27-12-6-12.1.E and F. will produce material evidence in a felony prosecution.
- T. If a law enforcement officer has reasonable grounds to believe that a person arrested for violation of subsection A, B, C or D of this section had been driving a motor vehicle within this municipality while under the influence of intoxicating liquor or drug and that upon his request, the person refused to submit to a chemical test, after being advised that failure to submit could result in revocation of his privilege to drive, then the law enforcement officer shall transmit to the director a statement signed under penalty of perjury stating what such reasonable grounds were and stating that the person refused to submit to a chemical test after being advised of the consequences of such refusal.
- U. On behalf of the director, a law enforcement officer requesting a chemical test or directing the administration of a chemical test pursuant to sections 27-12-6-12.1.E and F shall serve immediate written notice of revocation and of right to a hearing on a person who refuses to permit chemical testing or on a person who submits to a chemical test the results of which indicate an alcohol concentration in the person's blood or breath of 0.08 if the person is 21 years of age or older, 0.04 or more if the person is driving a commercial vehicle or 0.02 or more if the person is less than 21 years of age. Upon serving notice of revocation, the law enforcement officer shall take the license or permit of the driver, if any, and issue a temporary license valid for 20 days or, if the driver requests a hearing pursuant to NMSA 1978, § 66-8-112, valid until the date the department issues the order following the hearing; provided that a temporary license shall not be issued to a driver without a valid license or permit. The law enforcement officer shall send the

person's driver's license to the director along with the signed statement required pursuant to subsection S of this section.

- V. Any person arrested for any violation of subsection A, B, C or D of this section and who takes a breath test which discloses that the blood of such person contains an alcohol concentration of 0.08 or more or who refuses to take such a test after having been advised of the consequences of such refusal shall not be eligible for release from custody until the passage of four hours after the time recorded on the breath-alcohol testing machine reflecting the time of the last breath alcohol test or last refusal. The arresting officer shall furnish the booking clerk with a copy of said machine printout at the time the defendant is booked.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2212, § I, 7-18-05; Ord. No. 2379, § 1, 5-21-07)

Sec. 27-12-6-12.2. Operating a motor vehicle under the influence of intoxicating liquor or drugs; penalties; sentencing; fees.

- A. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs (subsections 27-12-6-12.1A through D), the trial judge shall inquire into the past driving record of the person before sentence is entered in the matter.

State law reference(s)—Similar provisions, NMSA 1978, § 66-8-110.

- B. When a person is charged with a violation of subsections 27-12-6-12.1A through D, any plea of guilty thereafter entered in satisfaction of the charges shall include at least a plea of guilty to violation of subsection 27-12-6-12.1A, B, C or D and no other disposition by plea of guilty to any other charge in satisfaction of such charge shall be authorized if:
- (1) The results of a test performed pursuant to the Implied Consent Act disclosed that the blood of the person charged contains an alcohol concentration of 0.08 or more (NMSA 1978, § 66-8-102 as amended);
 - (2) Four one-hundredths or more if the person is driving a commercial vehicle; or
 - (3) The defendant has refused to submit to a chemical test or tests of his breath or blood.

However, nothing in this subsection shall limit the authority and discretion of the city attorney to dismiss any charges where the interests of justice so require.

- C. A person under first conviction pursuant to this section shall be punished by imprisonment for not more than 90 days or by a fine of not more than \$999.00, or both; provided that if the sentence is suspended in whole or in part or deferred, the period of probation may extend beyond 90 days but shall not exceed one year. Upon a first conviction under this section, an offender shall be sentenced to 48 hours of community service. In addition, the offender may be required to pay a fine of \$300.00. The offender shall be ordered by the court to participate in and complete a screening program described in subsection F of this section and to attend a driver rehabilitation program for alcohol or drugs, also known as a "DWI school," approved by the traffic safety bureau of the state transportation department and also may be required to participate in other rehabilitative services as the court shall determine to be necessary. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to not less than 48 consecutive hours in jail. If an offender fails to complete, within the time specified by the court, any community service, screening program, treatment program, or DWI school ordered by the court or fails to comply with any other condition of probation, the offender shall be sentenced to not less than an additional 48 consecutive hours in jail. Any jail sentence imposed under this subsection for failure to complete, within a time specified by the court, any community service, screening program, treatment program or DWI school ordered by the court or for aggravated driving while under the influence of intoxicating liquor or drugs shall not be suspended, deferred or taken under advisement. On a

first conviction pursuant to this section, any time spent in jail for the offense prior to the conviction for that offense shall be credited to any term of imprisonment fixed by the court. A deferred sentence pursuant to this subsection shall be considered a first conviction for the purpose of determining subsequent convictions.

- D. A second or third conviction pursuant to this section shall be punished by imprisonment for not more than 179 days or by a fine of not more than \$999.00, or both; provided that if the sentence is suspended in whole or in part, the period of probation may extend beyond 179 days but shall not exceed one year.

Notwithstanding any provision of law to the contrary for suspension or deferment of execution of a sentence:

- (1) Upon a second conviction, each offender shall be sentenced to a jail term of not less than 96 consecutive hours, 48 hours of community service and a fine of \$999.00. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than 96 consecutive hours. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional seven consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement; and
- (2) Upon a third conviction, an offender shall be sentenced to a jail term of not less than 30 consecutive days, 96 hours of community service and a fine of \$999.00. In addition to those penalties, when an offender commits aggravated driving while under the influence of intoxicating liquor or drugs, the offender shall be sentenced to a jail term of not less than 60 consecutive days. If an offender fails to complete, within a time specified by the court, any community service, screening program or treatment program ordered by the court, the offender shall be sentenced to not less than an additional 60 consecutive days in jail. A penalty imposed pursuant to this paragraph shall not be suspended or deferred or taken under advisement.

- E. Fourth or subsequent offenses shall be prosecuted under state law in magistrate or district court.

State law reference(s)—Similar provisions, NMSA 1978, § 66-8-102.

- F. Upon any conviction under this section, an offender shall be required to participate in and complete, within a time specified by the court, an alcohol or drug abuse screening program approved by the department of finance and administration and if necessary, a treatment program approved by the court. The penalty imposed pursuant to this subsection shall not be suspended, deferred or taken under advisement.

- G. Upon a second or third conviction pursuant to this section, an offender shall be required to participate in and complete, within a time specified by the court:

- (1) Not less than a 28-day inpatient, residential or in-custody substance abuse program approved by the court;
- (2) Not less than a 90-day outpatient treatment program approved by the court;
- (3) A drug court program approved by the court; or
- (4) Any other substance abuse treatment approved by the court.

The requirement imposed pursuant to this section shall not be suspended, deferred or taken under advisement. (NMSA 1978, § 66-8-102)

- H. Upon a conviction pursuant to this section, an offender shall be required to obtain an ignition interlock license and have an ignition interlock device installed and operating on all motor vehicles driven by the offender, pursuant to the rules adopted by the traffic safety bureau of the department of transportation. Unless determined by the sentencing court to be indigent, the offender shall pay all costs associated with

having an ignition interlock device installed on the appropriate motor vehicle. The offender shall operate only those vehicles equipped with ignition interlock devices for:

- (1) A period of one year for a first offender;
- (2) A period of two years, for a second conviction pursuant to this section; or
- (3) A period of three years, for a third conviction pursuant to this section. The penalties and requirements of this subsection shall not be suspended, deferred or taken under advisement.

State law reference(s)—Similar provisions NMSA 1978, § 66-8-102.

- I. Except as otherwise prohibited in this section, a municipal judge may suspend in whole or in part the execution of sentence or place the defendant on probation for a period not exceeding one year on terms and conditions that the municipal judge deems best, or both, or defer sentence. If the municipal judge decides to defer the execution of a sentence, such deferral shall be granted only as allowed in subsection H of this section. A suspension of execution of sentence or probation, or both, as allowed pursuant to this section, shall be granted only when the municipal judge is satisfied it will serve the ends of justice and of the public and that the defendant's liability for any fine or other punishment imposed is fully discharged upon successful completion of the terms and conditions of probation
- J. If a person is convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of subsection 27-12-6-12.1A, B, C or D, a first offender, at the discretion of a trial court after a presentence investigation, including an inquiry to the motor vehicle division of the transportation department concerning the driver's driving record, shall receive a deferred sentence on the condition that the driver attend a driver rehabilitation program, also known as the "driving-while-intoxicated school," approved by the court and the division and such other rehabilitative services as the court may determine to be necessary; however, imposition of a deferred sentence shall classify the person as a first offender. The municipal court shall forward to the division the abstract of all proceedings and the report of the disposition of the case. For the purpose of this subsection, marijuana, as defined in the Controlled Substances Act, shall be classified as a drug.

State law reference(s)—Similar provisions, NMSA 1978, § 66-5-29.

- K. A person convicted of driving a motor vehicle while under the influence of intoxicating liquor or drugs in violation of subsection 27-12-6-12.1A, B, C or D shall be assessed, in addition to any other fee or fine, a fee of \$65.00 to defray the costs of chemical and other tests used to determine the influence of alcohol or drugs. Additionally, the person shall be assessed a fee of \$75.00 to fund comprehensive community programs for the prevention of driving while under the influence of intoxicating liquor or drugs or for other traffic safety purposes. The municipal court shall collect the fees and maintain the fees in separate funds and transfer the fees along with other funds collected by the court per NMSA 1978, § 35-14-7. The municipality shall maintain the fees collected pursuant to this subsection in separate funds and transfer the fees collected pursuant to this subsection to the administrative office of the courts for credit to the crime laboratory fund and the traffic safety fund.

State law reference(s)—Similar provisions, NMSA 1978, §§ 31-12-7—31-12-9.

- L. In addition to any other fines or fee that may be imposed pursuant to the conviction or other disposition of the offense under this section, the court may order the offender to pay the costs of any court-ordered screening and treatment programs.
- M. With respect to this section and notwithstanding any provision of law to the contrary, if an offender's sentence was suspended or deferred in whole or in part and the offender violates any condition of probation, the court may impose any sentence that the court could have originally imposed and credit shall not be given for time served by the offender on probation.
- N. As used in this section and in 27-12-6-12.1:

- (1) "Bodily injury" means an injury to a person that is not likely to cause death or great bodily harm to the person, but does cause painful temporary disfigurement or temporary loss or impairment of the functions of any member or organ of the person's body;
 - (2) "Conviction" means an adjudication of guilt and does not include imposition of a sentence; and
 - (3) "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle:
 - (a) Has a gross combination weight rating of more than 26,000 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - (b) Has a gross vehicle weight rating of more than 26,000 pounds;
 - (c) Is designed to transport 16 or more passengers, including the driver; or
 - (d) Is of any size and is used in the transportation of hazardous materials, which requires the motor vehicle to be placard under applicable law.
- O. A conviction under a municipal or county ordinance in the state or a law of any other jurisdiction, territory, or possession of the United States or of a tribe where that ordinance is equivalent to state law for driving while under the influence of intoxicating liquor or drugs, prescribing penalties for driving while under the influence of intoxicating liquor or drugs shall be deemed to be a conviction under this section for purposes of determining whether a conviction is a second or subsequent conviction.
- State law reference(s)—Similar provisions, NMSA 1978, § 66-8-102M.
- P. Before imposing any mandatory minimum sentence under this section, based upon one or more prior convictions for driving while intoxicated, the judge shall find that the defendant was represented by counsel or waived the right to counsel prior to the entry of each judgment of conviction. Such an affirmative finding shall not be required when the judge imposes any sentence within his discretion under this chapter [section] and the judge shall consider the defendant's entire driving record, including all prior convictions for driving while intoxicated, when imposing any sentence permitted but not required under this chapter [section].
- Q. A law enforcement officer making an arrest for a violation of the provisions of 27-12-6-12.2 or of similar municipal or county ordinances shall use standard arrest reports and procedures developed and approved by the Department of Public Safety in accordance with Section 8 of Laws of 2005, Chapter 269.
- (Ord. No. 2121, § VI, 7-19-04; Ord. No. 2212, § II, 7-18-05; Ord. No. 2379, § II, 5-21-07)

Sec. 27-12-6-12.3. Reckless driving.

- A. Any person who drives any vehicle carelessly and heedlessly in willful or wanton disregard of the rights or safety of others and without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property is guilty of reckless driving.
- B. Every person convicted of reckless driving shall be punished:
- (1) Upon a first conviction by imprisonment for not less than five days nor more than 90 days, or by a fine of not less than \$25.00 nor more than \$100.00, or both; and
 - (2) On a second or subsequent conviction by imprisonment for not less than ten days nor more than 90 days, or by a fine of not less than \$50.00 nor more than \$300.00, or both. (NMSA 1978, § 66-8-113)
- C. Any person arrested under this subsection may be found guilty of the lesser included offense of careless driving.
- (Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.4. Careless driving.

- A. Any person operating a vehicle on the street shall give his full time and entire attention to the operation of the vehicle.
- B. Any person who operates a vehicle in a careless, inattentive or imprudent manner, without due regard for the width, grade curves, corners, traffic, weather and road conditions and all other attendant circumstances is guilty of careless driving. (NMSA 1978, § 66-8-114).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.5. Operators and chauffeurs must be licensed.

- A. Except those expressly exempted by NMSA 1978, § 66-5-4, no person shall drive any motor vehicle or moped upon a street or private parking lot used by the public in this municipality unless he holds a valid license issued under the provisions of the New Mexico Vehicle Code. Enforcement of this section on private parking lots used by the public shall be limited to persons having an accident or being issued another traffic citation on a private parking lot used by the public.
- B. Any person licensed under the provisions of the New Mexico Motor Vehicle Code, or expressly exempted from licensure, may exercise the privilege granted upon all streets and highways in this municipality. (NMSA 1978, § 66-5-2)
- C. No person, whether a resident or non-resident of the State of New Mexico, shall operate a motor vehicle or moped upon a street in this municipality in violation of any restrictions with respect to the type of, or special mechanical devices required on, a motor vehicle which the licensee may operate or any other restrictions applicable to the licensee.
- D. Every licensee shall have his driver's license in his immediate possession at all times when operating a motor vehicle or moped, and shall display the same upon demand of a magistrate or police officer. However, no person charged with violating this section shall be convicted if he produces in court a driver's license theretofore issued to him and valid at the time of his arrest. (NMSA 1978, § 66-5-16)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.6. Unlawful use of license; driving when privilege to do so has been suspended or revoked.

- A. No person shall:
 - (1) Display or cause or permit to be displayed or have in his possession any cancelled, revoked or suspended driver's license or permit;
 - (2) Lend his driver's license or permit to any other person or knowingly permit the use thereof by another;
 - (3) Display or represent as one's own any driver's license or permit not issued to him;
 - (4) Fail or refuse to surrender to the court upon its lawful demand any driver's license or permit which has been suspended, revoked or cancelled;
 - (5) Permit any unlawful use of driver's license or permit issued to him;

- (6) Drive a motor vehicle in any public street or highway at a time when his privilege to do so is suspended or revoked and upon conviction shall be punished by imprisonment for not less than four days nor more than 179 days, and there may be imposed in addition a fine of not more than \$500.00;
- (7) Notwithstanding any other provision of law for suspension or deferment of execution of a sentence, if the person's privilege to drive was revoked for driving while under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act, upon conviction under this section, that person shall be punished by imprisonment for not less than seven days and fined not less than \$300.00, and the fine and imprisonment shall not be suspended, deferred, or taken under advisement. No other disposition by plea of guilty to any other charge in satisfaction of a charge under this section shall be authorized if the person's privilege to drive was revoked for driving while under the influence of intoxicating liquor or drugs or a violation of the Implied Consent Act.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2380, § I, 5-21-07)

Sec. 27-12-6-12.7. Fleeing or attempting to elude a police officer.

No driver of a motor vehicle shall willfully fail or refuse to bring his vehicle to a stop, or otherwise flee or attempt to elude a pursuing police vehicle, when given visual or audible signal to bring the vehicle to a stop.

- A. The signal given by the police officer may be by hand, voice, emergency light or siren.
- B. The officer giving the signal shall be in uniform, prominently displaying his badge of office, and his vehicle shall be appropriately marked showing it to be an official police vehicle.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.8. Unattended motor vehicle.

No person driving or in charge of a motor vehicle shall permit it to stand unattended without first stopping the engine, locking the ignition, removing the key, and effectively setting the brake, or placing the transmission in parking position, thereon and, when standing upon any grade, turning the front wheels in such a manner that the vehicle will be held by the curb or will leave the street if the brake fails. (NMSA 1978, § 66-7-353)

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.9. Limitations on backing.

- A. The driver of a vehicle shall not back it:
 - (1) Unless the movement can be made with reasonable safety and without interfering with other traffic;
 - (2) Upon any shoulder or roadway of any controlled-access street, or upon the exit or entry road of any controlled-access street (NMSA 1978, § 66-7-354);
 - (3) Into an intersection or around a corner unless preceded by an observer to safely direct the movement; or
 - (4) From a private driveway into any street unless the movement can be made with safety and without interfering with other traffic on the street.
- B. In no case shall a vehicle be backed more than 60 feet unless preceded by an observer to safely direct the movement.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.10. Obstruction to driver's view or driving mechanism.

- A. No person shall drive a vehicle when it is so loaded or when there are in the front seat such number of persons, exceeding three, as to obstruct the view of the driver to the front or sides of the vehicle or as to interfere with the driver's control over the driving mechanism of the vehicle.
- B. No passenger in a vehicle shall ride in such position as to interfere with driver's view ahead or to the sides, or to interfere with his control over the driving mechanism of the vehicle (NMSA 1978, § 66-7-357).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.11. Restriction on use of television in motor vehicles.

It is unlawful to operate in this municipality any motor vehicle equipped with a television screen, of whatever type, upon which images may be projected or shown, if the screen is within the normal view of the driver of the motor vehicle unless the television is solely used as an aid to the driver in the operation of the vehicle. As used in this section "television screen" does not include closed-circuit monitors or computer terminal monitors used by law enforcement agencies in law enforcement motor vehicles (NMSA 1978, § 66-7-358).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.12. Coasting prohibited.

The driver of any motor vehicle when traveling upon a down grade shall not coast with the clutch disengaged (NMSA 1978, § 66-7-360).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.13. Following fire apparatus prohibited.

The driver of any vehicle other than one on official business shall not follow any fire apparatus traveling in response to a fire alarm closer than 500 feet, or drive into or park such vehicle within the block where fire apparatus has stopped in answer to a fire alarm (NMSA 1978, § 66-7-361).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.14. Crossing fire hose.

No vehicle shall be driven over any unprotected hose of a fire department when laid down on any street or private driveway, without the consent of the fire department official in command (NMSA 1978, § 66-7-362).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.15. Driving through safety zones prohibited.

No vehicle shall at any time be driven through or within a safety zone (NMSA 1978, § 66-7-361).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.16. Vehicles shall be driven only on streets, private roads and driveways.

No driver of a vehicle shall operate or be in control of a vehicle on other than the portions of streets improved, designed and ordinarily used for vehicular traffic, private roads, driveways or alleys in this municipality, except as otherwise provided by this chapter or as otherwise authorized or designated by the administrator or his designated representative.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.17. Driving on sidewalk and private property.

- A. No person shall drive any vehicle on, or across a sidewalk or sidewalk area except upon a permanent or duly authorized temporary driveway.
- B. No person shall drive on private property, except upon a permanent or authorized temporary driveway or parking area, without the express authorization of the owner, lessee or other person authorized by the owner to control the use of the private property.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.18. Prohibited activities while driving.

No person shall:

- A. Drive a vehicle while engaged in any activity which interferes with the safe operation of the vehicle;
- B. Drive while in his lap any person, adult or minor, or any animal;
- C. Drive while seated in the lap of another person while the vehicle is in motion;
- D. Drive a vehicle while having either arm around another person;
- E. Operate a motor vehicle's equipment, including but not limited to, the vehicle horn or lights, in such manner as to distract other motorists on the public way or in such a manner as to disturb the peace.
- F. Except as otherwise provided in subsection F.(3) below, drive a vehicle upon a public street or highway while using a mobile telephone to read, select or enter a telephone number or name in a mobile telephone for the purpose of making or receiving a call, engage in a call or create, send or read text messages and/or electronic mail.

(1) As used in this section:

- (a) *"Engage in a call"* means talking into, dialing or listening on a hand-held mobile telephone, but shall not include holding a mobile telephone to activate, deactivate or initiate a function of such telephone;
- (b) *"Hand-held mobile telephone"* means a mobile telephone with which a user engages in a call using at least one hand (or prosthetic device or aid in the case of a physically disabled person);
- (c) *"Hands-free mobile telephone"* means a mobile telephone that has an internal feature or function, or that is equipped with an attachment or addition, whether or not permanently part of such mobile telephone, by which a user engages in a call without the use of either hand (or prosthetic device or aid in the case of a physically disabled person), whether or

not the use of either hand (or prosthetic device) is necessary to activate, deactivate or initiate a function of such telephone;

- (d) *"Mobile telephone"* means the device used by subscribers and other users of wireless telephone service to access such service and shall include personal digital assistants;
 - (e) *"Personal digital assistant"* means a device using a wireless telecommunications service that provides for data communication other than by voice;
 - (f) *"Wireless telephone service"* means two-way real time voice telecommunications service that is interconnected to a public switched telephone network and commonly referred to as cellular service or personal communication service.
 - (g) *"Drive"* means when the vehicle is in motion on any street or highway.
- (2) An operator of a motor vehicle who holds a mobile telephone to, or in the immediate proximity of, his or her ear is presumed to be engaging in a call within the meaning of this section. The presumption established by this section is rebuttable by evidence tending to show that the operator was not engaged in a call. Immediate proximity shall mean that distance as permits the operator of a mobile telephone to hear telecommunications transmitted over such mobile telephone, but shall not require physical contact with such operator's ear.
- (3) Subsection F. above shall not apply to:
- (a) The use of a mobile telephone for the sole purpose of communicating with any of the following regarding an emergency situation: An emergency response operator; a hospital, physician's office or health clinic; an ambulance company or corps; a fire department, district or company; or a police department;
 - (b) Any law enforcement, public safety or police officers, emergency services officials, first aid, emergency medical technicians and personnel, or any fire safety officials in the performance of duties arising out of and in the course of responding to an emergency;
 - (c) The use of a hands-free mobile telephone when being used in a hands-free manner; or
 - (d) The use of a hands-free mobile telephone when being used in a nontravel lane.
- (4) Penalties; sentencing; fines.
- (a) A violation of LCMC 1997, section 27-12-6-12.18 shall be a penalty assessment;
 - (b) The penalty assessment shall be \$56.00; and
 - (c) The violator's signature on the penalty assessment notice constitutes an acknowledgment of guilt of the offense and payment of the prescribed penalty assessment is a complete satisfaction of the violation.
- (5) This section will take effect on February 5, 2010.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2548, § I(exh. A), 12-7-09; Ord. No. 2558, § I, 2-2-10; Ord. No. 2582, § I, 7-19-10)

Sec. 27-12-6-12.19. Racing on streets.

- A. Unless written permission setting out pertinent conditions is obtained from the chief of the municipal police, and then only in accordance with such conditions no person shall drive a vehicle on a street in any race, speed competition or contest, drag race or acceleration contest, test of physical endurance, exhibition of speed or acceleration, or for the purpose of making a speed record, whether or not the speed is in excess of

the maximum speed prescribed by law, and no person shall in any manner participate in any such race, drag race, competition, contest, test or exhibition.

B. As used in this section:

- (1) *"Drag race"* means the operation of two or more vehicles from a point side by side at accelerating speeds in a competitive attempt to outdistance each other, or the operation of one or more vehicles over a common selected course from the same point to the same point for the purpose of comparing the relative speeds or power of acceleration of the vehicle or vehicles within a certain distance or time limit;
- (2) *"Race"* means the use of one or more vehicles in a manner to outgain or outdistance another vehicle, prevent another vehicle from passing, arrive at a given destination ahead of another vehicle or test the physical stamina or endurance of drivers over long-distance routes (NMSA 1978, § 66-8-115).
- (3) *"Exhibition driving"* consists of intentionally fish-tailing, peeling-out, losing traction, and burning of rubber while operating a motor vehicle. While operating a motorcycle or motor-driven cycle, includes intentionally operating the vehicle on a single tire (commonly known as a "wheelie"); operating a vehicle from a standing position; or operating the vehicle without at least one hand gripping the handlebars.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.20. Processions.

- A. No driver of a vehicle shall drive between the vehicles comprising a funeral or other authorized procession while the procession is in motion and when the vehicles in the procession are conspicuously designated as required in this section. This provision shall not apply at intersections where traffic is controlled by police officers.
- B. Each driver in a funeral or other procession shall drive as near to the right-hand edge of the street as practicable and shall follow the vehicle ahead as closely as is practicable and safe.
- C. A funeral composed of a procession of vehicles shall be identified by the display upon the outside of each vehicle of a pennant or other identifying insignia or by such other method as may be determined and designated by the traffic division.
- D. No funeral, procession or parade containing 200 or more persons or 50 or more vehicles, except the Armed Forces of the United States, the military forces of this state and the forces of the police and fire departments, shall occupy, march or proceed along any street except in accordance with a permit issued by the chief of police and such other regulations as are set forth herein which may apply.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.21. Driver to take precautions approaching the blind.

- A. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white or metallic in color, with or without a red tip, or using a guide dog shall take all necessary precautions to avoid injury to the blind pedestrian. Any driver who fails to take necessary precautions shall be liable in damages for any injury caused to the pedestrian.
- B. A totally blind or partially blind pedestrian not carrying a cane or using a guide dog shall have all the rights and privileges conferred by law on other persons, and the failure of a totally blind pedestrian to carry a cane

or to use a guide dog shall not be held to constitute nor be evidence of contributory negligence (NMSA 1978, § 28-7-4).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.22. Offenses by persons owning or controlling vehicles.

It is unlawful for the owner, or any other person, employing or otherwise directing the driver of any vehicle to require or to permit the operation of such vehicle upon a street in this municipality in any manner contrary to this chapter (NMSA 1978, § 66-8-27-121).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.23. Permitting unauthorized persons to drive.

- A. No person shall cause or knowingly permit his child or ward under the age of 18 years to drive a motor vehicle upon any street when such minor is not authorized under state law or is in violation of any of the provisions of the New Mexico Motor Vehicle Code (NMSA 1978, § 66-5-40).
- B. No person shall authorize or knowingly permit a motor vehicle owned by him or under his control to be driven upon any street by any person who is not authorized under state law or is in violation of any of the provisions of the New Mexico Motor Vehicle Code (NMSA 1978, § 66-5-41).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-12.24. Parties to unlawful acts.

Every person who commits, attempts to commit, conspires to commit or aids or abets in the commission of any act declared herein to be unlawful, whether individually or in connection with one or more other persons or as a principal, agent or accessory, shall be guilty of such offense, and every person who falsely, fraudulently, forcibly or willfully induces, causes, coerces, requires, permits or directs another to violate any provision of this chapter or of the Motor Vehicle Code is likewise guilty of such offense (NMSA 1978, § 66-8-120).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13. Miscellaneous traffic regulations.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.1. Offenses relating to driving under the influence.

- A. No owner or person in control of a motor vehicle shall permit it to be driven or operated by any person who is a habitual user of narcotic drugs or by any person who is under the influence of intoxicating liquor, narcotic drugs or any other drug to a degree which renders him incapable of safely driving the vehicle.
- B. No person under the influence of intoxicating liquor, narcotic drug or other drug to a degree which renders him incapable of driving safely shall start or attempt to operate a vehicle.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.2. Unlawful riding.

- A. No person shall ride or permit another person to ride in or on any portion of a vehicle not designated or intended for the use of passengers.
- B. This provision shall not apply to any employee engaged in the necessary discharge of a duty or to persons riding within truck bodies in space intended for merchandise.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.3. Unhitched trailer on street.

No person shall leave any type of trailer unhitched upon a street.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.4. Moving or molesting unattended vehicles.

- A. No person shall individually or in association with one or more others do any of the following:
 - (1) Purposely, and without authority from the owner, start or cause to be started the engine of any motor vehicle;
 - (2) Purposely and maliciously shift or change the starting device or gears of a standing motor vehicle to a position other than that in which they were left by the owner or driver of said motor vehicle;
 - (3) Purposely scratch or damage the chassis, running gear, body, sides, tip covering or upholstery of a motor vehicle which is the property of another;
 - (4) Purposely destroy any part of a motor vehicle or purposely cut, mash, mark, or in any other way, destroy or damage any part, attachment, fastening or appurtenance of a motor vehicle, without the permission of the owner;
 - (5) Purposely drain or start the drainage of any radiator, oil tank or gas tank upon a motor vehicle, without the permission of the owner;
 - (6) Purposely put any metallic or other substance or liquid in the radiator, carburetor, oil tank, grease cup, oilers, lamps, gas tanks or machinery of the motor vehicle with the intent to injure or damage the same or impede the working of the machinery thereof;
 - (7) Maliciously tighten or loosen any bracket, bolt, wire, nut, screw or other fastening on a motor vehicle; or
 - (8) Purposely release the brake upon a standing motor vehicle with the intent to injure said machine (NMSA 1978, § 66-3-506).
- B. The foregoing provisions shall not apply to a police officer or member of the fire department or street maintenance department who in discharge of his duty legally moves or causes to be moved any unattended vehicle, nor to any person who moves the vehicle at the direction of or in compliance with orders from a police officer or member of the fire department or street maintenance department who in the discharge of his duties legally orders or directs the moving of the unattended vehicle.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.5. Destructive or injurious material on roadway.

- A. No person shall throw or deposit upon any street any glass bottle, glass, nails, tacks, wire, cans or any other substance likely to injure any person, animal or vehicle upon such street.
- B. Any person who drops, or permits to be dropped or thrown, upon any street any destructive or injurious material shall immediately remove the same or cause it to be removed.
- C. Any person removing a wrecked or damaged vehicle from a street shall remove any glass or other injurious substance dropped upon the street from such vehicle (NMSA 1978, § 66-7-364).
- D. No vehicle shall be driven or moved on any street unless such vehicle is so constructed or loaded as to prevent any of its load from dropping, sifting, leaking, or otherwise escaping therefrom, except that sand may be dropped for the purpose of securing traction, or water or other substance may be sprinkled on a street in cleaning or maintaining such street.
- E. No person shall operate on any street any vehicle or combination of vehicles with any load unless said load and any covering thereon is securely fastened so as to prevent said covering or load from becoming loose, detached, or in any manner a hazard to other users of the street (NMSA 1978, § 66-7-407).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.6. Trains and buses not to obstruct streets.

No person or corporation shall direct the operation of or operate any railroad train or bus in such manner to prevent the use of any street for purposes of travel for a period of time longer than five minutes.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.7. Boarding or alighting from vehicles.

- A. No person shall board or alight from any moving vehicle or any vehicle which is stopped in traffic.
- B. No person shall alight or enter a vehicle except when it is stopped at a curb or in a passenger loading zone.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.8. Improper opening of doors.

No person shall:

- A. Open the door of a vehicle on the side near moving traffic unless it is reasonably safe to do so, and the door can be opened without interfering with the movement of traffic; or
- B. Leave a door of a vehicle open on the side of the vehicle near moving traffic for a period of time longer than necessary to load or unload passengers (NMSA 1978, § 66-7-367).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.9. Occupied moving house trailer.

No person shall:

- A. Occupy a house trailer while it is being towed upon a street; or

- B. Tow a house trailer on any street when the house trailer is occupied by any person (NMSA 1978, § 66-7-366).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.10. Animals on street.

- A. It is unlawful for any person, during the hours of darkness to ride a horse or other animal upon the traveled portion of any street which is normally used by motor vehicles.
- B. It is unlawful for any person negligently to permit livestock to wander or graze upon any fenced street at any time or, during the hours of darkness, to drive livestock along or upon any street which is normally used by motor vehicles.
- C. Owners of livestock ranging in pastures through which unfenced roadways pass shall not be liable for damages by reason of injury or damage to persons or property occasioned by collisions of vehicles using said roadways and livestock or animals ranging in said pastures unless such owner of livestock is guilty of specific negligence other than allowing his animals to range in said pasture (NMSA 1978, § 66-7-363).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.11. Driving on mountain streets.

The driver of a motor vehicle traveling through defiles or canyons or on mountain streets shall hold such motor vehicle under control and as near the right-hand edge of the street as reasonably possible (NMSA 1978, § 66-7-359).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.12. Child passenger restraint; penalty; enforcement.

- A. A person shall not operate a passenger car, van or pickup truck in this state, except for an authorized emergency vehicle, public transportation or school bus, unless all passengers less than 18 years of age are properly restrained.
- B. Each person less than 18 years of age shall be properly secured in a child passenger restraint device or by a seat belt, unless all seating positions equipped with seat belts are occupied, as follows:
 - (1) Children less than one year of age shall be properly secured in a rear-facing child passenger restraint device that meets federal standards, in the rear seat of a vehicle that is equipped with a rear seat. If the vehicle is not equipped with a rear seat, the child may ride in the front seat of the vehicle if the passenger-side air bag is deactivated or if the vehicle is not equipped with a deactivation switch for the passenger-side air bag;
 - (2) Children one year of age through four years of age, regardless of weight, or children who weigh less than 40 pounds, regardless of age, shall be properly secured in a child passenger restraint device that meets federal standards;
 - (3) Children five years of age through six years of age, regardless of weight, or children who weigh less than 60 pounds, regardless of age, shall be properly secured in either a child booster seat or an appropriate child passenger restraint device that meets federal standards; and
 - (4) Children seven years of age through 12 years of age shall be properly secured in a child passenger restraint device or by a seat belt.

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(Supp. No. 28)

- C. A child is properly secured in an adult seat belt when the lap belt properly fits across the child's thighs and hips and not the abdomen. The shoulder strap shall cross the center of the child's chest and not the neck, allowing the child to sit all the way back against the vehicle seat with knees bent over the seat edge.
- D. Failure to be secured by a child passenger restraint device by a child booster seat or by a safety belt as required by this section shall not in any instance constitute fault or negligence and shall not limit or apportion damages.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2228, § V, 8-15-05)

State law reference(s)—Similar provisions, NMSA 1978, § 66-7-369.

Sec. 27-12-6-13.13. Mandatory use of seatbelts.

- A. Except as provided by section 27-12-6-13.12 and in subsection B of this section, each occupant of a motor vehicle having a gross weight of 10,000 pounds or less manufactured with safety belts in compliance with Federal Motor Vehicle Safety Standard Number 208 shall have a safety belt properly fastened about his body at all times when the vehicle is in motion on any street or highway.
- B. This section shall not apply to an occupant of a motor vehicle having a gross vehicle weight of 10,000 pounds or less who possesses a written statement from a licensed physician that he is unable for medical reasons to wear a safety belt or to a rural letter carrier of the United States Postal Service while performing the duties of a rural letter carrier (NMSA 1978, § 66-7-372).
- C. Failure to be secured by a child passenger restraint device or by a safety belt as required in this section shall not in any instance constitute fault or negligence and shall not limit or apportion damages.
- D. The provisions of this section shall be enforced whether or not associated with the enforcement of any other statute (NMSA 1978, § 66-7-373).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.14. Consumption or possession of alcoholic beverages in open containers in a motor vehicle prohibited—Exceptions.

- A. No person shall knowingly drink any alcoholic beverage while in a motor vehicle upon any street within this municipality.
- B. No person shall have in his possession on his person, while in a motor vehicle upon any street within this municipality, any bottle, can or other receptacle containing any alcoholic beverage which has been opened or had its seal broken or the contents of which have been partially removed.
- C. It is unlawful for the registered owner of any motor vehicle, to knowingly keep or allow to be kept in a motor vehicle, when the vehicle is upon any street within this municipality, any bottle, can or other receptacle containing any alcoholic beverage which has been opened or had its seal broken or the contents of which have been partially removed, unless the container is kept in:
 - (1) The trunk of the vehicle or in some other area of the vehicle not normally occupied by the driver or passengers if the vehicle is not equipped with a trunk;
 - (2) The living quarter of a motorhome or recreational vehicle;
 - (3) A trunk camper;
 - (4) The bed of a pickup truck when the bed is occupied by passengers.

A utility or glove compartment shall be deemed to be within the area occupied by the driver and passengers. This section does not apply to the driver or owner of or any passenger in a bus, taxicab or limousine for hire licensed to transport passengers pursuant to the Motor Carrier Act or proper legal authority.

D. The provisions of this section do not apply to:

- (1) Any person who, upon the recommendation of a doctor, carries alcoholic beverages in that persons motor vehicle for medical purposes;
- (2) Any clergyman or his agent who carries alcoholic beverages for religious purposes in the clergyman's or his agent's motor vehicle.
- (3) Any person who is employed by a person licensed by the Alcoholic Beverage Control Act, while discharging his duties as an employee (NMSA 1978, § 66-8-138).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-13.15. Transportation of persons in the bed or in another part of an unenclosed truck; prohibited.

- A. *Definition:* Truck: For purposes of this section only, "truck" means every unenclosed motor vehicle designed, used or maintained primarily for the transportation of property except commercial sanitation trucks.
- B. *Riding in truck bed prohibited:* No person under the age of 18 years of age shall ride in the bed or in any part of a truck which is not part of the enclosed vehicle body or which is not enclosed by a rigid top.
- C. *Driver responsibility:* No motorist shall allow a person under 18 years of age to ride in a part of the truck they are driving if the location is not part of the enclosed vehicle body or is not enclosed by a rigid top.
- D. *Exemptions:* The following are exempt from these regulations:
- (1) Persons riding in trucks if participating in a parade conducted consistent with the city's parade ordinance;
 - (2) Persons wearing safety restraints and/or seat belts when riding in a vehicle equipped with a rigid top which has been removed, or partially removed (i.e., Izuzu Rodeo; Bronco);
 - (3) Persons under the age of 18 years of age who are riding in back of an unenclosed truck equipped with safety restraints which are being used at the time the persons are being transported in the back of the vehicle and are accompanied by a person 21 years of age or older (Subaru Brats, etc.);
 - (4) All riders being transported in a truck bed enclosed with a rigid top;
 - (5) Persons being transported for farm labor and/or agricultural purposes.
- E. *Penalty:* Whoever is convicted pursuant to subsections B or C of this section is guilty of a petty misdemeanor.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14. Pedestrians' rights and duties.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14.1. Pedestrian obedience to traffic-control devices and traffic regulations.

Pedestrians shall be subject to traffic-control signals at intersections as provided in section 27-12-5-6, but at all other places pedestrians shall be accorded the privileges and shall be subject to the restrictions provided in this chapter (NMSA 1978, § 66-7-333).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14.2. Pedestrians right-of-way in crosswalks.

- A. When traffic-control signals are not in place or not in operation the driver of a vehicle shall yield the right-of-way, slowing down or stopping if need be to so yield, to a pedestrian crossing the street within a crosswalk when the pedestrian is upon the half of the street upon which the vehicle is traveling, or when the pedestrian is approaching so closely from the opposite half of the street as to be in danger.
- B. No pedestrian shall suddenly leave a curb or other place of safety and walk or run into the path of a vehicle which is so close that it is impossible for the driver to yield.
- C. Subsection A shall not apply under the conditions stated in section 27-12-6-14.4.
- D. Whenever any vehicle is stopped at a marked crosswalk or at any unmarked crosswalk at an intersection to permit a pedestrian to cross the street, the driver of any other vehicle approaching from the rear shall not overtake and pass such stopped vehicle (NMSA 1978, § 66-7-334).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14.3. Pedestrians to use right half of crosswalk.

Pedestrians shall move, whenever practicable, upon the right half of crosswalks (NMSA 1978, § 66-7-338).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14.4. Crossing at other than crosswalks.

- A. Every pedestrian crossing a street at any point other than within a marked crosswalk or within an unmarked crosswalk at an intersection shall yield the right-of-way to all vehicles upon the street.
- B. Any pedestrian crossing a street at a point where a pedestrian tunnel or overhead pedestrian crossing has been provided shall yield the right-of-way to all vehicles upon the street.
- C. Between adjacent intersections at which traffic-control signals are in operation pedestrians shall not cross at any place except in a marked crosswalk (NMSA 1978, § 66-7-335).
- D. No pedestrian shall cross a street intersection diagonally unless authorized by official traffic-control devices; and, when authorized to cross diagonally, pedestrians shall cross only in accordance with the official traffic-control devices pertaining to such crossing movements.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14.5. Pedestrians on streets.

- A. Where sidewalks are provided it shall be unlawful for any pedestrian to walk along and upon an adjacent street.

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- B. Where sidewalks are not provided any pedestrian walking along and upon a street shall when practicable walk only on the left side of the street or its shoulder facing traffic which may approach from the opposite direction (NMSA 1978, § 66-7-339).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14.6. Pedestrians standing or loitering in traffic areas.

- A. No person shall stand or loiter in a street.

(Ord. No. 2121, § VI, 7-19-04; Ord. No. 2880, § I, 11-19-18)

Editor's note(s)—Ord. No. 2880, § I, adopted Nov. 19, 2018, amended the title of § 27-12-6-14.6 from pedestrians soliciting rides or business to pedestrians standing or loitering in traffic areas.

Sec. 27-12-6-14.7. Obedience of pedestrians to bridge and railroad signals.

- A. No pedestrian shall enter or remain upon any bridge or approach thereto beyond the bridge signal, gate or barrier after a bridge operation signal indication has been given.
- B. No pedestrian shall pass through, around, over or under any crossing gate or barrier at a railroad grade crossing or bridge while the gate or barrier is closed or is being opened or closed.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-14.8. Drivers to exercise due care.

Notwithstanding the foregoing provisions of this chapter every driver of a vehicle shall exercise due care to avoid colliding with any pedestrian upon any street and shall give warning by sounding the horn when necessary and shall exercise proper precaution upon observing any child or any confused or incapacitated person upon a street (NMSA 1978, § 66-7-337).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-15. Reference to vehicles upon the streets.

- A. The provisions of article VI of this chapter relating to the operation of vehicles, refer exclusively to the operation of vehicles upon the streets or highways, except where a different place is specifically referred to in a given section.
- B. The provisions of section article IV of this chapter and sections 27-12-6-12.1 through 27-12-6-12.3 of this chapter shall apply upon the streets and highways and elsewhere throughout this municipality (NMSA 1978, § 66-7-2).

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-16. Electric personal assistive mobility devices.

- A. As used in this section, "electric personal assistive mobility device" means a self-balancing device having two nontandem wheels designed to transport a single person by means of an electric propulsion system with an average power of one horsepower and with a maximum speed on a paved level surface of less than 20 miles

per hour when powered solely by its propulsion system and while being ridden by an operator who weighs 170 pounds.

- B. An electric personal assistive mobility device shall be equipped with:
 - (1) Front, rear and side reflectors;
 - (2) A braking system that enables the operator to bring the device to a controlled stop; and
 - (3) If operated at any time from one-half hour after sunset to one-half hour before sunrise, a lamp that emits a white light that sufficiently illuminates the area in front of the device.
- C. The director of the traffic safety bureau of the state highway and transportation department shall by rule prescribe motor vehicle safety standards applicable to electric personal assistive mobility devices.
- D. An operator of an electric personal assistive mobility device traveling on a sidewalk, roadway or bicycle path shall have the rights and duties of a pedestrian, and shall exercise due care to avoid colliding with pedestrians. An operator shall yield the right-of-way to pedestrians.
- E. Except as provided in this section, no other provisions of the Uniform Traffic Ordinance shall apply to electric personal assistive mobility devices.
- F. An operator who violates a provision of subsections B, C or D of this section shall receive a warning for the first offense. For a second offense, the operator shall be punished by a fine of \$10.00. For a third or subsequent offense, in addition to the fine, the electric personal assistive mobility device shall be impounded for up to 30 days.
- G. This section does not apply to personal assistive mobility devices used by persons with disabilities.

(Ord. No. 2121, § VI, 7-19-04)

Sec. 27-12-6-17. Parking restrictions for recreational vehicles on streets in residential zoning districts.

- A. Parking recreational vehicles on private property. Off-street parking of recreational vehicles is addressed in the city's Land Development Code, section 38-57(B) and section 38-58 of this Code.
- B. Parking recreational vehicles on streets in residential zoning districts must be in compliance with the city's uniform traffic code, chapter 27, subject to the limitations and requirements of subsection C of this Code.
- C. Permitting and time limitations for recreational vehicles on streets in residential zoning districts.
 - (1) The city will require the owner or operator of a recreational vehicle to obtain and display a parking permit when parking on a street, and will have up to, but no more than, eight hours to secure that permit;
 - (2) Parking will be limited to a maximum of six consecutive days and shall not exceed a total of 18 days in a consecutive 90-day period during a calendar year;
 - (3) The vehicle must be parked at the address listed on the parking permit and must be moved for at least 24 hours between the maximum six-day periods.

(Ord. No. 2856, § I(Exh. A), 6-4-18)

Editor's note(s)—Ord. No. 2856, § I(Exh. A), adopted June 4, 2018, amended § 27-12-6-17 in its entirety to read as herein set out. Former § 27-12-6-17 pertained to parking restrictions for recreational vehicles and derived from Ord. No. 2566, § I, 3-1-10.

Sec. 27-12-6-18. Occupation of recreational vehicle.

It shall be unlawful to occupy any recreational vehicle for residence purposes anywhere in the city, except as provided in section 27-12-6-17, and in a duly established trailer park maintained in accordance with all applicable state statutes and city ordinances.

(Ord. No. 2566, § I, 3-1-10)



**3062; Council
Bill 24-020**

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	February 5, 2024	Adopted:	March 4, 2024
Drafter:	Erika Jaquez	Department:	Financial Services
Program:	Treasury	Line of Business:	Revenue Management

Title:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS CRUCES, NEW MEXICO, TAXABLE GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$6,000,000, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, CERTAIN TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF AND SECURITY FOR PAYMENT THEREOF; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A PUBLIC COMPETITIVE SALE; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN AN AWARD CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

TYPE OF ACTION: ☒ Administrative ☐ Legislative ☐ Quasi-Judicial

PURPOSE(S) OF ACTION:
Issue debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) took four questions to voters at the November 8, 2022, election:

1. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$10,000,000 to acquire, plan, design, construct a new fire station facility (North of US Highway 70 and East of Interstate 25), including acquisition of necessary land?
2. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$5,000,000 to acquire, plan, design, construct, and equip the regional community recreation facility known as East Mesa Public Recreation Complex, including acquisition of necessary land?
3. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$6,000,000, and placed into the Affordable Housing Trust Fund, to provide resources to plan, design, construct, acquire, and preserve housing affordable for low to moderate income households, including acquisition of necessary land?
4. Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$2,000,000 to renovate and improve existing parks and recreational facilities?

All four questions were approved.

Agenda Item #11.1.

The City intends to use the proceeds of the \$6,000,000 Taxable General Obligation Improvement Bonds, Series 2024, on question 3. The bonds will be payable from ad valorem taxes on property within the City, also known as property taxes.

With this issuance, there will be no remaining authority to issue bonds as approved by voters in 2022.

After the first reading, the final ordinance and Preliminary Official Statement (POS) will be attached as Exhibits. A clean and relined copy of the ordinance will also be provided as an Attachment for the second meeting at which final adoption is scheduled.

PLAN(S):

City Council Strategic Plan

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

Does this action amend the Capital Improvement Plan (CIP)?

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance authorizing the issuance of \$6,000,000 Taxable General Obligation Improvement Bonds, Series 2024 for question 3 authorized by voters on November 8, 2022.
2. Vote "No"; this will not approve the Ordinance, thus not authorizing the issuance of \$6,000,000 Taxable General Obligation Improvement Bonds, Series 2024 for question 3 authorized by voters on November 8, 2022.
3. Vote to "Amend"; this could delay issuance of the bonds and would require further direction from Council and staff.
4. Vote to "Table"; this could delay issuance of bonds.

ORDINANCE 3062; COUNCIL BILL 24-020

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS CRUCES, NEW MEXICO, TAXABLE GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$6,000,000, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, CERTAIN TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF AND SECURITY FOR PAYMENT THEREOF; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A PUBLIC COMPETITIVE SALE; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN AN AWARD CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

The City Council is informed that:

WHEREAS, at the general obligation bond election held for the City of Las Cruces (the "City"), State of New Mexico, on the 8th day of November, 2022, the electors of the City authorized the City Council, the governing body of the City (the "Governing Body") to contract bonded indebtedness on behalf of the City and upon the credit thereof by issuing its City of Las Cruces, New Mexico Taxable General Obligation Improvement Bonds, Series 2024 (the "Bonds") to secure funds for the following purposes in the following amounts:

<u>Purpose</u>	<u>Amount Authorized By Election</u>	<u>Amount Previously Issued</u>	<u>Amount to Be Issued</u>
Shall the City of Las Cruces issue general obligation bonds, payable from property taxes, in an amount up to \$6,000,000 and placed into the Affordable Housing Trust Fund, to provide resources to plan, design, construct, acquire, and preserve housing affordable for low to moderate income households, including acquisition of necessary land?	\$6,000,000	\$0	\$6,000,000

WHEREAS, the Governing Body has determined, and does hereby determine, that it is necessary and in the best interest of the City and the inhabitants thereof that the \$6,000,000 of the general obligation bonds authorized at the election (the "Bonds"), be authorized for issuance at this time; provided, however, that a satisfactory price for the Bonds be obtained in a public sale; and

WHEREAS, the Governing Body expects to sell the Bonds in a public competitive sale to the best bidder, as determined pursuant to the Award Certificate (as defined herein) supplementing this Bond Ordinance; and

WHEREAS, the Governing Body desires to delegate authority to the City Manager or City Financial Services Director (collectively, the "Delegate") (1) to determine the specific principal amounts, interest rates, maturity dates, prices, redemption features, and other final terms and features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy (if any), (2) to execute and deliver an award certificate establishing the final terms of the Bonds (the "Award Certificate") as authorized by Section 6-14-10.2 NMSA 1978, and (3) to award the Bonds to the best bidder for the Bonds (the "Purchaser") provided that the

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final terms of the Bonds set forth in the Award Certificate be within the parameters set forth in this Ordinance; and

WHEREAS, the Governing Body intends that the specific details of and requirements for bidding for the Bonds shall be provided in an official notice of sale (the "Notice of Sale") to be approved on behalf of the City by the City Financial Services Director or Treasurer or her designee; and

NOW, THEREFORE, Be it Ordained by the Governing Body of the City of Las Cruces:

(I)

Section 1.Ratification. All actions heretofore taken by the Governing Body and the officers and employees of the City directed toward the issuance and sale of the Bonds to secure funds for the Improvement Project (as defined herein) be, and the same hereby are, ratified, approved and confirmed.

Section 2.Improvement Project Authorization. Proceeds of the Bonds are hereby authorized to be placed into the Affordable Housing Trust Fund, to provide resources to plan, design, construct, acquire, and preserve housing affordable for low to moderate income households, including acquisition of necessary land and to pay the costs of issuance of the Bonds (collectively, the "Improvement Project").

Section 3.Findings.

A.The issuance of the Bonds under the home rule powers of the City granted by the City Charter, this Bond Ordinance, Sections 6-14-8 through 6-14-11 NMSA 1978, and Sections 6-15-1 through 6-15-22 NMSA 1978, for the purpose of providing funds to finance the costs of the Improvement Project, is necessary and in the interest of the public health, safety, morals and welfare of the residents of the City.

B.The Bonds shall be authorized by an affirmative vote of a majority of all the members of the Council.

C.The City will finance the costs of the Improvement Project, in whole or in part, with the proceeds of the Bonds.

D.The Net Effective Interest Rate on the Bonds shall not exceed the statutory maximum of 10% per annum.

Section 4.Bonds are General Obligations. The Bonds shall constitute the general obligation debt of the City, payable from general ad valorem taxes which shall be levied without limitation as to the rate or amount. The full faith and credit of the City shall be, and hereby is, irrevocably pledged to the payment of the principal of and interest on the Bonds.

Section 5.Authorization, Parameters and Detail.

A.Authorization. This Bond Ordinance has been adopted by the affirmative vote of a majority of all of the members of the Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue its negotiable, fully registered, general obligation bonds in one or more series in the total aggregate principal amount not to exceed \$6,000,000 to be designated in the Award Certificate as the "City of Las Cruces, New Mexico Taxable General Obligation Improvement Bonds, Series 2024," and the issuance, sale and delivery of the Bonds is hereby authorized.

The forms of the Continuing Disclosure Undertaking and Preliminary Official Statement as presented to the Governing Body, with the adoption of this Ordinance, and the sale of the Bonds to the Purchaser within the parameters set forth in this Ordinance are hereby approved by the Governing Body with the approval of the final terms of the Bonds to be accepted in the Award Certificate, and approval of the final forms of the

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Preliminary Official Statement and Continuing Disclosure Undertaking delegated to the Delegate or designee as permitted by Section 6-14-10.2 NMSA 1978. The use and distribution of the Preliminary Official Statement and Official Statement by the Purchaser in connection with the sale of the bonds to the public are hereby ratified, authorized, approved and acknowledged.

B.Parameters Authorized. The Bonds shall be issued subject to the following parameters:

(1)The Bonds shall be issued in an aggregate principal amount not to exceed \$6,000,000 for the Improvement Project.

(2)The net effective interest rate on the Bonds shall not exceed 10% per annum.

(3)The final maturity of the Bonds shall not be later than August 1, 2043.

(4)The Bonds shall be sold pursuant to a public competitive sale.

(5)The Purchaser's discount shall not exceed 4% of the par amount of the Bonds.

(6)The Bonds shall be in substantially the form set forth in this Ordinance.

(7)The Bonds shall not be sold for less than the par amount of Bonds plus accrued interest from the date of the Bonds to the date of delivery of the Bonds to the Purchaser.

(8)The Bonds shall be dated as of their date of issuance and delivery.

(9)The Bonds shall be issued as federally taxable under the Internal Revenue Code of 1986.

The Delegate is hereby authorized pursuant to this Ordinance to award the Bonds to the Purchaser, to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Award Certificate consistent with the parameters set forth in this Ordinance.

C.Details of Bonds.

(1)The forms, terms, and provisions of the Bonds in the form set forth in Section 11 are hereby approved with only such changes therein as are not inconsistent with this Bond Ordinance and as shall be approved in the Award Certificate.

(2)The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of \$5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on August 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on February 1 and August 1 in each year commencing on August 1, 2024, or such other date specified in the Award Certificate, until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Award Certificate.

D.Notice of Sale. The Official Notice of Sale appended to the form of preliminary official statement presented to the Governing Body in connection with this Ordinance (the "Preliminary Official Statement") is hereby approved. The City Financial Services Director is hereby authorized and directed to have published once, at least one week prior to the date of sale, a summary of the notice of sale of the Bonds in a newspaper of general circulation in the City, and the City Financial Services Director is hereby authorized and directed to give such other notice of the bond sale as she shall determine, including the publication of the notice in

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financial papers and periodicals and the distribution among investment bankers and others of the Preliminary Official Statement.

E.Final Terms; Award of Bonds. The exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds shall be as set forth in the Award Certificate. The Bonds shall be awarded to the Purchaser as provided in the Award Certificate.

F.Series Date; Numbering; Interest Payment Dates. The Bonds shall be dated the date of delivery (herein the "Series Date"), will be issued in one or more series and shall consist of bonds numbered consecutively from R-1 upward, issuable in the denomination of \$5,000 each or integral multiples thereof (provided that no individual bond will be issued for more than one maturity); shall bear interest from the Series Date to maturity at the rates set forth in the Award Certificate, payable to the registered owner thereof, or registered assigns, on August 1, 2024, (or such other date as set forth in the Award Certificate) and semiannually thereafter on August 1 and February 1 in each year in which the Bonds are outstanding and shall mature on August 1 of each year as set forth in the Award Certificate.

Section 6.Redemption of Bonds Prior to Maturity.

A.Optional Redemption. Redemption of the Bonds prior to maturity at the option of the City shall be as provided in the Award Certificate.

B.Notice of Redemption. Notice of redemption shall be given by the Registrar/Paying Agent by sending a copy of such notice by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar/Paying Agent on the fifth day prior to the mailing of notice on the registration books kept by the Registrar/Paying Agent. The City shall give notice of redemption of the Bonds to the Registrar/Paying Agent at least forty-five (45) days prior to the redemption date. The Registrar/Paying Agent's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become due and payable upon each Bond to be redeemed at the office of the Registrar/Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Such notice may be a conditional notice of redemption – the money required to pay the principal of and interest on the Bonds to be called for redemption need not be on deposit with the Registrar/Paying Agent at the time of mailing the conditional notice of redemption. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Registrar/Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Registrar/Paying Agent, the Registrar/Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Registrar/Paying Agent by the City.

Section 7.Execution of Bonds.

A.The Bonds shall bear the facsimile or manual signature of the Mayor of the City and shall be attested by the facsimile or manual signature of the City Clerk and shall bear the facsimile or original seal of the City. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar/Paying Agent. The Bonds bearing the signatures or facsimile signatures of the officers in office at the time of the signing thereof shall be the valid and binding obligations of the City, notwithstanding that before the delivery of the Bonds and payment therefor, or before the issuance thereof upon transfer or exchange, any or all of the persons whose signatures appear on the Bonds shall have ceased to fill their respective offices. The Mayor and City Clerk may, by the execution of a signature certificate pertaining to the Bonds, adopt as and for their

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respective signatures the facsimiles thereof appearing on the Bonds; and, at the time of the execution of the signature certificate, the Mayor and City Clerk may each adopt as and for his or her facsimile signature the facsimile signature of his or her predecessor in office in the event that such facsimile signature appears upon any of the Bonds. If facsimile signatures are to appear on the Bonds, the Mayor and City Clerk, pursuant to Sections 6-9-1 through 6-9-6, inclusive, NMSA 1978, shall each forthwith file his or her manual signature, certified by him or her under oath, with the Secretary of State of New Mexico, provided that such filing shall not be necessary for any officer where any previous filing shall have application to the Bonds.

B.No Bond shall be valid or obligatory for any purpose unless the certificate of authentication, substantially in the form hereinafter provided, has been duly executed by the Registrar/Paying Agent. The Registrar/Paying Agent's certificate of authentication shall be deemed to have been duly executed by it if manually signed by an authorized officer of the Registrar/Paying Agent, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 8. Registration of Bonds.

A.Books for the registration and transfer of the Bonds shall be kept by the City Treasurer, as Registrar/Paying Agent, who is hereby appointed by the City as registrar and as paying agent for the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each interest payment date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each interest payment date but such transfer will not include transfer of interest payable on such interest payment date.

B.The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided in this ordinance with respect to payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

C.If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

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D. Bonds which are reissued upon transfer, exchange or other replacement shall bear interest from the most recent interest payment date to which interest has been fully paid or provided for in full or, if no interest has been paid, from the Series Date.

E. The officers of the City are authorized to deliver to the Registrar/Paying Agent fully executed but unauthenticated Bonds in such quantities as may be convenient to be held in custody by the Registrar/Paying Agent pending use as herein provided.

F. Whenever any Bond shall be surrendered to the Registrar/Paying Agent upon payment thereof, or to the Registrar/Paying Agent for transfer, exchange or replacement as provided herein, such Bond shall be promptly canceled by the Registrar/Paying Agent, and counterparts of a certificate of such cancellation shall be furnished by the Registrar/Paying Agent to the City.

G. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the depository, registered in the name of the depository or its nominee. Principal, premium, if any, and interest will be paid to the depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the depository, Participants or Indirect Participants.

(1) If (i) the Bonds are not eligible for the services of the depository, (ii) the depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

(2) Authorized Officers of the City are authorized to sign agreements with the depository relating to the matters set forth in this Section.

(3) Notwithstanding any other provision of this ordinance, so long as all of the Bonds are registered in the name of the depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Registrar/Paying Agent or the City to the depository as provided in this ordinance and by the depository to its Participants or Indirect Participants and to the Beneficial Owners of the Bonds.

Section 9. Successor Registrar/Paying Agent. If the Registrar/Paying Agent initially appointed hereunder shall resign, or if the City shall reasonably determine that such Registrar/Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor registrar/paying agent. Every such successor registrar/paying agent shall be a bank or trust company located in and in good standing in the

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United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, of not less than \$10,000,000.

Section 10.Bonds Negotiable. Subject to the registration provisions hereof, the Bonds hereby authorized shall be fully negotiable and shall have all the qualities of negotiable paper, and the registered owner or owners thereof shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code.

Section 11.Form of Bonds. The Bonds shall be in substantially the following form:

[Form of Bond]

REGISTERED REGISTERED

NO. R-_____ \$

UNITED STATES OF AMERICA
STATE OF NEW MEXICO
CITY OF LAS CRUCES
DOÑA ANA COUNTY, NEW MEXICO
TAXABLE GENERAL OBLIGATION IMPROVEMENT BONDS
SERIES 2024

Registered Owner:

Principal Amount: _____ DOLLARS

Interest Rate	Maturity Date	Series Date
_____% per annum	August 1, _____	_____, 2024

The City Council of the City of Las Cruces (the "Governing Body "), on the faith, credit and behalf of the City of Las Cruces, Doña Ana County, New Mexico (the "City"), for value received, hereby promises to pay to the registered owner named above, or registered assigns, the principal amount hereof on the Maturity Date and to pay interest on the principal amount at the Interest Rate on August 1, 2024, and thereafter on February 1 and August 1 of each year (the "Interest Payment Date") from the Series Date to its maturity. The principal of the bonds of the series of which this is one (the "Bonds") and interest due at maturity shall be payable to the registered owner thereof as shown on the registration books kept by the City Treasurer, as "registrar/paying agent" (such registrar/paying agent and any successor thereto, the "Registrar/Paying Agent") for the Bonds, upon maturity and upon presentation and surrender thereof at the principal office of the Registrar/Paying Agent. If any Bond shall not be paid upon such presentation and surrender at or after maturity, it shall continue to draw interest at the rate borne by said Bond until the principal thereof is paid in full. Payment of interest on the Bonds (other than at maturity) shall be made by check or draft mailed by the Registrar/Paying Agent (or by such other arrangement as may be mutually agreed to by the Registrar/Paying Agent and such registered owner), on or before each Interest Payment Date (or, if such Interest Payment Date is not a business day, on or before the next succeeding business day), to the registered owner thereof as of the close of business on the Record Date (defined below) at his address as it appears on the registration books kept by the Registrar/Paying Agent. All such payments shall be made in lawful money of the United States of America. The term "Record Date" as used herein with respect to any Interest Payment Date shall mean the 15th day of the month preceding the Interest Payment Date. The person in whose name any Bond is registered at the close of business on any Record Date with respect to any Interest Payment Date shall be entitled to receive the interest payable thereon on such Interest Payment Date notwithstanding any transfer or exchange thereof subsequent to such Record Date and prior to such Interest Payment Date; but interest on any Bond which is not timely paid or duly provided for shall cease to be payable as provided above and shall be payable to the

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person in whose name such Bond is registered at the close of business on a special record date (the "Special Record Date") fixed by the Registrar/Paying Agent for the payment of any such overdue interest. The Special Record Date shall be fixed by the Registrar/Paying Agent whenever moneys become available for payment of overdue interest, and notice of any such Special Record Date shall be given not less than ten days prior thereto, by first-class mail, to the registered owners of the Bonds as of the fifth day preceding the mailing of such notice by the Registrar/Paying Agent, stating the Special Record Date and the date fixed for the payment of overdue interest.

The Bonds are fully registered and are issuable in denominations of \$5,000 and any integral multiple thereof (provided that no individual bond may be issued for more than one maturity).

The series of Bonds of which this bond is one is limited to the total principal amount of \$6,000,000 of like tenor except as to number, denomination, maturity date, and interest rate, issued by the City of Las Cruces, Doña Ana County, New Mexico, for the purposes of providing funds to place into the Affordable Housing Trust Fund, to provide resources to plan, design, construct, acquire, and preserve housing affordable for low to moderate income households, including acquisition of necessary land and to pay the costs of issuance of the Bonds.

The Bonds are issued under the authority of and in full conformity with the charter of the City, the Constitution and laws of the State of New Mexico (particularly Sections 3-30-1 through 3-30-9 NMSA 1978, the provisions of Sections 6-14-8 through 6-14-11 NMSA 1978, Sections 6-15-1 through 6-15-22 NMSA 1978, and acts amendatory and supplemental thereto), and pursuant to Ordinance No. _____ of the Governing Body duly adopted on March 4, 2024 and made a law of the City prior to the issuance of this bond (the "Bond Ordinance").

The Bonds maturing on or after August 1, 20____, are subject to prior redemption at the City's option on and after August 1, 20____, in whole or in part at any time, in one or more units of principal of \$5,000 in such order of maturities as the City may determine (and by lot if less than all of the Bonds of any maturity are called, such selection by lot to be made by the Registrar/Paying Agent in such manner as it shall consider appropriate and fair) The purchase price for Bonds selected for redemption will be equal to the principal amount of each bond (or portion thereof) so redeemed, plus accrued interest thereon to the redemption date.

The Registrar/Paying Agent will maintain the books of the City for the registration of ownership of the Bonds. Upon the surrender for transfer of any Bond at the principal office of the Registrar/Paying Agent, duly endorsed for transfer or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be transferred in the name of the transferee or transferees a new Bond or Bonds in fully registered form of the same aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. Bonds may be exchanged at the principal office of the Registrar/Paying Agent for an equal aggregate principal amount of Bonds of other authorized denominations, and of the same maturity, series and interest rate. The Registrar/Paying Agent shall authenticate and deliver not more than three business days after receipt of the Bond to be exchanged a Bond or Bonds which the registered owner making the exchange is entitled to receive, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds as herein provided shall be without charge to the owner or any transferee, but the Registrar/Paying Agent may require the payment or reimbursement by the owner of any Bond requesting exchange or transfer of any transfer fee, tax or other governmental charge required to be paid with respect to such exchange or transfer. The Registrar/Paying Agent shall close the registration books fifteen days prior to each Interest Payment Date for change of name or address of the registered owners. Transfers shall be permitted within fifteen days prior to each Interest Payment Date but such transfer will not include transfer of interest payable on such Interest Payment Date.

The person in whose name any Bond shall be registered on the registration books kept by the Registrar/Paying Agent, shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to

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payment of interest; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative, but such registration may be changed upon transfer of such Bond in the manner and subject to the conditions and limitations provided herein. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar/Paying Agent shall, upon receipt of the mutilated Bond and such evidence, information or indemnity relating thereto as it may reasonably require and as may be required by law, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount of authorized denominations, and of the same maturity, interest rate and series, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured, the Registrar/Paying Agent may pay such Bond in lieu of replacement.

For the punctual payment of the principal of and interest on this bond as aforesaid and for the levy and collection of taxes in accordance with the statutes authorizing the issuance of this bond, the full faith and credit of the City is hereby irrevocably pledged. The Governing Body has, by the Bond Ordinance, ordered the creation of an interest and sinking fund for the payment of the Bonds. Such fund is to be held in trust for the benefit of the owner or owners of the Bonds.

It is hereby certified, recited and warranted that all the requirements of law have been complied with by the proper officials of the City in the issuance of this bond; that the total indebtedness of the City, including that of this bond, does not exceed any limit of indebtedness prescribed by the Constitution or laws of the State of New Mexico; that provision has been made for the levy and collection of annual taxes sufficient to pay the principal of and the interest on this bond when the same become due. This bond shall not be valid or obligatory for any purpose until the Registrar/Paying Agent shall have manually signed the certificate of authentication hereon.

IN TESTIMONY WHEREOF, the Governing Body of the City of Las Cruces, in Doña Ana County, New Mexico, constituting the governing board of the City, has caused the seal of the City to be hereto affixed and this bond to be signed and executed with the facsimile or manual signature of the Mayor of the City and subscribed and attested with the facsimile or manual signature of the City Clerk, all as of the Series Date.

GOVERNING BODY OF THE
CITY OF LAS CRUCES, NEW MEXICO

[SEAL]

By _____
Mayor

ATTEST:

By _____
City Clerk

[Form of Certificate of Authentication]

CERTIFICATE OF AUTHENTICATION

This bond is one of the Bonds described in the Bond Ordinance and has been duly registered on the registration books kept by the undersigned as Registrar/Paying Agent for the Bonds.

Date of Authentication and

Registration: _____, 2024

Las Cruces City Treasurer, as Registrar/Paying Agent

By _____
City Treasurer

[End of Form of Certificate of Authentication]

[Form of Assignment]

ASSIGNMENT

For value received, the undersigned sells, assigns and transfers unto _____ whose social security or tax identification number is _____ the within bond and irrevocably constitutes and appoints _____ attorney to transfer such bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

Signature Guaranteed:

NOTE: The assignor's signature to this assignment must correspond with the name as it appears upon the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

[End of Form of Assignment]
[End of Form of Bond]

Section 12.Delivery of Bonds. When the Bonds have been duly executed and authenticated, they shall be delivered to the Purchaser named in the Award Certificate. The funds realized from the sale of the Bonds shall be applied solely to the specified purposes for the Bonds, but the Purchaser of the Bonds shall in no manner be responsible for the application of or disposal by the City, or any of its officers, of any of the funds derived from the sale thereof.

Section 13.Levy of Taxes. In order to pay the principal of and interest on the Bonds as they become due and, at the option of the City, to reimburse the general fund or other funds for the payment of principal of or interest on the Bonds for which property taxes were not available, there shall be an annual assessment and levy upon all of the taxable property of the City subject to taxation which provides an amount sufficient to pay the principal of and the interest on the Bonds as they become due and payable. However, the City may, at its option, apply any other funds lawfully available for the purpose to the payment of principal or interest on the Bonds as they become due, and the levies required by this Section may be reduced to the extent other revenues are or will be available and used for payment of the Bonds. To the extent property taxes are not available for that purpose, the principal of and interest accruing on the Bonds shall be paid from the City's general fund or from any other fund lawfully available for that purpose. The taxes shall be assessed, levied and collected annually at the time and in the manner as other City taxes are assessed, levied and collected. Annually, the Governing Body shall take all reasonable action to insure the levy and collection of taxes by the governmental authority charged with legal responsibility to levy and collect taxes in amounts sufficient at the time to pay the principal of and interest on the Bonds. The money produced by the levy of taxes provided in this Section to pay the principal of and interest on the Bonds is appropriated for that purpose and that amount shall be included in the annual budget adopted and passed by the Governing Body each year. The taxes collected shall be maintained in an interest and sinking fund, which is hereby created, and kept for and applied

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only to the payment of the principal of and interest on the Bonds when due and as otherwise required or permitted by law.

Section 14. Additional Action of Authorized Officers; Delegation of Authority to Determine Final Terms of the Bonds and Award Bonds to the Purchaser.

A. The Mayor, City Clerk and other officers of the City be and they hereby are authorized and directed to take all action necessary or appropriate to effectuate the provisions of this ordinance, including without limiting the generality of the foregoing, the deposit of \$6,000,000 of the proceeds of the Bonds, plus an allocable share of net premium, if any, into an acquisition fund for payment of the costs of the Improvement Project and the costs of issuance allocable to the Improvement Project, the execution and delivery of a continuing disclosure undertaking to enable the Purchaser of the Bonds to comply with Securities and Exchange Commission Rule 15c2-12(b)(5), the printing of the Bonds, and the execution of such certificates as may be required by the Purchaser relating to the signing of the Bonds, the tenure and identity of City officials, and the receipt of the purchase price of the Bonds from the Purchaser and the absence of litigation, pending or threatened, if in accordance with the facts, affecting the validity of the Bonds.

B. Pursuant to Section 6-14-10.2, NMSA 1978, the City Manager or City Financial Services Director, each as Delegate, are hereby delegated authority to execute an Award Certificate, and to determine any or all of the final terms of the Bonds, including, without limitation, the exact principal amounts, maturity dates, interest rates, prices, redemption features, municipal bond insurance, and other final terms of the Bonds subject to the parameters and conditions contained in this Bond Ordinance. The Delegate shall present the Award Certificate to the Governing Body in a timely manner, before or after delivery of the Bonds, at a regularly scheduled public meeting of the Governing Body.

Section 15. Defeasance.

A. Any Bond and the interest thereon shall be deemed to be paid, retired, and no longer outstanding (a "Defeased Bond") hereunder when payment of the principal of such Bond, plus interest thereon to the due date (whether such due date be by reason of maturity, upon redemption, or other) either (i) shall have been made or caused to be made in accordance with the terms thereof (including the giving of any required notice of redemption), or (ii) shall have been provided for on or before such due date by irrevocably depositing with or making available to a qualified depository for such payment (1) lawful money of the United States of America sufficient to make such payment or (2) Government Obligations which mature as to principal and interest in such amounts and at such times as will ensure the availability, without reinvestment, of sufficient money to provide for such payment (as verified by a certified or registered public accountant), and when proper arrangements have been made by the City with a qualified depository for the payment of its services until all Defeased Bonds shall have become due and payable. At such time as a Bond shall be deemed to be a Defeased Bond hereunder, such Bond and the interest thereon shall no longer be secured by, payable from, or entitled to the benefits of the ad valorem taxes herein levied and pledged as provided in this ordinance, and such principal and interest shall be payable solely from such money or Government Obligations.

B. Any moneys so deposited with the qualified depository may, at the written direction of the City, also be invested in Government Obligations, maturing in the amounts and times required to make payments when due on the Defeased Bonds, and all income from such Government Obligations received by the qualified depository which is not required for the payment of the Defeased Bonds and interest thereon, with respect to which such money has been so deposited, shall be turned over to the City for deposit in the interest and sinking fund for payment of principal and interest on the Bonds. The term "Government Obligations" means direct obligations of the United States of America, including obligations the principal of and interest on which are unconditionally guaranteed by the United States of America which may be United States Treasury Obligations such as its State and Local Government Series, which may be in book-entry form.

Section 16. Investment of Bond Proceeds. Moneys in any fund not immediately needed may be invested as provided by state law and applicable federal statutes and regulations.

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Section 17.Ordinance Irrepealable. After any of the Bonds have been issued, this ordinance shall constitute a contract between the City and the holder or holders of the Bonds and shall be and remain irrepealable and unalterable until the Bonds and the interest thereon shall have been fully paid, satisfied and discharged, defeased or until such payment has been duly provided for.

Section 18.Severability. If any section, paragraph, clause or provision of this ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this ordinance.

Section 19.Form of Notice of Adoption. The following notice shall be published one time in a newspaper having general circulation in the City as soon as is practicable following the adoption hereof and this ordinance shall be effective five days after such publication as provided by law.

[Form of Notice]

LEGAL NOTICE

City of Las Cruces, New Mexico
Notice of Adoption of Ordinance

NOTICE IS HEREBY GIVEN that the Governing Body of the City of Las Cruces, Doña Ana County, New Mexico did, on the 4th day of March, 2024, adopt an ordinance entitled:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS CRUCES, NEW MEXICO, TAXABLE GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2024, IN THE PRINCIPAL AMOUNT OF \$6,000,000, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, CERTAIN TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF AND SECURITY FOR PAYMENT THEREOF; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A PUBLIC COMPETITIVE SALE; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN AN AWARD CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

The Ordinance directs and authorizes the issuance of City of Las Cruces, Taxable General Obligation Bonds in the aggregate principal amount of \$6,000,000 for the purpose of placing the proceeds into the Affordable Housing Trust Fund to provide resources to plan, design, construct, acquire, and preserve housing affordable for low to moderate income households, including acquisition of necessary land and to pay the costs of issuance of the Bonds; provides parameters for the Bonds; provides the form of the Bonds; delegates authority to the City Manager and City Financial Services Director to determine exact principal amounts, maturity dates, interest rates, prices, redemption features and other final terms of the Bonds within the parameters established in this Ordinance, to award the Bonds to the Purchaser pursuant to an Award Certificate; provides for the delivery of the Bonds; provides for levy of taxes to pay the principal of and interest on the bonds; makes certain covenants for the benefit of the owners of the Bonds; and provides other details concerning the bonds.

Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico. This notice constitutes compliance with Section 6-14-6 NMSA 1978.

DATED this 4th day of March, 2024.

CITY OF LAS CRUCES

Christine Rivera, City Clerk

(End of Form of Notice for Publication)

Section 20.Repealer Clause. All acts and resolutions in conflict with this ordinance are hereby rescinded, annulled and repealed.

(II)

THATCity staff is hereby authorized to do all deeds as necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

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APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS