CITY COUNCIL
AGENDA
AMENDED
Monday, December 18, 2023 at 1:00 PM
Council Chambers

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

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

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

CITY OF LAS CRUCES

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.

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 Flores.

1.2. Pets of the Week.

1.3. Jobs of the Week.

1.4. Presentation of Certificates of Appreciation/Proclamations - Councilor Flores.

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 December 11, 2023 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

6.1. Work Session of November 13, 2023. 5 - 24

Work Session - Nov 13 2023 - Minutes - Pdf

6.2. Regular City Council Meeting of November 20, 2023. 25 - 66

City Council - Nov 20 2023 - Minutes - Pdf

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

7.1. RESOLUTION NO. 24-063: A RESOLUTION APPROVING THE CITY OF LAS CRUCES' LEGISLATIVE PRIORITIES FOR THE 2024 NEW MEXICO LEGISLATIVE SESSION. 67 - 73

Resolution No. 24-063 - Pdf

7.2. RESOLUTION NO. 24-064: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT A BUDGET ADJUSTMENT FOR CASA DE PEREGRINOS FROM THE TELSHOR FUND FOR $100,000 THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2024 BUDGET. 74 - 82

Resolution No. 24-064 - Pdf

7.3. RESOLUTION NO. 24-065: A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) FOR THE LC00290 UNIVERSITY AVENUE FROM MP 1.06 TO 1.4 PROJECT, AND TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE AGREEMENT. 83 - 92

Resolution No. 24-065 - Pdf

7.4. RESOLUTION NO. 24-066: A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SIERRA NORTE DEVELOPMENT INC., FOR THE DESIGN AND CONSTRUCTION OF A NEIGHBORHOOD PARK LOCATED IN THE TRAILS AT METRO PHASES 1 AND 2 SUBDIVISIONS, IN AN AMOUNT NOT TO EXCEED $1,003,600.00. 93 - 100

Resolution No. 24-066 - Pdf

7.5. RESOLUTION NO. 24-067: A RESOLUTION AUTHORIZING A CONTRACT FOR AIRPORT CONSULTANT - ENGINEERING, ARCHITECTURE, AND CONSTRUCTION MANAGEMENT SERVICES WITH DUBOIS & KING, INC. OF RANDOLPH, VERMONT FOR A TERM OF FIVE (5) YEARS, IN AN AMOUNT NOT TO EXCEED $1,000,000 ANNUALLY, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-050). 101 - 162

Resolution No. 24-067 - Pdf

7.6. RESOLUTION NO. 24-068: A RESOLUTION AUTHORIZING AN ANNUAL AMOUNT OF $3,000,000.00 FOR GROUND AMBULANCE SERVICES TO AMERICAN MEDICAL RESPONSE AMBULANCE SERVICE, INC DBA AMERICAN MEDICAL RESPONSE (AMR), OF LAS CRUCES, NEW MEXICO FOR AN INITIAL PERIOD OF FIVE (5) YEARS WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO RENEWALS AND APPROVED BUDGET APPROPRIATIONS. (PROCUREMENT NO. 22-23-021). 163 - 217

Resolution No. 24-068 - Pdf

7.7. RESOLUTION NO. 24-069: A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT CONTRACT FOR STATE LOBBYING SERVICES TO $100,000 PLUS APPLICABLE TAX, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 20-21-050). 218 - 236

Resolution No. 24-069 - Pdf

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

8.1. RESOLUTION NO. 24-070: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2024 BUDGET AND THE FY2024 CAPITAL IMPROVEMENTS PLAN (CIP). 237 - 487

Resolution No. 24-070 - Pdf

8.2. COUNCIL BILL NO. 24-011; ORDINANCE NO. 3053: AN ORDINANCE APPROVING A ZONE CHANGE FROM R-4 (MULTI-DWELLING HIGH DENSITY – LIMITED RETAIL AND OFFICE) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 0.812 + ACRES AND LOCATED AT 6281 REYNOLDS DRIVE. SUBMITTED BY GABRIEL ORTIZ, REPRESENTATIVE. (23ZO0500124). 488 - 514

Ordinance No. 3053 - Pdf

8.3. COUNCIL BILL NO. 24-012; ORDINANCE NO. 3054: AN ORDINANCE AMENDING ORDINANCE NO. 3028, UPDATING THE PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., TO ADD AN ADDITIONAL $2,800,000 TO GO TOWARDS RENOVATIONS OF MULTIPLE FACILITIES. 515 - 623

Ordinance No. 3054 - Pdf

9. BOARD APPOINTMENTS

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. 24-013; 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. 624 - 679

Ordinance No. 3055 - Pdf

10.2. 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. 680 - 737

Ordinance No. 3056 - Pdf

10.3. 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. 738 - 807

Ordinance No. 3057 - Pdf

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

12. CITY MANAGER REPORT

13. ADJOURNMENT

MINUTES
Work Session
Monday, November 13, 2023 @ 1:00 PM
City Council Chambers, City Hall

PRESENT: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran

ABSENT: Councilor Tessa Abeyta

1. PETS OF THE WEEK

1.1

Amy Defelix presented Pets of the Week.

2. JOBS OF THE WEEK

2.1

None.

3. AGENDA ITEM

3.1 NEW MEXICO WORKFORCE CONNECTION PROGRAMS.

Sarah Raney, One Stop Coordinator Southwest Region Workforce Connection introduced topic.

Joshua Stoller, Employee Supervisor DWS Office gave overhead presentation.

Valerie Marron, TANF Supervisor gave overhead presentation.

Haydee Ramirez, Service Youth Provider gave overhead presentation.

Councilor Flores said you say the financial literacy classes are held on Saturday and it

seems like it's all day long?

Haydee Ramirez said it's not just the financial literacy, it actually captures many of our other services, but that's one of them.

Councilor Flores asked did you say they get $50 for attending and then $50 for?

Haydee Ramirez said it is $50 dollars for the financial literacy just by itself for that one class and $50 for attending the whole 6 hours as well.

Councilor Flores asked the educational programs, what grades do you target? You work with the local schools and in the different counties?

Haydee Ramirez said right now we are opening a more conversation and I am starting in the more of the rural areas at this point. I know Dona Ana is huge, we're working with Sunland Park as well. For instance we're working with the school districts because they already have built themselves those career paths. We're here to be able to sustain and help them with maybe work experience dollars to be able to help these kids. Not only are they getting a high school diploma, but a lot of these other participants are also getting a second certification that's when we come by we can do a partnership with them. We can pay for that work experience, as they're doing work experience in the schools we're paying $14 an hour for these kids to be able to take home that extra income especially those needs.

Councilor Flores said I do hope you tap into not only our Las Cruces Public Schools, but with our Las Cruces community schools. Dr. Miller Tomlison is the one that runs that. I think that would be a perfect fit in terms of motivating kids because that's what they do, it's a middle school though.

Haydee Ramirez said I believe it's more of a high school. Most definitely we can definitely get that communication with them. Once they come into high school they come in they already about a program. Just so you know, I have been in this position for 6 months. I come from the educational part. I was a teacher for 14 years, so I believe the education how important that is and now I'm implementing that into these type of programs that we have. It has really been a satisfaction to me at least coming from that part and I can see the correlation of one to another. Most definitely just know I'm knocking doors for those school districts to be able to understand. I think not only understand but know our programs so we can partnership, correlate whatever they're doing and what we're doing together.

Sarah Raney said I did want to add, in some of our other communities as well we had our teams from the DWS offices go even into our middle schools and talk because we feel like reaching those youths at the younger ages even at fifth grade saying what do you want to be when you grow up? Starting that focus of their career path. Then they get into the other programs here is essential.

Chris Ruiz, Operations Manager WIOA Adult/Dislocated Work Program continued overhead presentation.

Councilor Bencomo asked what is the work that you all are doing to get the information out to folks? Is there a way the City or even us as individual Councilors can work with you to get this information out?

Chris Ruiz said we partner with DWS a lot of our participants come from DWS from the unemployment we do. On Wednesday we will be at Community of Hope here in Las Cruces. We are actually going to job fairs. We're trying to do as much foot work as we can, but we're only six TDS and myself in the entire seven counties. I have one in each county, so it is kind of hard, mainly it's word of mouth. I know that New Mexico Workforce is working on social media and they're trying to get more information out on social media. Mainly it's all leg work we're out there knocking on doors, doing community services, 211 reports which come from our DWS that's what helps us a lot. Usually people coming in for services just looking for work in general that come in through the doors they usually get referred to us. Once they mention I'm trying to go back to school I can't find nothing, that's when we come in, we go ahead and help them out.

Councilor Bencomo said for all of you for whatever we can do individually like having individual constituent meetings or whatever, I think it would be really important to start collaborating that way. I did want to note that, I think community schools we be a great partner as well, maybe you're already doing that. I know you say on here or authorized to work in the US. Are you trained to work with DACA folks?

Chris Ruiz said we have helped. Actually currently, I help with a lot of immigrants, migrants, refugees as long as they're eligible to work in the United States, we work with them.

Councilor Flores said working with people who are potentially not authorized to work. How do you guard against any fear of approaching you to seek these services? What do you do? How do you advertise? It is very scary, authorized to work in the US. Do you know exactly what documentation is needed so you could put it out there even before they show up? People will not show up if they don't know what they're going to get into. A special visa or are you familiar with that?

Chris Ruiz said personally I am familiar just with the documentation we have. The documentation we have once we give whether its DWS or any kind of services where we're going to draw for anything all our information is on there what is accepted to be qualified. There is a qualifying process. We don't honestly go out there and advertise it at all times. It's in our documentation, as in what we require. Me personally I'm not too familiar what you're asking.

Councilor Flores said what I'm asking is this, say for example, you put the eligibility requirements and then someone reads authorized to work in the US and that may be an ambiguous reading by that person, so that person would show up and look for your services. Would you be asking that person if they are authorized to work? Well that is the part that concerns me because it may be off putting. People might be afraid to approach you, see what I'm saying? I think it's a matter of making it very clear, so that

people aren't afraid. I don't know how you would work that, you start getting into legalities and all that. You don't want to do anything to misrepresent what you're doing.

Chris Ruiz said that is a directive I could bring to my director in regards to that, this is the first time I've ever had this question. I'm not too sure how to approach it. I personally haven't had anybody with that issue. Usually once we ask if you're authorized, a lot of people aren't offended, you never know it might come up. It is something to look into, I will take it to my director and see what we're doing with that.

Councilor Flores said I know that Congressman Gabe Vasquez is looking into making the possibility of being employed, not irrespective of DACA proper documentation. But amplifying that identification to qualify for jobs. Kudos to you for the way you lived your life.

James Fielder, Business Operations Manager Adult/Youth Program said to answer your question about the advertising. We actually have a site on Employee NM as well as billboards and radio, things like that. Our One Stop operator is working feverishly right now to introduce different social platforms and things of that nature. The different programs we're doing things like TikTok and all that kind of stuff to let people know about the different programs that we at Workforce have.

James Fielder continued with overhead presentation.

Councilor Bencomo said on your last point about the pandemic and people not wanting to go back to work. I'm actually curious if you have like data on this? I think sometimes when I hear that, I think or do they not want to go back to jobs where they don't have paid sick leave, health insurance, where they're not treated fairly, where they get sick and get everybody sick. Did the pandemic sort of help expose all the ways in which people weren't being treated fairly in their job and their life wasn't worth the risk?

James Fielder said personally I think all that you said has always been there, I just think now people are just actually voicing that. What I've seeing is it's a big trend people want to work from home. They're looking for jobs where you can work from home. In some cases it's a matter of pay. I'm sure all of you have seen and I saw this literally during the pandemic McDonald's used to pay like nothing, now you can work at McDonald's for like $25 an hour. Target pays $25 an hour right now. You have major companies or manufacturing plants that they can't meet that wage. You know now that all along McDonald's, Burger King, Wendy's they always had this money and just didn't pay the people what they should've been paying. I think it's something that always been there, it's just like all things, it evolves. I wish I could say I had data for it but that's just how it goes right now.

Councilor Bencomo said I've often heard people say this and I'm always wondering if they've talked to people who are actually on the other side of that and wondering if they ever asked did you think about how the pandemic impacted people without paid sick leave?

James Fielder said I absolutely love my business team they, work with employers, and we've found that employers have had the mirror turned in on them and find out that their culture wasn't inducive as far as producing productive employees, so they've had to changed their practices. It's a little bit of everything.

Mayor Miyagishima asked is Lordsburg in your territory and are you guys doing anything over there? I get calls from elected officials that are asking if there's anything we don't want send it their way.

James Fielder said Lordsburg right now is the new Socorro where the town seems like it's kind of dissipating, disappearing because they're just not bring in enough industry there and the kids are leaving. Which is why I'm glad that we now have the youth program and Haydee has done a remarkable job of playing that. Now they're keeping their youth there and wanting to stay. We're working with mainly their county and municipalities as far as putting job seekers to work and that's helping them expand some of the programs they have to help grow other businesses and things of that nature. There is a big push there in Lordsburg as well as Luna County. It's kind of cool because they're kind of working in tandem together to bring businesses in to show different opportunities that are in that surrounding area as well as Catron county as well.

Sarah Raney said I wanted to add to the Lordsburg statement. Giselle and I were able to start the second access point in the City of Lordsburg at the Hope Haven there is an access point where individuals can do job search via the computer. There is web access so they can access our team here in Las Cruces, Deming, Silver City all of our teams are kind of watching those access points that we have. Hope Haven is one of them and then the other one is at the library. We're trying to get our presence there in Lordsburg and help out. We've been working a lot with the City, Economic Development, with Emily Gojkovich a lot lately and their members they're trying to get more awareness to their communities as well. We are trying to pay attention to our smaller locations.

Victor Cabrera, National Farm Workers Jobs Program for New Mexico continued presentation.

Councilor Flores said this is throwing me off a little bit National Farm Workers Jobs. You train people to be farmworkers?

Victor Cabrera said no we get them out of the fields. We can train them inside the fields. For example there is a farm worker that wants to be a supervisor, wants to be a tractor operator because now our tractors have GPS, it takes a certain amount of time to get them trained. We train them under irrigation, it's a big process. If you're just a chile picker we put you to be a supervisor in the fields or become a tractor operator, or a forklift operator.

Councilor Flores said your services also include career counseling. What kind of counseling do you give farm workers?

Victor Cabrera said when the kids or farm workers come to our office we always ask them what is it that you're looking for. What we look for is a sustainable job that will create a sustainable income. That sustainable income will generate into the community and for the most part that's what they're seeking and that's how we counsel them.

Councilor Flores asked how long ago was it established?

Victor Cabrera said NFJP was established in New Mexico since 1965 with HELP New Mexico and now with MET was established in 1967 in Texas which they moved into New Mexico.

Joshua Stoller continued overhead presentation.

Mayor Miyagishima said a story I would like to share with you an interesting story, it didn't happen here but a different part of the region. He was a surgeon, a doctor he was in a motorcycle accident, and he had his arm sliced off, they reattached it, but he couldn't operate any more. He went back to DVR, and he became a consultant for hospitals and doctors. He could have taken disability, but he was relatively young, and he wanted to still do something meaningful. DVR was able to rehabilitate him to transition into something different other than being a surgeon. It can be someone such as that or anything in between.

Joshua Stoller said that is correct also to the co-enrollment. If there is something DVR is not able to do due whether financial or some aspect of that plan that co-enrollment and communication amongst partners and external partners is really the key to that. The example is the commission on the blind and hard of hearing. Being able to facilitate what services that the commission may be able to facilitate and also to DVR. Now those are two separate programs as far as the funding mechanism so they couldn't co-enroll in that capacity due to they're both federally funded. We look at the best fit for the individuals to their success.

Mayor Miyagishima asked don't you still all still pay maybe not anymore the first 6 months with hopes that you'll then employee the person and then you take over for paying them or you don't cover the first 6 months their salary that is?

Joshua Stoller said I do not have the answer to that question, but we can definitely follow up with that.

Mayor Miyagishima said that used to be the case. I say that so for the those who are thinking or listening and thinking of opening their own business they can reach out to you. You can provide them some type of training and usually the State picks it up for the first 6 months in hopes that you'll keep them if they're able to use them.

Joshua Stoller said definitely so, and they do offer job development coaches as well. If we do have those individuals that looking to start their own business or looking to getting into the job field. They also do that research or foot work with that individual

being able to assist them in that capacity. The ultimate goal for a job seeker is the retention value of them having employment as well as the employer. Specifically in Southern New Mexico because our environment is much different than what you see in Albuquerque, Central and being able to have that ability for that employee retention as well as that job seeker retention and even through programs such as MET having that opportunity to further develop your skill sets. Being a generational of if you're in the field picking chile you know having that opportunity through programs being able to develop further and become a supervisor and break that norm of what they want moving forward as well. To answer one of your questions regarding as far as Visas and ability to employ if they're within DWS obviously an individual would need documentation in order to work. They would need a right to work, they would need a Visa or so forth. The other side of that as far as employment is also job readiness. We don't dismiss an individual when it comes to the job readiness component. We still offer those services to prepare them as far as resume building, job coaching and so forth. We do offer them the resources such as the Mission Lutheran Church who does have that ability to assist them in getting that documentation prepared. Now that is a lengthy process in itself but the goal on our end is to have them job ready so when they do the paperwork in order to be eligible to work in the United States then they can start that process again moving forward. We have seen that quite exponentially within the ERAP program when you do job readiness fairs as well as Community of Hope. We have a lot of individuals whether US citizens or they may have migrated here to be able to provide that service to them here's some resources you can utilize, to get your documentation but in that same aspect we are able to provide those services for them so that way they don't feel that they're left out in the cold if you will. They're able to actually to get those services get prepared and when that documentation does come back across then we're able to facilitate.

Councilor Flores asked you don't ask someone if they have documentation to remain in the country and be able to work here but you said that you do prepare them? Do you send them over to the Lutheran Church first or how does that work? How successful has that been? Have people been able to get the proper documentation to remain in the country and to work lawfully?

Joshua Stoller said to answer your question when we have an individual we definitely don't want to let them go, what we do is offer those services to them on site or we always welcome them back to our facilities say if we're having a job fair or job readiness component. We do offer those services up front. Through our systems of registrations that's when we typically identify, we don't ask straight out are you eligible to work? But through the documentation if they don't have a Social Security or Work Visa then that is where that comes into light and we're able to provide those resources to them. From there we can still continue with the coaching, the classes and we work within our partners job readiness, career readiness if you will. They can partake in all of the systems and programs that we have that of course, are at no cost. Then in that aspect the Lutheran Church was an example, an entity to be able to get that documentation for them and that is a process. Now we have had return I will say not in greater volume, but those individuals have returned saying they are now ready to work. That's when we can finish out their registration process and if there is solely within DWS looking for job placement or if they have the opportunity to utilize one of our programs as well, then we are able to continue that path for them.

Councilor Flores asked do you get the list of jobs that are available on certain Visas from the INS? How do you calibrate that? How do you work with someone who has the potential of perhaps working here without being too intrusive? Do you have a list of the employment that is needed in this country and would issue Visas to those individuals who have the credentials or can train for those credentials?

Joshua Stoller said if we have individuals that have their Visas we can assist them in finding employment.

Councilor Flores asked they would have to have the Visa first?

Joshua Stoller said they would have to have a minimum of a work Visa, if not documentation to live and work within the United States, then we can find them employment.

Councilor Flores said usually the work Visa is issued once they establish that they're needed in this country.

Joshua Stoller said in the perfect system yes. There is some lag time. Essentially if there is any of that process with them and if there is any documentation that is needed we find the resources needed through them. We also work of course with the DOL to be able to assist them and facilitate where and how they can work.

Mayor Miyagishima said I can kind of expand on that for you Councilor. They do need to have the work Visa but if they have the regular Visa to come into the United States for 6 months they're not allowed to work. That's why I support what Congressman Vasquez is trying to do. If you're in one of these areas like healthcare, education or energy production or emergency services. That's where we are having some shortages and if you have that training then you can have a different path to getting permanent work and permanent residency. I think that is really good what the Congressman is proposing. We don't make the Federal Laws here, but an employer has to fill out within a day or two when they hire someone an I-9. It specifically says you have to show certain documentations and that is just the way it goes. If not both the employee and employer can get in serious trouble.

Sarah Raney concluded presentation.

3.2 AFFORDABLE HOUSING INVESTMENT STRATEGY.

Natalie Green, Housing & Neighborhood Services Manager introduced topic.

Jenn Lopez, Project Moxie gave overhead presentation.

Councilor Bencomo said I think as elected officials or candidates we always talk about we just need to build more housing as if it was just that simple. In my head sometimes it is like how are we going to solve our housing crisis, we build more houses. We have to really take into consideration the context of everything it takes. You just presented and incredible amount of work that our amazing housing staff has done and that is

yielding 757 units over several years and our housing shortage is 5,600 units. I just want to really contextualize that because it takes so much work, so much money, so much everything to make a little bit of a dent in this greater scheme of things. Often people don't either want to acknowledge that or just lack that understanding like the full analysis, I just wanted to say that as you're presenting this it just struck me about how much work, really our staff has been doing to try to address the situation in which we find ourselves in. Not to mention that the Federal Government has disinvested from public housing for decades now. You said that there was about 400 units that you think could go out of affordability. Can you talk more about what those 400 units are?

Jenn Lopez said MFA did a statewide housing strategy in 2022 and did a ton of data collection around the State and that was the most recent data we could find for Las Cruces, so that's where the data comes from. The 400 units that would fallout of affordability are ones being tracked, so those are ones that have been funded by Federal Funding. It could be tax credits, could be public housing, it could be 515. It's most likely public housing and tax credits. We just want to put it on your radar so that we're paying attention to that as those projects come up. Then again you have a wonderful pilot opportunity potentially with Public Housing Authority.

Councilor Bencomo said I think I'm going to leave that up to Natalie to make sure that stays on our radar because that's huge. If anything I've learned from Nicole Martinez and a lot of the housing advocates is, this will actually go to my second question around messaging is that how are we ensuring we're talking about prevention as well because as we're housing people many other people could be entering into housing instability and homelessness. I'm assuming that part of the recommendations you're going to give to us, include some communication strategies, narrative strategies. I ask that because I was recently at an Association for other local elected officials called Progress Now and one of my colleagues from Sacramento was talking about sort of their huge housing crisis and what they've seen. She had really interesting data so for them homelessness across the region increased by 9% and she talked about for every one person that exited homelessness in Sacramento, 3 more lost their homes. That's really a powerful data point for how we can then talk to our constituents because often I think what happens is, what people see out in our community and out on the street isn't matching what the City is doing trying to meet those demands and those needs. Part of all of this is obviously the actual work but also how we talk about it as a City. I think we need to get better at that.

Jenn Lopez said we have called out communications as a critical strategy. What we can talk to staff about is adding to the appendices some best practices and messaging is a great idea, it would not take that much time at all. There is a section of the strategy we're still working on I mean it's 95% baked but I want to call it out because it's right where you're going, which is supportive services and program. We're going to finish that section up but that's key as you said housing is really hard to do, keeping people housed really hard to do. Who is impacted by housing instability has grown tremendously since Covid. I didn't spend a lot of time on data, I just had a hunch you probably all knew the need, but I should have maybe not made assumptions. Think about you're median house price it blows my mind you're at $180,000 or something like that 2018 and almost $300,000 now. It's hard and you've

got incredible momentum I mean you're leading in the State of New Mexico as far as I'm concerned.

Councilor Corran said I appreciate you breaking down some of the things that I think maybe weren't on our radar. I think I've been hearing, I have a couple of new developments of varying types in my district which is district 5, including the Peachtree Apartment Complex. I think that was one of the ones that might be in that category of things that need the additional money to sort of get in the ground. I just wanted to one check in if that's the kind of project that you're talking about. I think in our minds, we're oh we're done with that, not that we don't want to keep working on it, but we've talked about it, and it's been approved. I guess I really just wanted to see what kinds of projects are in that space. I hope we can knock those off our list very quickly in terms of where we are looking to spend the money in a short amount of time. Especially as they've gone through so much, surmounted so many hurdles.

Natalie Green said that is one of the projects so Phase 1 we're getting ready to close on financing, what will be coming back to you with is Phase 2. We want to work on the preservation of the difficult to develop. It adds a bonus to the whole hamburger, it adds that boost and it makes that project really viable, and you'll see that before the MFA Tax Credits submission. That will either be November or December depending on timing January at the latest. I did just want to put this up here when we're talking about difficult developed projects just what a typical project development timeline can look like over time. Why our pipeline is so important to this processes. We want to make sure we get enough projects in the pipeline so we're planning out ahead.

Councilor Corran said the last thing I just sort of wanted to give note to is I really appreciate you mentioning the zoning code, I think we have spoken loosely to this as part of our Realize. I just sort of want to point that out again. This is sort of a parallel track, but I think we have spoken quite often about the need for the most housing friendly elements on the very front edge of the Realize Las Cruces changes. I don't know if the committee is currently in discussion for some of those things. I know that will be something I will be looking for as any part of that comes to Council. The expectations are pretty high that whatever concrete recommendations come from this are incorporated as part of Realize I hope but also even if just sort of the general idea that we have to change this to fix this problem. I think that it's really important for us to re-emphasize to the folks that are working on the Realize task force, I just want to speak to that. I appreciate you including that as one of the key elements that isn't really related to money but is related to something that we're already changing.

Mayor Miyagishima said basically what you're advocating, which I think it's what you are trying to advocate, which I would support. Instead of taking, let's just use $6 million. The City has just two options. Let's say the City is in the business of building their own structure the $6 million only goes so far at $200 a square foot, only builds 30,000 square feet, which divided by 1500 is like 20 houses, 20 units. A lot of times we have people who, especially non-profits they'll come say hey we can got this money it's 80% of the construction we need to come up with 20% so if we use 20% we could help 3 different developers build lots tremendously more instead of doing 20 lots versus 300, 400.

Jenn Lopez said well said Mayor, this is all based again on real pipeline. I mean this is what we know is in process, which is really powerful. I don't know any other communities besides Albuquerque that has this kind of pipeline going.

Mayor Miyagishima said and credit Council because we have done something similar with our Telshor Fund to help some Non-Profits come up with that small percent down payment so to speak. That's why people have asked well how come you haven't spent it yet, we're waiting for the projects and things of this nature. I appreciate you coming here and providing this strategy. I think that just reinforces all along what staff has been saying our Finance Department and this just makes sure we're on the right path.

Jenn Lopez said you are an incredible Council, you really are. All that you have done, and we just wanted to kind of set it up, so it was even easier for your staff to keep excelling at the work. I am already using this as an example in other communities of what they should be doing.

Natalie Green said just for next steps we'll be publishing, finalizing the draft. We'll be publishing that on the website. Then we'll do a public information campaign. We'll also ask for feedback from our partners, community members. Then obviously it will come back for adoption to this Council. The bonds are also at the same time in the process of being prepared to be sold and get the revenue in so it will all align together. We'll all get to eat cheeseburgers in a couple of months.

Councilor Bencomo said I have a quick question for Natalie in terms of timeline. Do you think we'll see this before the session starts in January?

Natalie Green said we can have it ready before the session it's really up to the direction of this Council. We will be ready to bring it the second meeting in January.

Councilor Bencomo said I would just love to have this kind of information in our back pocket for the next 30 days.

Natalie Green said you will have the draft in December. You'll have the draft, the actual adoption will happen in January.

Mayor Miyagishima said I guess the sentiment is the Council wants you to move forward.

3.3 FIRE CODE UPDATE.

Chief Jason Smith, Las Cruces Fire Department gave overhead presentation.

Mayor Miyagishima said I did kind of research that as far as the cost and this is new construction not renovation. By the way commercial I think it's required. We're just talking residential about $6,000. It's about $20 more a month, this is on a 1500 square foot house. The savings is about a $100 a year on insurance. Then you take that $6,000 and you amortize it over 30 years because it's part of the new house. The

sprinkler system is going to cost about $15,000 and you back out the $3,000 you get to save from insurance the net cost is still about $12,000. Of those fires it said 52% didn't have a smoke detector they felt if they'd at least had that it really would have helped prevent more than that percent. I guess what I'm trying to say is I appreciate you bringing this forward, and I appreciate you really being candid about all the different concerns and the comments. I wondered I haven't gotten any emails from anybody from the Home Builders. I looked at where is the number one place that the fires happen in the houses and it's the kitchen, the second was a heating source. If the City was going to move forward just require it in the kitchen. Right now with the interest rates going up and the latest report is construction is slowing down in the City. We want to make sure people can have an affordable house. I mean .0025 of 1%, granted all lives are valuable. I guess the question the Council will have to weigh is the risk. People would have to do it voluntarily if they wanted to. To mandate them to do it or if Council just says ok just do it in the kitchen. Like I said it's according to the statistics it's the number one place. I just wanted to share that information with my colleagues.

Councilor Bencomo said thank you for the information provided. That video scared the crap out of me frankly put. I do not have sprinklers in my house, I said oh my gosh I need sprinklers in my house. I appreciated that you included the conversation with the home builders I've had some phone conversations with someone as well. Can you help me clarify for Monday what are you asking for us to vote on Monday? I'm hearing you say then we will do this whole phase where we're asking for more input and possible implementation in 2026. What are you asking us on Monday?

Chief Jason Smith said to look at amending the ordinance to specifically address the portion where it speaks about 1 and 2 family homes being sprinklered. To where we either put a date on it out into the future or it's removed, and we look at adding it and coming back later in that 6-12 months.

Councilor Bencomo said ultimately I think we are obviously moving towards that direction. We have to, the data and the numbers that you've shown, even just your anecdotal numbers. It's clearly something that's shifting and growing. The writing is on the wall that we have to move there. I think it's a matter of when and capacity. We've also talked in the Transportation Sustainability PRC about water heaters and all these things to improve your homes. There is just not enough plumbers in our community to do this work, not enough in Las Cruces, not enough in El Paso. If we're also not seeing on the other end of that the capacity for people to be able to implement these things. What kind of additional barriers does that put forth in developers not only private developers, but even our own goals as a City, that's number one issue I'm sort of hearing about. Number two I'm curious if your able to speak about mobile homes and the fires that are in mobile homes? If this includes mobile homes and why or why not?

Chief Jason Smith said what we've learned right now is this needs to be at either the State level or the Federal level. We can't change that requirement from what we've learned so far when it comes to mobile homes.

Councilor Bencomo asked do you have different numbers on mobile homes? Are fires more likely at mobile homes than other types of residential housing?

Chief Jason Smith said I don't have those numbers right now, we can have those for you next week. Where we can look at both any kind of national trend as well as local.

Councilor Bencomo said that would be helpful Chief. I know even at least I have a couple of mobile home parks that neighbor my house. I know that there's been a couple of fires since the time I've been on Council. I feel like that is a place of concern as well. That I've also been approached about concerns regarding that, I don't think they are necessarily fair but ultimately I think our decision is about risk and liability and particularly who is impacted most. I think if the writing is on the wall, I do want to make sure that we're laying out a good plan forward so that people can plan well so that capacity can be built up in our community for the installation of these kinds of things. Honestly I would also love to hear from our housing staff on how they think. I'm hoping in a matter of a week they can come up with some recommendations from their end as well or if Ifo can get that information to her as well.

Chief Jason Smith said I think you're hitting on the point of what we're looking for as your fire department is that direction of which way you do want us to proceed going forward?

Mayor Miyagishima said just a couple of things Councilor. I don't have the information you want. I do know a mobile home will usually burn up in about 4-5 minutes, it's over. Also mobile homes and manufactured homes are actually considered personal property and not real property like a house. It falls under the department of motor vehicles unless it is permanently attached.

Councilor Flores said I am delighted that you've looked at the code and it's wonderful that you included the builders. We're all affected, we're all impacted as a community. I know I shared with you the code and maybe it's an ordinance we can change hopefully in the near in the near future so far as the width of streets. I discussed that with you, I mentioned it to you again because I remember the street name of the street Canterra Arc the street is this narrow. You said yes a fire truck can fit there but in order to open all your doors and get all the safety and rescue apparatus you wouldn't be able to do it. That would be another code. I know a few years ago the Mayor and I and the Red Cross, held a thing free smoke detector and fire extinguishers. We went door to door I don't remember if they installed them as well or if the Fire Department. People were really receptive of it, those who were home. It did bring that to my attention, we learned that mobile homes really go up fast. I really respect the fact that you looked at the ordinance, that you ran it by our City Clerk. I totally support this effort and I think we should implement it as expeditiously as possible. I think the cost, I would bet my bottom dollar someone who has lost someone to a fire and had there been a sprinkler there, fire alarm that person could have been saved. I'll bet you my bottom dollar they're willing to pay that extra amount. I realize it may put a burden on builders but that's the price we pay. I would rather save a life. This is very moving for me.

Councilor Gandara said Chief you indicated this is already in the code, is that what I heard you say that?

Chief Jason Smith said correct the ordinance as submitted does have the separate line adopting the sprinkler requirement. We crafted it that way so it could be amended or changed as Council saw fit.

Councilor Gandara asked it's on another code right?

Chief Jason Smith said the ordinance refers to the International Residential Code. There it has existed for 1-2 family homes since 2011 and for townhouses since 2009.

Councilor Gandara asked are you proposing that whatever way we go now or later that is this for new builds only? Ok new builds only. How do you anticipate getting other residents with older homes like mine is that a consideration?

Chief Jason Smith said I think it can be. I think we need to look at different sources of providing that, much like we look at grant funding like connecting to septic systems getting those into wastewater. I would be willing to put in staff time into figuring out how we can make that achievable.

Councilor Gandara said I'm concerned about equity and what you're dealing with now a lot of the fires are older homes, older buildings right?

Chief Jason Smith said you are correct. We look at this and I do think of this as a 20-30 year and longer project. The homes we build under now, are going to be the older homes in the future.

Councilor Gandara said I looked it up as well what would be the cost to put sprinklers in newer homes versus and older home. I think about folks that I mean it's $2-$7 a square foot for an older home. I think about again equity and how people are going to be able to do that with very little income. Kind of the rates of poverty, just things we deal with in our community today. Coming up with an option for them I think for me is very important. About 6 years ago maybe our GIS unit did a mapping of just the number of residents and the age of the homes across the City, and it wouldn't surprise you to know that we have older homes in this community. I don't know how rapidly it's changed with just the building we're doing today. To me that would be representing District 1 something of major importance particularly on how we struggle to get infill, in some of these areas as well. I know you're looking for direction. I don't know that I have it. I think it's important. I know how busy you are just with the number of calls you have had and sort of what we're seeing in community today. I would certainly want to do this sooner, rather than later. I want us to be thoughtful on how we do that. It sounds like you want that too. I know the home builders are here I see a few of them and would like to hear from their perspective and what they're thinking.

Councilor Corran said when I worked at the Red Cross we worked on a disaster action teams. Homes which were typically apartment complexes actually that would have sprinklers, rarely need anything from us as an organization versus families that

didn't have sprinklers demanded as much as we possible could, which meant a long stay in a hotel. I am going to use a little business math for the Mayor. I'll start with Public Health, did you know that in the World seatbelts were first being developed in the middle of the 1950's. They were around, they were started in New York City cabs, and you could buy them in drug stores, but no one wanted to adopt them nor make a rule that any cars should have them. The Volvo car company interestingly enough said no this is a priority we don't want the people who drive our cars to die. In 1958 they made a rule that every car would have a seatbelt. It wasn't until 1968 that the United States started mandating seatbelts for front seat drivers to be put in cars much to the chagrin of the Ford Motor Company. Today Volvo's stock is $20.51, and Ford's is $9.82. I leave that to you to see what it means when people are leaders on caring for people's safety no matter how costly it is. I don't know who ends up better in the end. Certainly I'd rather be driving a Volvo. I say that because I think knowing that and investing in that and I know that it costs and also thinking about all of these homes. The folks who are buying the homes of today are eventually going to be the people that are going to be landlords to the renters of tomorrow. The intervention won't trickle down to things if we don't sort of stop the trend of not doing it now.

Kent Thurston, Member of the Public said right now we're having a record inflation. That's killing the ability to even buy a house so anytime we add any value or any cost to a house it's hurting us. Not necessarily us as the home builder. It's also hurting the people that are wanting to buy a house. If our median income and a 120% of that today we heard was $77,000 for the income value at 120% of that today is only going to buy you a house at about $235,000. Last month from the sheet that I had the average sale price was a $310,000 home. We as a company have already tried to pull as much money out of a house, all the amenities, all the frills that we can to even get people into a home. We're also trying to do other things, incentives to get people to buy their rates down, other things like that to permanently get them down. Affordability is one of the biggest things we kind of focus on the market. We also agree lives do matter, you can't put a cost on lives. We are putting a cost on to the lives of the people who can't buy a house. There is a tradeoff sometimes of making a policy for one thing, but not realizing the amount of people we're going to displace out of a home. This State has not adopted this either yet, in my understanding Las Cruces would be the first one to actually adopt this in the whole entire State of New Mexico. It's already gone through the State Legislature as well through the IRC so if you build in the county you have to build to the codes, but the State has not implemented this in the State region. I wanted to see if we were thinking about is if we are going to put sprinklers into the new homes then are we going to require that sprinklers are in all remodels no matter the size of a remodel. If we're making a rule that's going to save people's lives then if I go to do a kitchen remodel then I should have to put in all of the sprinklers as well. Any type of remodel we need to still be able to play the game fair. If you're only going to put it on one sector of housing, which is new homes then you should also have to put it through out if that's what we're passing as to be more safe as a City. Then it should also go to every remodel that has to pull a remodel permit.

Troy Mitchell, Member of Public said I appreciate the Chief's presentation. I think his main focus is public safety, specifically fires. That is why we have forums like this so we the experts in building and developing can come here and explain that it's not really as cut and dry as some may think. If we update the IRC and say that they're

supposed to have sprinklers in single family homes specifically then it kind of brings into question a lot of the missing middle, the fourplex, duplexes, triplexes because those are pulled typically on the IBC side, and they're built with fire walls. Fire walls in between units, meaning you don't need fire suppression. This opens the question as are we going to require fire suppression in all of those if so that's going to increase the price of those dramatically because then you have multiple units That drives the affordability down. I'd really want to make that known. I think that the Chief was right on point with putting together, I don't think it needs to be personally in this part of the code update with the IRC. I think we can leave it out and put together a committee that's focused on providing solutions for our next code update if that is the year 2026 or whenever they feel it's necessary.

Mayor Miyagishima said Mr. Mitchell, Dr. Pitts can correct me if I'm wrong but a duplex, triplex and fourplex are all considered residential. If it's residential than those are going to be required in there.

Troy Mitchell said we pull it as the IBC though, we pull it commercial. It provides a lot of convolution.

Mayor Miyagishima said if a person wants to build a duplex, triplex, fourplex those are considered residential you can get long term financing on those. Anytime you go over four units now they become commercial, and they fall to a whole different set of rules at least that is how it use to be.

Troy Mitchell said I'm currently building a fourplex and I had to pull it through the IBC.

Dr. Tim Pitts, Deputy Director Building & Development said the code and the rules on residential financing and so on there's a lot of variations. It gets difficult when you get down to it what applies in what case. The International Residential Code applies to 1 and 2 family residences and townhouses. A townhouse is defined as a building that has walls on two sides connecting to other buildings and two sides where there's egress paths, you have to have a front and back entrance, or it can be front and side. There has to be two ways out of the building. That's what the IRC applies to. If your building is a fourplex, you can build it as a townhouse and you can finance it as the Mayor says as a residential home. If you are a veteran for instance you can use your veteran benefits to finance that home. It is actually a really good deal and we've been trying to promote these because it is great way to do the missing middle like Mr. Mitchell was talking about. You can also build it as an IBC building it's the International Building Code. The International Building Code requires the plans to be drawn by an architect or an engineer to make sure that it's built safely and so on. It doesn't have the requirements of the IRC. The IRC is meant for single family homes almost all single family homes built in the United States are built under the IRC. It's so easy, it's just such easy rules it just tells you how to do it and that's it. You can always just go to the IBC and build it that way if you like to, you just then have to have an architect.

Mayor Miyagishima said Council here earlier was talking about make it affordable for people to have a home. When you require all the architecture stamp or all these other

things that's expensive and it just causes the prices to go up. I can recall years ago where the City would require on a fourplex and they didn't know, the said well you know I'm going to count it as commercial and so it's residential. They require certain more things it just raises the cost, those costs gets passed on to the consumer if they have to pay for it in hire rent. My colleagues are doing everything they can in the coming years to make sure it's affordable to residents. Anytime it can be done I think if it can be built as a residential that would make it under the residential code instead of the International Building Code because that's a little more strict.

Adolf Zubia, Member of the Public said just to clarify a little bit of my background, used to be the Fire Chief. I was very active in the Fire Codes at the National Level, as a matter of fact when Chief Smith talked about the adoption of these provisions in the IRC the Residential Code that was 2009 in Minneapolis. I was there along with 2000 firefighters that voted that in. I also happened to be the Vice President of the International Code Council and in the same conference I got voted as President, so I got blamed for this. I am not responsible. However I'm an advocate of residential sprinklers. However the one issue I got wind of Chief Smith's presentation last week. I got a number of calls with some serious concerns because of the way it was being approached. I contacted the Chief and basically we just discussed the process and how it was being handled was somewhat problematic. There is a lot of issues as you could tell based on some of the comments that the homebuilders brought up. This process needs to be worked out in great detail. I have been a part of it in the state of South Carolina. This got very confrontational in that state it took years to kind of address some of the issues. We talked about contacting the Water Utility Department. We're talking about upsizing water meters maybe. We're talking about stand-alone systems not part of the domestic water. If they're going to have backflow preventors? Are they going to have fire alarm systems? Are we going to be requiring the maintenance requirements or are we just going to let it go and let the homebuilder deal with it? Issues that are a serious concern that need to be specifically addressed. You talked about issues just here today townhomes, fourplexes in other communities, in other areas that I worked at we worked those out, but we needed to spell it out and address it in the building code because it not part of the IRC. You sprinkle, you don't have to sprinkle if you put a two hour firewall. We gave them options and opportunities to not necessarily do it. But again it has to be spelled out in great detail. It's not something that can be done fairly easy. Remodels somebody brought up remodels I think it was Mr. Thurston. The building code addresses existing buildings in the International Existing Building Code is a separate code that deals with changes in existing buildings, and it spells out the specific criteria on how much has to be done in order for certain requirements to kick in. That is already spelled out in the code. You can just reference that if we're going to deal with existing homes this is what you would use and spell it out. My recommendation it's too much to take on right now. I would not address existing homes period remodeled or otherwise. My recommendation is based on my experience in code development, more importantly code adoptions in the future. I know the steps the Fire Department are taking is very progressive, very good. However I strongly recommend that this group on Monday take that provision out and delay it until committees or sub-groups are set up to evaluate this. Address all those issues and bring clarity to this board to make a final determination based on the consensus that's developed by all stakeholders in those sub-committee meetings or subsequent meetings that take place in order to kind of

clarify all these issues. There's a lot more that need to be spelled out including what I call tradeoffs. In sprinklers in your home you are allowed to not have egress windows if you have a sprinkler home that hasn't been discussed. The compaction of residents that can happen, road width can be minimized because you don't need the access. Exactly as Chief said, fire hydrant placement or elimination of some, increasing the distance from 500 to 1000 feet those kind of things can be worked out.

Chad Selles, Member of the Public said I wanted to bring up I don't think the cost estimates are being given now are real accurate, that's just for the home build. I don't think we will get the fire flow through a ¾ inch water meter, we'll have to up size the water meter. If you go to 1 inch that's about double the cost for the impact fees. If you just put in a 1 inch service line it's not metered then you have the 1 inch service line that is $2,500 then you have a backflow preventor for that. Then you have to do the testing on the backflow preventor every year. It' not just the build for their sprinkler system for the house there is a lot of infrastructure that will have to be included.

Mayor Miyagishima said when you mentioned backflow, the City has a great water system that's one of the reasons we have an ISO of number 1. For members and my colleagues to go from a ¾ inch water pipe to a 1 inch water pipe you're talking about more cost.

Steve Miller, EPIC said first off it's not required for all commercial buildings it depends on the square footage, occupancy type. It is a good thing in the future. The gentleman here who is a part of the committee that actually adopt it first originally way back when. You need to look as it's a 20 or 30 year thing, like we are with our AV requirements for vehicles and stuff like that. If it's not required in all commercial aspects but you want to put it into residential. Also most people die in a fire because of smoke. I believe the Fire Department can tell us the facts about that or not versus burning in the fire. Firewalls we do, do those we just have to make sure there done correctly. The cost analysis when you get into the remodel you say ok, tear out all the ceilings let's start putting plumbing lines, and sprinkler systems in and trying to go around everything it's not very easy to do. We are all here for a reason because of safety and lives it does matter. It needs to be put further back and studied truthfully. I agree with Chad on the cost analysis. Besides if you have a sprinkler system in a commercial building now it has to be monitored whether that building is occupied or not. Are we saying we're going to have to monitor all sprinkler systems in all homes, which is going to add to the cost. Our fire department also said a little while ago that 54% of the homes that were burnt didn't have adequate fire alarm systems in them on the residential side. Maybe you could look at the firewall situation better address those. You can look more of these alarm systems whether it's the gas, or fire smoke system. Maybe we as a community can have reach out like they did with going to homes and make sure that people are safe in that aspect.

Daniel Fernandez, KT Homes said one of the things to consider too is the fact that if we are going to increase home pricing from $10,000 to $15,000 this may create an exodus from people wanting to build in the City to the County because the County is not going forward with this sprinkler suppression system.

Chief Jason Smith said just to kind of echo back what I'm hearing from our partners in the industries. There's a lot of things to consider, a lot of questions that we need to go in depth with so we have some of those answers now that we can provide. But I think its best if we get some direction from Council on what route you want us to take and go for this implementation. I think if we look at this for being implemented in July of 2026 that is adequate time to bring clarity to those issues and address those concerns. I also think it aligns with the public safety impact fee update. There are some possibilities to reevaluate that fee and seeing how we can reduce the impact of its cost. There is a lot of minutia that needs to be answered as former Fire Chief Zubia pointed out. There is a lot of things there that need to be answered and we can't provide those answers. We just need to know what kind of path to be taken from Council.

Councilor Flores asked is there a possibility of using the Telshor Fund for people to use, it's a health issue, a safety issue. Would it be outside of the parameters of the funds that can be used for the Telshor?

Mayor Miyagishima said most likely because unless they fall under a certain income level because the anti-donation clause prohibits governments from providing monies for services not rendered for one thing, unless they hit a certain income level then we can use that.

Councilor Flores said at least some people would qualify. I'm sure that those are the owners that don't have sprinklers.

Mayor Miyagishima said if it's new construction.

Councilor Flores said yeah that's a totally different ball game.

Chief Jason Smith said one last question whether it's for today or next week. It's just direction on how we want the ordinance amended? This way we can have staff at Community Development get that prepared.

Mayor Miyagishima said Chief in all candidness it sounds like probably the best is just to wait a week or two maybe get with the stakeholders and have a maybe work session. To implement it and then go back and amend it just seems counterproductive.

Chief Jason Smith said to clarify I'm not asking to implement it and then amend it. I'm talking about amending the ordinance next week so that it's either delayed going into effect or it doesn't go into effect until we bring all this information back and introduce a brand new ordinance.

Mayor Miyagishima said I will get with Ifo or even with Christine on how to do that.

4. ADJOURNMENT

4.1

Councilor Yvonne Flores moved, seconded by Councilor Becki Graham, to Adjourn at 3:53 p.m.

RESULT:	**Carried**
MOVER:	Councilor Yvonne Flores
SECONDER:	Councilor Becki Graham
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Johana Bencomo, Councilor Yvonne Flores, Councilor Becki Graham, and Councilor Becky Corran
ABSENT:	Councilor Tessa Abeyta

Mayor

City Clerk

MINUTES
City Council
Monday, November 20, 2023 @ 1:00 PM
City Council Chambers, City Hall

PRESENT: Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

ABSENT:

1. OPENING CEREMONIES

1.1 PLEDGE OF ALLEGIANCE - COUNCILOR BENCOMO.

1.2 PETS OF THE WEEK.

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

1.3 JOBS OF THE WEEK.

Sarah Raney, NM Workforce Connection presented Jobs of the Week.

1.4 PRESENTATION OF CERTIFICATES OF APPRECIATION/PROCLAMATIONS - COUNCILOR BENCOMO.

Mayor Miyagishima presented the Mayor's Distinguished Service Award to John Moscato, Dean Riggs, and Royal Jones.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Terry Miller, Member of the Public said I am here today because I watched the video

for the City Council meeting for November 6th and October 16th and there were two things that made such an impression on me that I decided to make a public comment. The first was the process of the city council went through for the November 6th meeting to address the proposed demolition of the Fielder Home in the Historic Mesquite District. Once the presentation by the staff was over all of you immediately began asking thoughtful important questions and all of you listened carefully to the citizens who came to speak. Then when all was said and done each of you came to the conclusion to table the demolition to make certain this was the right and legal step to take. It is clear from your actions that you are concerned about preserving our local history as much as possible, thank you. The second reason I am here has to do with something I noticed with public comments at the October 16th meeting. There were two issues the majority of the speakers talked about. The first issue addressed concerns about vandalism, theft, public drug use and problems related to homelessness and is an issue that has been front and center at our city council meetings for months. The second issue addressed the safety of our roads for bicyclists in particular. Both issues are extremely serious but there was a difference in the way they were presented to city council this time. The first four speakers expressed their concern about the crime issue but it was the fourth speaker, a business owner rightly distressed about vandalism at her business who near the end of her time asked the city council what she could do to help lower crime in the city. The next three speakers addressed road safety for bicyclist and talked about a plan called Vision Zero. I looked it up and learned Vision Zero is a strategy that focuses on eliminating all traffic fatalities and severe injuries while increasing safe, healthy, and equitable mobility for all. During one of the presentations the speaker said I don't want to complain, I want to offer ideas. Plus, all three of these speakers belong to a group or groups that work with the city on bicycle safety issues. So, what I realized was these four speakers clearly are more interested in finding ways to resolve these problems rather than just complain about them and that is how we citizens of Las Cruces get things done and that is how we keep our city growing and thriving because when we work together to solve problems that every community faces we absolutely can make all the difference in the world.

Councilor Flores said Ms. Miller I just want to thank you for everything that you contribute to our community, especially for being founder of the Childrens Reading Alliance and how it has helped many of our children throughout the years to become book lovers and they have learned to read and to love reading.

Jeffrey Michael Field, Member of the Public said I am a Veteran and before I begin, I would like to make note that today November 20th and every November 20th is Universal Children's Day. Also known as World Children's Day. It was spearheaded by the United Nations in 1954, and it is considered the most universally accepted human rights treaty in history. I am here today to advocate for a ceasefire between Israel and Palestine. Two nations that have been in conflict for decades. Beginning in the mid-20th century it is one of the world's longest continuing conflicts. This struggle has caused immense suffering for both peoples. It is time, past time for us to seek a peaceful solution. I am here today to request you, to urge you to pass a resolution advocating for a ceasefire. I am a Veteran who lost two friends in the Vietnam War. I did not see battle there, instead I worked stateside with those soldiers whose wounds were of the body and of the mind and many Veterans like myself are reminded of the

trauma of war this past Veteran's Day. Dennis Fritz a retired Command Chief Master Sergeant in the Air Force said this in a NPR story published November 13th, if you wish to read the story you will find the address in the packet. He said, "as I reflect to what is going on today in the Middle East in particular, you know my goal was to be able to celebrate Veteran's Day and not add more to Memorial Day". A ceasefire would not only bring immediate relief to those effected by the conflict, but it would also create an opportunity for diplomacy and dialogue. A ceasefire could be the first step towards a more stable and secure future for both Israel and Palestine.

Frank Lopez, Member of the Public said I call Las Cruces my home. I lived here and then I moved to Albuquerque for like 6 years and then I have moved back. I am actually here just to say thank you. I lived in some tough cities. Oakland, there has been some serious crime in Oakland. Albuquerque, there has been some serious crime in Albuquerque, and I know many stories from those cities. Las Cruces does not compare to any of those but I want to share in this moment right now the week of Thanksgiving that so many folks are giving thanks. We just ended a campaign and I want to acknowledge the work that you all do. The incredible sacrifices that you all make and by way of my work I should give a tiny bit of background. I have worked with hundreds of community leaders in three different states and many cities and I have a business background and so when I think about the work you all have done it has been so thoughtful, and courageous and on another level. So, I am very proud to be back in Las Cruces and I am proud to have all of you as my elected officials and I want to thank those especially who are moving on, Mayor Pro Tem Gandara and the work you have done over many years with children and Councilor Abeyta, I don't know you very well but the work you do in health and so many of you others that speak about the issues happening in this community so with that I thank you and just want to acknowledge the incredible work that you do but not only the work that goes into a campaign but the work in serving as a councilor. I have listened to some of the sessions, and I am amazed at how brutal people can be and I just want to say that I am with you and lots of people are with you.

Lynn Moorer, Member of the Public said I am a resident of District 1. Thank you all for your steady thoughtful and usually effective public service. Today I want to recognize and thank Mayor Miyagishima for his almost 16 years of exemplary service to Las Cruces. I also want to thank Councilor Abeyta for her discerning and unstinting service to us as well. My particular gratitude goes today to my City Councilor Mayor Pro Tem Kasandra Gandara who has represented my fellow District 1 residents and me for eight years with honor, integrity, intelligence, and grace. Mayor Pro Tem Gandara has served not merely with diligence and incredible hard work which has been awe inspiring, but she has been a creative, an enlightened advocate for Las Cruces in each one of its citizens. Always operating with class, she has been fearless and filled with genuine empathy when tackling problems. She has also consistently risen far above the smallness of those who habitually complain and/or verbally attack when the council makes decisions with which they disagree. Mayor Pro Tem Gandara has never just paid lip service to the highest aspiration and attributes of public service. She has gotten into the trenches to accomplish that with solid persistent and very compassionate work. Thank you, Kasandra, I look forward to the time when you will bring your inspired service to us all again.

Arlene Martinez, Member of the Public said I am a retired teacher but most importantly I am a grandma of four kids, three of which play at the Hadley Sports Complex. Baseball, softball, and soccer provide a lot of fun for families. Grandparents go, aunts and uncles, the kids, we all go to support the kids there and it is a lot of fun. There isn't a lot of entertainment in my opinion, enough entertainment for kids. We don't have a bowling alley anymore, we don't have a skating rink, we don't have a water park, we don't have bumper cars, but we do have the ball fields and I would like to see some improvement going on over there. The children, it helps to keep them fit, it helps to keep them on track, it helps them to get good grades in school and then join the high school athletics which is great. It provides income for our city because we have tournaments and people come and they spend the weekend here. They spend money at restaurants and so forth and so I think it is a good all around facility for everybody. I read this from the newspaper, "the Hadley Sports Complex is a diamond of Las Cruces facilities. It has eight baseball fields, softball fields all in one spot with Harty, Paz and Maag complexes." And it sounds good on paper, and it even looks good in one of the pictures that I have in my packet shows an aerial view but when you look close it is really quite different. It is sad in my opinion. I know that money goes into the fields. I know that the leagues pay money to join and I am specifically talking about the boys baseball. They pay $475.00 a season and this year they didn't get any playoffs, they didn't get any trophies. I don't know where the money went. I broke it all down for you and I am not going to read each section but over $30,875 is collected from just the boys league. I know that since John Heffley took over the girls softball, they don't even charge a league fee. They only charge enough money to pay the umpires so it can be beneficial to the kids. It is supposed to be about the kids and so they pay the umpires $25 a game. I don't know where all this money is going to, the fees that they are getting but I do have some pictures in my packet and talking about the flooding and it looks really bad over there. People are coming from all over the state to play at a tournament and we have these fields not to mention how poor condition that the parking lot is.

Mayor Miyagishima said I think a lot of this money stay with the associations that collect them and also the bond money sometimes can't be used for the maintenance part of this. If you don't mind later, you can leave your contact information, your email information and we will try to get you some answers so that we can move forward from there.

James Urias, Member of the Public said I was here April 17th of this year and I am back to just talk about what I have noticed in society in all districts and that is a direct neglect of knowing law and of law. Incorrect training by corrupted parties causing crimes against one another. The supreme law of the land is God's law in the constitution. Not state policies, statutes, or mandates. Ignorance to law is why we have been divided as people and as a country. Today I tried to end by enforcing ratification to all laws created after the constitution due to the errors in all government documentation. Until these laws are corrected and ratified the same way the constitution was ratified one year after it was written we should be on constitutional law and what saddens me is that wrong has become right and being right has blinded everyone from seeing what is wrong. Never again I hope we will use weak individuals and let them be in control of our lives. Never again will we vote the lesser of two evils. I was raised that a cheater never wins, and a winner never cheats. Words of advice

as written through history, salvation comes from those who see the dammed and when I look around and see the attempts and the efforts that they are falling short because of the confusion of the incorrect laws that should be voided due to errors and contractual law. We are facing a situation of complete collapse and we see it with two presidencies. You can tell a lot by an individual by who they think the President is. Asking will not fix anything. What fixes things is talking to one another and knowing of law.

4. READ CLOSED MEETING STATEMENT

4.1 READ NOVEMBER 13, 2023, CLOSED MEETING STATEMENT INTO THE RECORD.

The Las Cruces City Council met in Closed Session and only discussed those limited items as state in the posted notice to conduct an audit exit conference FY23 for City of Las Cruces, South Central Solid Waste Authority, Metro Narcotics, Mesilla Valley Regional Dispatch Authority, and Animal Services Senter of the Mesilla Valley, which is closed pursuant to NMSA, Section 12-6-5 to 12-6-14.

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:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

6. CITY COUNCIL MINUTES

6.1 WORK SESSION OF OCTOBER 10, 2023.

6.2 REGULAR CITY COUNCIL MEETING OF OCTOBER 16, 2023.

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

7.1 RESOLUTION NO. 24-052: A RESOLUTION AUTHORIZING A CONTRACT FOR ELECTRONIC PAYMENT SERVICES WITH PAYMENTUS CORPORATION OF CHARLOTTE, NORTH CAROLINA, FOR A TERM OF FIVE (5) YEARS, IN AN AMOUNT NOT TO EXCEED $600,000 ANNUALLY, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 23-24-003).

7.2 RESOLUTION NO. 24-053: A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $250,000 ANNUALLY COMBINED FOR PRICE AGREEMENTS FOR AMMUNITION (PROCUREMENT NO. 23-24-011).

7.3 COUNCIL BILL NO. 24-007; ORDINANCE NO. 3049: AN ORDINANCE APPROVING A ZONE CHANGE FROM UR (URBAN RANCH) TO EE

(EQUESTRIAN ESTATE AND AGRICULTURE) FOR PROPERTY LOCATED AT 7332 SHANNON ROAD. SUBMITTED BY JOHN MAJOR, PROPERTY OWNER.

7.4 COUNCIL BILL NO. 24-008; ORDINANCE NO. 3050: AN ORDINANCE REPEALING AND REPLACING DIVISION 17- BUILDING STANDARDS OF CHAPTER 30, BUILDINGS AND BUILDING REGULATIONS OF THE LAS CRUCES MUNICIPAL CODE TO ADOPT THE 2021 BUILDING CODES, AS AMENDED, AND AS ADOPTED BY THE STATE OF NEW MEXICO CONSTRUCTION INDUSTRIES DIVISION.

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

8.1 RESOLUTION NO. 24-054: A RESOLUTION APPEALING THE DECISION OF DENIAL BY THE PLANNING AND ZONING COMMISSION ON SEPTEMBER 26, 2023, FOR A 20-FOOT VARIANCE TO THE FRONT YARD SETBACK IN ORDER TO RETAIN A CONSTRUCTED CARPORT ADDITION ON A PROPERTY LOCATED AT 4053 WINTERS STREET. THE SUBJECT PROPERTY ENCOMPASSES 0.108 + ACRES AND IS ZONED R-1BC (SINGLE-FAMILY HIGH DENSITY- CONDITIONAL). SUBMITTED BY TRACIE STEVENSON, PROPERTY OWNER (23VO0500106).

Sara Gonzales, Senior Urban Planner said good afternoon, Sara Gonzales with Community Development.

Christine Rivera, City Clerk said Sarah I will need to swear you in for the appeal part. Thank you. Do you swear or affirm that the testimony that you are about to give is the truth and nothing but the truth under penalty of law?

Sara Gonzales said I do.

Christine Rivera said thank you.

Sara Gonzales said this is a variance appeal for the property located at 4053 Winter Street. Currently the property is located about 200 feet north of the intersection of Holly Drive and Winter Street. It is approximately .11 acres in size, zoned R-1BC which is our single family high density conditional with a single family residence currently on the property. Here is a zoning map of the subject property and the surrounding area. Everywhere around this property is some type of single family multifamily or mobile home park. So, you are looking at a residential district. Here is an aerial map of the subject property highlighted in blue towards the south portion which is close on Winters. As you can see the question in case is basically this carport that was placed onto the property and has been heard by the Planning and Zoning Commission. Just keep in mind that council will be reviewing another case within this district in the upcoming months. Per code requirements per Chapter 38 of the 2001 Zoning Code R-1b zoning designation properties do require a 25-foot setback for any garages or carports placed on the property from the front property line. On September 26th the Planning and Zoning Commission denied the proposal for a 3 to 3 vote with one commissioner absent based on the following findings o recommendations The garage or carport does not meet the minimum code standard

of 25 feet set back from the property line. The request for a 20-foot variance does not meet the criteria outlined within 38-10J and it also was not constructed with a building permit. So, this was after the fact in this case. Now the criterion which the Planning and Zoning Commission can approve a variance is three fold based on a hardship. When they look at this a hardship can be based off of topographic constraints. Is there an arroyo? Are there hills? Is there going to be some type of drainage easement in which you cannot place the structure in the appropriate place on the property.

The second item in which P&Z looked at was going to be spur of economic development. That normally becomes a hardship when we look at businesses coming into town and they are looking to deviate from parking stalls, they may need sign variances, but it doesn't necessarily run with a variance directly for a carport for a residence. Lastly, could be a monetary hardship. A monetary hardship is defined as an expense that is so expensive in order to meet the intent of code or meet code regulations that it makes the project unfeasible. It does not mean that a monetary hardship comes from structures being placed on properties unfortunately without those permits being issued from staff or from the city. So, with that the applicant did provide justification in order to retain the carport 5 feet from the front of the property line. This was an anniversary gift from her late husband. It does protect her and her vehicles from weather damage. There were no complaints from the public during the public hearing or prior to the process taking place and the structure does not impede onto utilities. I do want to note based on property itself as you can see on the site plan highlighted in red is where the carport structure currently exists. There is a 12-foot utility easement that runs along the front of the property. There are processes in which you may encroach into a utility easement if it is approved through utilities as well as any utility provider. So that would be Comcast, Qwest, Lumin, any of those who have line communications running underneath. In this case there are Comcast and El Paso Electric lines running through that utility easement.

Here is an image of the structure of the carport that is currently placed within the front of the property. It is a metal carport with the four post that stand alone. A metal structure is basically on top of the metal structure itself. With that staff did send out notices to all the surrounding properties and with that we have done it twice now. We have only received one phone call that only had an inquiry. Their question was, if this variance gets approved then does she get to keep the carport, and do they get one as well? And that generally becomes a consensus and as staff had explained variances specific to each property as it runs with the land. So, a variance would only be good for this property, if this were to be approved or denied they would have to go through the same process in order to acquire one.

During the public hearing for P&Z on September 26th there were five members of the public that did speak on the applicant's behalf and I do believe they are here as well today. If council decides to approve the case and overturn P&Z's decision there are conditions in which staff would like to be placed onto the property. With that both sides of the structure to remain open. As you pull out of a driveway or a carport structure if it is enclosed you lose your visibility to the vehicles that are coming when you get on to the street. The second would be that the structure needs to be attached to the home. The reason that we say that is because accessory structures are not permitted within the front yard setback and so we would want that attached to the

home making it primarily in addition to that home. Next would be to reduce the size outside of the 12-foot utility easement. Knowing that there is utilities ran through there utility companies have no concerns or issues whenever they do have to go under concrete or they remove the driveway structure but whenever there is a building structure it makes it very complicated. A lot of times they need to get in and service their utilities and that is why they are now being placed along the front as opposed to the rear or the sides of the property. And lastly the applicant would need to obtain any building permits and required inspections to maintain that carport structure.

With this council options are to vote and approve which will overturn the P&Z decision made on September 26th. Vote to deny, that will uphold the decision by P&Z Commission. Vote yes, with conditions or vote to table and ask staff to find additional information. Once stated the applicant is here as well as the supporting staff that came with her last time.

Mayor Miyagishima said thanks Sara. It looks like we have questions from council, Councilor Flores, Gandara, and Bencomo.

Councilor Flores said thank you Mr. Mayor and thank you Ms. Gonzales. What was, is there a rationale, a reason given as to why the commission did not approve the variance or because we are here to listen to an appeal, so they just went by letter of the law type of thing. I think it seems that if there is a variance to be had there is different ways to, it could be remediated in a sense in terms of following the things that you enumerated, right? So, my question it was all of that brought up at the P&Z and was that discussed and the possibility of and it sounds like it could be feasible given everything you listed. Am I correct in understanding that?

Sara Gonzales said Mayor, Councilor Flores the presentation you hear today is the same being that we are dealing with an appeal case. The P&Z Commission voted that essentially because the 20-foot deviation did not meet that criteria of those three hardships based on topographic constraints, monetary hardship or spur of economic development. That is the criterion in which they have the right to approve a variance. By not seeing any of those that is where the P&Z Commissioned deemed that it was not approved at that point in time.

Councilor Flores asked is it the only property that has that sort of a structure?

Sara Gonzales said Mayor, Councilor Flores there is an additional one that was heard that evening that will be coming forward to city council on December 4th. So, there were two cases that were presented that evening. Over the past five years we have had seven different variance cases come forward for carports. Two of which have been approved and five denied.

Councilor Flores asked okay, but in that neighborhood, Ms. Gonzales?

Sara Gonzales said in this neighborhood just the two.

Councilor Flores said just the two. So, who appealed it, the property owners

appealed, and you are presenting?

Sara Gonzales said Mayor, Councilor Flores yes that is correct. The appellant is the appealing body and the applicant is the property owner and staff brings it forward for the appeal process.

Councilor Flores asked you did list ways that the property owner can overcome that veto or that no vote, right? Do this, do that and there won't be because there is that easement issue I think that the city is concerned about.

Sara Gonzales said Mayor, Councilor Flores that would be correct. Staff did not identify any safety, health or welfare issues with the carport structure. We just did notify or notice that the 12-foot utility easement could become a problem if there were any services or line services that needed to be accessed from our utility companies and they would have to remove that structure in order to obtain access to those. So that was the only concern that staff had. When we take it to P&Z we provide the recommendation knowing that staffs availability to recommend approval follows the same three criteria and we present that to the Planning and Zoning Commission. Planning and Zoning Commission does have the right to say yes or not at that time. During that P&Z hearing though they did vote to say no based on the 3 to 3 vote, we were missing one commissioner.

Councilor Flores asked but in your professional opinion and your knowledge the things that would make it possible to have that, is that attainable? Is the easement requirement how should I say, does it eliminate any difficulty in accessing the easement? I mean you did say this, this, or that is done, so does that remove the possibility of not being able to access the easement?

Sara Gonzales said Mayor, Councilor Flores if the structure is not to be removed or cut back then it could make it very hard to obtain use of that easement if any of the utility companies need to go in. We just provide from staff's point of view an approval with conditions that if you do overturn that you do have the right to place these conditions, and these are the concerns that staff would have if we move forward. If anyone comes into the Community Development Department, we do provide the regulations of the 25-foot setback is required at the time that they come in. So, for us to justify recommending approval on a variance for a carport when it does not meet the standards is the inability that we have. That is why it goes through the public hearing process.

Councilor Flores asked but if we were, say we overturned the decision of the P&Z would they be able to meet those requirements that you have set forward?

Sara Gonzales said Mayor, Councilor Flores I believe the applicant would address that to say that if she was willing to at least eliminate or meet those requirements to move it outside of that utility easement she is here so I would let her have to speak upon if she would want to remove it as whole or if she could actually meet that requirement to move it out of the utility easement.

Councilor Flores asked and at what cost? Would she be able to afford it because everything is costing an arm and leg these days.

Sara Gonzales said Mayor, Councilor Flores that is a great question as far as the cost because when it is constructed, they do provide you a cost when you actually pay for it. There is always the cost of removal. We have seen multiple in town that are removed after they have paid for them hence the idea that a monetary hardship is not the request of asking for you to keep it or maintain it. It's the monetary hardship of it wasn't feasible in the beginning.

Councilor Flores asked do you have any idea how much that would cost? Is there any ballpark figure?

Sara Gonzales said Mayor, Councilor Flores I would direct maybe Larry Nichols may have a cost estimate of removing possibly, the Community Development Director?

Larry Nichols, Community Development Director said thank you. Larry Nichols Community Development Director. Mayor and Councilor Flores. There is two issues here in addition to the setback requirement and being built over the easement this structure never obtained a building permit to do the structure. A lot of this could have been avoided had that permit been acquired. We would have advised them not to build over the easement. Your question regarding cost. I guess it would be somewhat of a reversal of what it cost to build to begin with. In other words, taking it down to put it back up into compliance. It would probably be in the range of $2,000-$3,000.

Councilor Flores said thank you Mr. Nichols. So, Ms. Gonzales so with all these provisions that you provided, all of these conditions would it then be safe? Would it be safe, and would there be access to that line?

Sara Gonzales said Mayor, Councilor Flores yes at that point because they would require a building permit and staff can actually do the proper inspections on the site being outside of those utility easement staff would have no concern or any issues as far as safety.

Councilor Flores asked okay and say for example they have to save up to pay for the expense? Somehow, I think it is going to be more than $2,000 or $3,000. Everything just cost so much these days. Is there a time limit as to when they can implement those changes to comply with the requirements here?

Sara Gonzales said Mayor and Councilor Flores a lot of times we do work with the property owners especially coming into code compliance. We work between three to six months in order to get compliance achieved.

Councilor Flores said great. Thank you so much, Ms. Gonzales. Thank you, Mr. Nichols. Thank you, Mr. Chair.

Mayor Miyagishima said we have Mayor Pro Tem and then Councilor Bencomo.

Councilor Gandara said thank you, Mayor. Thank you, Sara, for your presentation. I have similar questions but what really struck me and gave me pause was sight, line of sight. People coming in and out. Can you talk to me a little bit more about that?

Sara Gonzales said Mayor and Mayor Pro Tem Gandara based on the property whenever you look at the side property lines the reason why we request that these not be enclosed is because the minute you come to back out here you may not see that vehicle coming down the street. So, by enclosing this structure that is why we recommended any carports to remain open as you have limited your sight view whenever you are reversing out of those properties.

Councilor Gandara asked so when you talk about enclosed, you mean the top, or you mean the side? What are you? Is it enclosed? I don't see it enclosed.

Sara Gonzales said Mayor, Mayor Pro Tem it is essentially once the permit has been given for the carport structure to remain several times we do end up finding that these become enclosed on these side walls and so with that we do not want this to become a fully enclosed structure as we are here for a carport not for a garage.

Councilor Gandara said got you Sara, got you. So okay, alright. I appreciate that very much and then you said there is going to be a second one that is coming?

Sara Gonzales said Mayor, Mayor Pro Tem that is correct. We will be hearing a second case on December 4th.

Councilor Gandara said okay, alright, thank you. Thank you, those are all my questions Mayor, thank you.

Mayor Miyagishima said Councilor Bencomo.

Councilor Bencomo said thanks Mayor. I have a couple of logistical questions. My biggest question is how this got on the radar of Community Development and P&Z. It is odd to be doing a whole appeal over a carport, to me. It feels odd.

Sara Gonzales said Mayor, Councilor Bencomo a lot of times what happens is Community Development finds out because there are a few options, neighbors in the neighborhood may have called because they were maybe told that they were not allowed to have one so a new comes up and they were not given that permission. Sometimes it is codes driving through neighborhoods, notices a new carport comes up within their district and then, so they have contacted Community Development. We generally see any of carport variances coming through. I would say 80% of them are coming through after they have been constructed and so from there we take them to the process as if this is the application, these would be your steps, these are your fees and that is where we make it in today. Planning and Zoning Commission is a final action body however they do have the right to appeal to City Council. City Council decides to deny or overturn it as well they do have the next steps to go to District Court.

Councilor Bencomo asked on the map of the community I sort of clocked maybe a second one, 4093 I think, is that the one you are talking about?

Sara Gonzales said Mayor, Councilor Bencomo yes that is correct.

Councilor Bencomo said really my is question is on the utility easements. You said El Paso Electric and Comcast, thank you, is the concrete driveway not a barrier to those easements?

Sara Gonzales said Mayor, Councilor Bencomo it is a barrier but it is not a structure so it is a lot easier to bore underneath depending on where the actual lines are so they may be able to tunnel underneath a driveway or the removal of the concrete is easier for access. A lot of times the problem is there is a full structure above they have to remove all of that structure in order to get underneath or remove that concrete as well and then the cost becomes that price. That is why a lot of the easements now are located along the front property boundaries, so you are only disturbing a portion of the driveway in order for them to access it. They may not tear up the entire driveway but it is just in case they have to access it or need access to that point of time. When I spoke with Comcast as to would they recommend structures being in utility easements or are these the preferred establishment they said no because a lot of times El Paso Electric had one chance where a deck was built over an electrical easement and the power went out and to service 3,000 people they demolished basically that deck and did not recover the cost and so the recommendation is not to place them in there when you know that there are actually utility connections. Sometimes we have corner lots that utilities run along the front but maybe not along the side. That is where we do the encroachment agreement so the applicant can do those knowing that there is no utilities ran through there but if they ever needed to extend it they could.

Councilor Bencomo said a porch is different than a, literally this is just one roof it seems like. Look I and then you said the conditions, you said they would have to reduce it. To me that feels like the reduction would no longer serve a purpose then, the carport would no longer serve a purpose of a carport.

Sara Gonzales said Mayor, Councilor Bencomo because the carport is twenty feet deep and it is only encroaching seven, you still get thirteen feet out of that structure. That would be inside the 25-foot setback that is already required because all of the garages within this neighborhood were built to their setbacks at 25 feet. So, it still gives that 13-foot extension in order to have it and then meet the utility easement request.

Councilor Bencomo said okay. Honestly, I am inclined to lean with the resident in it. I will say this to the resident that and I don’t know where you are, I am sorry, that, oh hello. By leaving it then it sets a precedence and that becomes harder and harder to enforce, right? So, that is the only hard part about these appeals is that we could be like this looks good to me this is fine but then that becomes the new point and I think that makes it really difficult for staff to move forward in the future and so, sorry I was

distracted. Yeah, that is all my questions Sara, I think. Oh no, I had one more question. Is it not currently attached?

Sara Gonzales said Mayor, Councilor Bencomo not it is not. There is a separation but in speaking with the applicant there is a way, that she has already talked to a couple of contractors in order to make it attached. So, it can be feasible.

Councilor Bencomo said oh, this is the other thing is was going to say. Is there a way for us to get so that it is clear that there is a lot of miscommunications between contractors and residents, is there a way for the city too that we can send out letters, memos, reminding people about the rules to contact the city before building structures and things like that. It just feels like such a burden to residents to then have to do all of this.

Sara Gonzales said Mayor, Councilor Bencomo that we can go ahead and work with our PIO Office to get those out. Another recommendation would be during district meetings let everybody know to contact us. That is what we are here for, we are open. This is all we can do is have people come in and ask a question that we would like them to ask prior to coming to these cases because they do become unfortunate. We are working with our Codes Office right now to also whenever applicants come in with structures that have been built without permits, we try to find out the contact information of who is constructing them. Codes is now informing them that they need permits, they are required and what they are actually putting these applicants and property owners through.

Councilor Bencomo said okay, thank you.

Mayor Miyagishima said thank you. Did you have a question, Councilor? And before you get to that Larry approximately what would be the cost of a building permit for this? Just approximately.

Larry Nichols said Mayor, Nichols for the record. It is based on evaluation. I am guessing that the carport was somewhere in the value of $3,000 to $5,000. Probably the permit would be less than $85 something in that nature.

Mayor Miyagishima said okay great, thank you. Councilor Graham.

Councilor Graham said thank you, thank you Mayor and thanks for all the information. So, I am going to lead with a quick story before I ask my question. Just coincidentally I was looking into getting a carport, like two weeks ago and luckily the contractor with whom we were working knew the process and actually like to sad but I am not actually get a carport because we just don't have the room for it but without a knowledgeable contractor and I am just kind of echoing what you were saying Councilor Bencomo I could have seen me like willy-nilly putting up this carport and not realizing that I was in violation of codes. Also thank you Community Development, you were lovely to work with. I don't get a carport, but I am not salty about it. It's going to be okay. But yeah, I just want to echo the idea that contractors need to be following in line in knowing the process because I had no idea. My question for the applicant or

appellant, I am never sure, what the, okay great. Is this, are the conditions something that the appellant is willing and able to meet?

Mayor Miyagishima said okay, before we have you answer that ma'am, we are going to need to have you, the City Clerk is going to have to swear you in.

Tracy Stevenson said my name is Tracy Stevenson and I am the resident at 4053 Winter Street.

Mayor Miyagishima said she is going to ask you the oath.

Christine Rivera said hello Tracy, do you swear or affirm that the testimony that you are about to give is the truth and nothing but the truth under penalty of law?

Tracy Stevenson said I do.

Christine Rivera said thank you.

Tracy Stevenson said the question was?

Councilor Graham asked willing and able to meet the conditions that were laid out in the presentation?

Tracy Stevenson said yes, I am.

Councilor Graham said okay fantastic.

Tracy Stevenson said I just wanted to come up and say my husband that had this built for me. The story was like yours we saw these. They are going up everywhere and by the way there is more on our street. There is two more. I don't know if they are in the easements or not. There are two more on our street and a little further down. They are behind fences, and they are up front. Mine is obvious, it's right in of the driveway. But my husband we loved carports and we would go by places. I would be in neighborhoods. We had an automotive shop, me and my husband did here in town and he passed away on March 3rd and back in January we had a discussion early in the morning having coffee and he said come April I really want to do something special this year and I said I plan them every year, I think it would be nice if you did something for us this year and he shook his head. Didn't know what he was going to do but he obviously was thinking about it. Well time went on and then comes February and February we had a health issue in our family with our son, a heart issue and he was taken to Dallas and then you know you get busy with life and you forget about anniversaries and things like that. We were very scared. My husband, we had four employees and so he stayed back and he made sure that every, he took care of things while I was up there with our son in Dallas and after that things were looking pretty good. He came through his surgery very well and we were very blessed because the cardiologist told him that he had like three months to live and we were at two months to live because he had something called a unicuspid valve replacement

and that is very rare. Like 5% of the population have that so I could see my husband being extremely stressed and our son is like our right-hand man at our shop. He was and my husband use to say I wish we had three more of him and anyways long story short we got through that. On March 3rd, then March 3rd comes rolling around, it was a Friday morning we are having coffee and we are talking about the weekend. It's a payday for our guys and we are speaking about just what we were going to do this weekend and then he decided to go and get ready for work, and he comes back and he says I need to sit down I don't feel very well. I said yes please sit down. What's wrong and he says I don't know I can't seem to catch my breath and I said please sit down and I will get breakfast ready for us so I turn around and not as soon as I turned around I heard him go (sigh) and I turned around and I looked and he was kind of slumped and I knew and I walked over to him and I said Roger, and he no response and I had Bluetooth in my ear because I was speaking to my sister earlier and I called 911 and I knew he was gone. I don't know what happened but they stated it was a heart attack, so he went quick. Well, we went through all the funeral, let's see that day all of our employees lost their jobs because I couldn't run a shop and my son did not want it, it was just too big for him to handle. So then after that we went through the funeral and liquidating the shop. My husband was one of these people who if he was going to do a job, a big job he always took a deposit and so when we went to liquidate the shop we had people telling us your husband owes us money for this and this and this and so I gave it back. I wanted my husband to leave this world with a good name. I don't want to take their money, it's not my money so I gave them all their money back and at the same time I was liquidating the shop and selling parts and we had lifts and we had all kinds of equipment. I was able to keep our employees on for two more weeks and they helped me liquidate the shop and sell them some things and so we could pay for the funeral and all the things you do. Come April, April comes rolling around and I am home and you know my world is just broken and I just, when Roger passed away my income was gone. I used to work at Albertsons, I worked there for 30 years, and I was able to put in my time there and my husband said that he would like for me to come and work for him over there so I was gladly to do something so different. So, I went over there and I ran parts and I picked up customers but in the meantime while I was picking up customers while I was going through neighborhoods I noticed awnings and I loved them. I would and if my husband was with me, I would stop and say oh I love this one, look at this one, oh I love the way that looks. I don't like that one because it slopes too far. I don't like what that one is made of. I love this one and so instead of looking at houses and landscapes we looked at awnings and so we were just taken by them and if I really liked them I would make a U-turn and go back and sit and look at it and see how it was built. Now the question came up whether I would put sides on my awning, no. I have no desire to ever put sides on it, its wide open. There is no obstruction with any cars coming out, there is two little poles right there. It is as open, it doesn't even look like it is even there. The only thing it is, is shade. That is all it is and I have no desire to ever add on to that because that is not something that I really have been interested in. But well, okey so April comes along, I am home. There is a lot of things to do and a lot of things to sort through and I get a knock at the door and it was a man and he said we are here to put up an awning and I said I thought he had the wrong house and I said no I don't think that is for us, for me and he said no. I believe it is. He said, your husband prepaid an awning for you and I said and at that moment I cried. It was such an emotional moment I literally almost fainted and I just like how did this come about? He said your husband wanted

it to be a complete surprise for you and he said so can we put it up for you? And of course, I am not even thinking about permits or anything. I didn't even know who these people were, but it was a grandfather, his son, and then his son and I said sure yes let's put it up, when? And he said tomorrow would be fine so we put it up and I was out there the whole time just watching. They started at 8 o'clock in the morning and they stopped at 2 o'clock in the afternoon and it was just everything we both ever wanted. It is structurally sound. It's very close to the house. It can absolutely be attached if I needed to attach it and that wouldn't be a problem. I would be willing to do what it takes to keep it. It is very meaningful to me. It is very special. I know the meaning behind it. I know he was expected to be here and enjoy it with me and I don't have means to, and I will be honest when Roger passed away my income was gone. We had one of our fleets with SunCity Plumbing, that day they came and picked up all of their vehicles. People were in and out taking their vehicles and I could just see money going out the window. I just like ah, there is jobs we couldn't finish, people I had to give their money back to because we couldn't finish them and I had to bring my son back from his surgery even though he was supposed to have 13 weeks of taking it easy I just had to bring him back because he was the only one that knew what was going on with our business. My husband he would, he was his right-hand man and he knew what had to be done. That was really hard to bring him back but we were really careful with him but basically I am just saying that I have sold some things off. I was able to give my husband a very respectable funeral. He was a Veteran, and I was able to honor that and it was just something that he would have been proud of if he could see it and I had lots of support. I have family and friends just calling me daily. Have you heard anything about the awning? I am just getting so much support, but the thing is that with the awning I am not finished if I am able to keep it and want to have it painted to match my house. I want it, I take a lot of pride in my property. I don't let it ever falter with weeds and just junk. I love a clean if you just look at it. There is just no weeds. I am just always working on it but I will have it attached, I will have it painted to match my home and because when you drive down the street it is obvious it is there but I was looking at it the other day and I thought if I paint it, it won't be so obvious. It would be blended in and it would be beautiful. So, I called Locates to come out and mark my property as far as where is the utilities because that seemed to be a topic last time I was here and they came out and they marked my property and basically those utilities run perpendicular on my property. I don't know a lot about easements and things like that, but I did ask them a question and the question was this, if I ever had to have any done on this property would this awning be in your way? And I asked them because I waited for them. I wanted to ask because I knew I would be coming up for you all on an appeal and I wanted to have my p's and q's in order, and I just want to let you know that they said absolutely not. Your awning is absolutely not in our way. Like I said if you look at it there is two poles and its big and open. It is almost as if it is not there. The shade yes is nice. That is what you see but as far as you standing in front on my house. You can almost vision it not being there because all you have is just those two poles and it doesn't obstruct any kind of traffic coming through, easy to get in and out of but like I said I am just here to appeal the decision. The lady that represents my district which is Kasandra and she gave me a yes vote the last time and I was absolutely just ecstatic about it, thank you. And I just wanted to say that I hope you allow me to keep it. These are, there are two more on our street. Now behind my street there is like three and I am maybe like a mile and half from the county line because you know being right there you see them a lot and then in

neighborhoods, I see them. Like I said I can put anybody with me right now in my car and I can take you to every property that I have seen in this town and I can show you their awnings and because I have seen them and I think that is why my husband thought maybe it would be alright to have one. Now I apologize this absolutely was an oversight on his part and I honestly didn't even know myself and I am sure a lot of people come up and say that to you but we honestly did not know. We absolutely did not even realize this. That is probably an excuse a lot of people use but in our case that is absolutely the truth and I just hope that you can just consider that I am able to pay for my fees. I am able to keep it up. Now as far as taking it down I don't know really where the money would come from for that. I really don't. I don't know what my husband paid for this.

Mayor Miyagishima said I am sorry Sir, we don't take any comments from the public right now.

Tracy Stevenson said this was actually voted on and I lost by a vote, one deciding vote because I had another lady with the same situation with an awning like mine but honestly, I think mine is structurally built better because I knew what we wanted and it's just, this was voted on but like I said I lost by a vote, a deciding vote so.

Councilor Graham said thank you, thank you so much for the information and I am so very sorry for everything that you have been through. Thank you, Mayor.

Tracy Stevenson said okay thank you.

Mayor Miyagishima said thank you. so just for clarification.

Tracy Stevenson asked do I leave?

Mayor Miyagishima said yes ma'am. Just for clarification just as Sara was mentioning it is very possible a neighbor could have seen it, someone from codes is driving by, someone who didn't get a carport and reported it to the city probably codes went out there and it went up the chain. It probably went to Community Development and Sara and then they probably contacted the applicant and they said listen you didn't get a permit so you have to go to Planning and Zoning and Planning and Zoning says no or 3 to 3 and then it gets appealed to us. That is how it came up here. Okay so there is a few other people that wanted to speak I understand? Raise your hand of who wanted to speak. Just one, two, three. I have here Sara Vulco, Vicky Morgan, Lindsey Ray Jennings, James Allen and/or Brent Stevenson. Are any of them here? All but two. Okay the three that I called. If you want to come forward and Christine has to give you the oath.

Vicky Morgan said hi, my name is Vicky Morgan.

Christine Rivera asked do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Vicky Morgan said yes.

Christine Rivera said thank you.

Vicky Morgan said I am here on behalf of Tracy. My dear friend since grade school to attest to her impeccable character and the extraordinary circumstances surrounding the awning in question. Throughout our years of friendship Tracy has consistently shown herself to be an individual of outstanding character. She possesses a rare combination of qualities that can only be described as extraordinary. She is caring, always placing the needs and concerns of others above her own. She exudes positivity even when faced with challenges that would overwhelm many. Her resilience, generosity and her kindness are qualities that I have witnessed firsthand for many years. The awning which stands at the heart of dispute represents more than just the mere structure to her. It was one of the last gifts given to her by her late husband before his untimely passing. Every time she looks at it she is reminded of the love they shared and the memories they created together. It is a testament to their bond and an emblem of a life they built. While some may view it as just an awning for Tracy it holds profound sentimental value. Beyond the emotional significance, the financial burden of removing the awning would be undo and harsh, especially given the heartache she has already endured. I kindly request that you consider the exceptional circumstances of this case. Removing the awning would not only be financially expensive for Tracy but would also mean erasing a tangible reminder of her husband. I sincerely hope that a compassionate resolution can be reached in this matter taking into account both the character of my dear friend and this significant emotional implications of removing such a treasured memento. Thank you for your time and consideration.

Mayor Miyagishima said thank you Ms. Morgan. Just one quick question, are you a neighbor? Do live on that street or?

Vicky Morgan said no, no we have been friends since grade school.

Mayor Miyagishima said okay, thank you.

Vicky Morgan said we grew up, Junior High, High School, just good friends.

Mayor Miyagishima said okay. Are you a Bulldog or are you a Trojan?

Vicky Morgan said a Mayfield Trojan.

Mayor Miyagishima said okay so next.

Brent Stevenson said hello and good afternoon.

Christine Rivera asked can you state your name?

Brent Stevenson said Brent Stevenson.

Christine Rivera said Brent Stevenson do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Brent Stevenson said yes.

Christine Rivera said thank you.

Brent Stevenson said thank you council members, Mayor. I won't take up too much of your time. This issue was brought up a little less than a year ago. My mother, she went outside to the car and she slipped and she fell. Afterwards me and my dad were talking one night and he was talking about an awning and I told him I think it is amazing idea, it's great and for a guy that always wants to keep his family safe and I think everybody knows about that. I think he was acting out of his heart. This is all something that if he knew he was supposed to get a permit he would have. He followed the rules. He was one of those people. If he was here today he would be up here talking instead of me but I do hope that you grant my mother the ability to access a permit and keep her awning. Thank you very much.

Mayor Miyagishima said thank you Brent and again our condolences on the passing of your dad. Who is next? Yes, ma'am. Are you Lindsey or Sarah? Okay, Christine will give the oath.

Christine Rivera said hi Sarah.

Sarah Vulco said hi.

Christine Rivera asked do you swear and affirm that the testimony that you are about to give is the truth and nothing but the truth under penalty of law?

Sarah Vulco said yes ma'am.

Christine Rivera said thank you.

Sarah Vulco said my name is Sarah Vulco. I am a Regional Project Manager for the State of New Mexico. I worked for City of Las Cruces, Public Works Department, David Maestas, David Sedillo, I worked for both of those gentlemen. Also worked in Joint Utilities for Adrienne Widmer for a period of time. I am a licensed commercial contractor, civil engineering is my background. So, construction is not something I am uncommon to. So, Tracy Stevens called me, she is a friend of the family and she called a few months ago saying hey I got this thing on my door can you help sort through this I am not understanding what I am in trouble for. I said oh absolutely. I was more than happy to help this family they are upstanding family in this community and I took a look at it and said okay, yeah see there are some problems here and for me it's about due diligence. It's about checking facts. It's about seeing where things are. Is it feasible? Is it not feasible. I do million dollar feasibility studies. My structures are anywhere from $30-$50 million per structure. So having said that this is kind of a smaller thing than what I am used to looking at but all the same you know, utility easement, setbacks, things like that are still something that we deal with even on

large scale construction. So, for me it was about kind of reverse engineering this because I knew that she would be coming and speaking to Zoning Committee and finding out. When we came to the Zoning Committee I was expectant to see technical drawings and expectant to see utilities, things that were problematic to the city. I was expecting to see that information and that wasn't presented to us so after the hearing the big word was the easements, the utility easements. At that hearing I did ask that question is if the situation comes up that some infrastructure is coming in that needs access to that utility could she sign a paper with the city saying, I will have this thing removed at that time if it ever becomes a problem. This is something that we do with school campuses. We often get land that, raw land that hasn't been developed in those areas and there is easements on these raw pieces of property and you know we tell these districts we say yeah, we will build over that easement but you have to resume the cost of remove and replacement of that portion of the building if this becomes something because we never know these are undeveloped parcels of property. In Tracy's situation I went out there and looked at everything and it's a fully developed neighborhoods in all of the proximity of her area. So, I don't see any new infrastructure coming in. The next thing that was important to me was to call out Locates to find our exactly what was in that easement and it is in one of our exhibits in the packet and you will see that everybody that didn't mark on that paperwork. It is there not there. So, there was sewage, there was electrical, there was water, you can see the water meter there, and then there was also gas and those utilities are on one side of her property and they are just to tie into her home. There is nothing going this direction that is all in the street and I have the actual locates. I have confirmation on that. It is not my hearsay telling you that it's that way. I called it out because I wanted to know because of my background in the construction industry I wanted to advise my friend correctly. I didn't want to tell her, ah let's just go to the hearing. Let's do this, let's do that and we have her footing sitting on top of an electrical line. That would be unfair to her because and then that would be unfair to the community as a whole and so I like to look at things fully when we look at something and so from what I can see I think it is a case where it is something that could be approved, and it is something that wouldn't harm anybody. After looking at her property, she lives very close, I have to drive down Elks Drive to get to her property so I took a little cruise through the neighborhoods in Elks Drive and there were hundreds of awnings. Same case scenarios, apples to apples comparison and we are not talking apples to oranges. Some are apples to oranges, some are terrible, and some are not as close to property line. Some were closer to the proximity to the city infrastructure than hers was and they were older structures. I stopped and spoke with one gentleman and you know his structure was there and he said yeah a he didn't have any need to take his down and it was staying as far as he has concerned so, I see that the is lot of these in the neighborhoods already and I think in this situation where it wasn't necessarily Tracy setting this up for this to happen it is somebody who is no longer here and I feel like she is taking the brunt for all of it and that is really hard to watch my friend go through the things that she has gone through and I think if there was ever a scenario where it is a situation where we get to actually bring an ethical view instruction I think this would certainly be the case and I definitely appreciate your alls consideration to this situation and their family and the meaning that this carport has to them. That is my background in far as what I have seen and what I can see and certainly if I felt like this was a harm to community or the public in any way I would be the first person to voice that opinion. Friendship or no friendship and Tracy would be behind me on the same

way to that is that we would not want to harm anyone or anything and so thank you for your consideration.

Mayor Miyagishima said thank you.

Councilor Corran said I actually have a question, Sarah, Sarah, yes. Sorry can you come back please. Can I ask a question? Sorry.

Mayor Miyagishima said yes.

Councilor Corran asked you are referring to the locates report in exhibit A, correct?

Sarah Vulco said yes ma'am.

Councilor Corran said I have never seen one of these Locates Reports before but it looks like Century Link says cleared. I don't know if I misunderstand what cleared means or what this report means but it also says El Paso Electric says cleared so.

Sarah Vulco said so she has her utilities that are hooked up to that, so you probably have about 20 different people and which ones tell you that they are not cleared.

Councilor Corran said well the City of Las Cruces says that it was marked and so they say UFO cleared which I don't know what UFO cleared means either. I don't know.

Sarah Vulco said anything that has a utility they will actually come out and mark that for us and the reason for that is if we are going to be digging in that area then they will come in and they will mark it. If they don't come in and mark it and they mark it as a clear that means that we are good to go. We are good to dig. We can dig at that point.

Councilor Corran said I just wondered.

Sara Gonzales said Mayor, Councilor Corran, so I had the same question when I had received the report from the applicant or appellant whenever I received it. That is why I reached out to Jason Zeal with Comcast. He actually did a site check and said that one of the carport structures that was constructed is about 6 inches away from his line. So, there is Comcast that does run through the properties on this site plan. They are essentially running this direction from north to south and on the private side when I was doing this subdivision I learned exactly how they were actually installing these utilities. So, El Paso Electric will go 6 feet down, they will put a layer or a foot of dirt and then Comcast will come in on top. They are now putting them to where they are in the same trenches. So, they are actually utilizing this space in order to put them in. The applicant in December did provide the pictures of where Comcast and El Paso Electric had been marked on her property and so they would run parallel through these properties and that 12-foot utility easement.

Councilor Corran asked so the locates is? I just don't understand.

Sara Gonzales said the clearing of the locates just meant that the actually went out there and did their process. So that is just to tell 811 that they had completed their process.

Councilor Corran said okey, no well that is very helpful, thank you. So, there isn't a report about the, there isn't a report that reflects that 6-inch thing?

Sarah Vulco said well, they have to mark where they actually have to mark them so that I don't hit them with a backhoe. That is the whole idea of my locate. So, if El Paso Electric is in some place other then what they marked we are in a lot of trouble. But I have never seen locates lie to me like that. Locates have always been truthful because if I have a backhoe out there I don't need to hit an electrical line. With a backhoe that would kill someone. They are not going to deviate from that for me. So electrical lines were shown from the street through her property to her house.

Tim Pitts, Deputy Director Community Development said Tim Pitts Deputy Director for Community Development. Mr. Mayor, Councilor Corran the clear means that no, there is nothing in that particular easement. That is the utilities saying to the developer that there is nothing there for you to hit. If they don't put clear.

Mayor Miyagishima said excuse me Dr., Dr. Pitts I am sorry for interrupting.

Tim Pitts asked I need to swear in?

Christine Rivera asked do you swear or affirm that the testimony you are about to give is the truth and nothing but the truth under penalty of law?

Tim Pitts said I do.

Christine Rivera said thank you.

Tim Pitts said so yes, that is correct. That means that there is not in this one. I think Sara is talking about the other one that it is and is within okay, well. We know what this report says and it says clear and if it says clear that means they don't have any so but I guess the point I would make on this is under city code you are not allowed to build a building in an easement. So, what you would be doing is retroactively allowing them to do something you would have never allowed prior to if they came in before.

Councilor Corran said yes, which I understand. I know that is our gig here. So, thank you.

Sarah Vulco asked did you have any further questions? Okay, thank you.

Mayor Miyagishima said no. I don't believe so. Did you have a question for Sarah?

Councilor Flores said not for Sarah, neither Sara but I do have a comment for Mr./Dr. Pitts and Mr. Nichols and anybody else in the world who should be responsible. My

question is this, if the home buyer isn't given notice that there is an easement on their property because that is really an easement on the property that they paid for, right? How can you hold them accountable? Is it the contractor then? Was it the gentleman who knocked on her door? Does he have to be sworn in again?

Mayor Miyagishima said no he doesn't.

Councilor Flores asked is my question clear?

Tim Pitts said Mr. Mayor, Councilor Flores anytime you purchase property you are usually given at least a plat of survey. Some sort of document that shows that to you. But it is your obligation as a home buyer or as a property owner to know what easements are on your property.

Councilor Flores said they don't offer that in high school, or college, or anywhere I went to. I mean you know, I have bought several houses and I have never understood, and I mean I have never been given that information. Is it something that, is the burden on the homebuyer?

Tim Pitts said I would give advice to any potential home buyer please get a survey of your property even if it's an older one. Please have it available to you because you will learn a lot about what you are going to want to know when it happens.

Councilor Flores said this information I think it was one of my colleagues up here that said that we have to have more information about this. I don't know. I mean I certainly didn't know. I am not looking to put a carport or anything like that but I just think that the onus is on the property owner and then we have people doing this business, shouldn't there be an onus on the person who or the business offering to do that work?

Tim Pitts said Mr. Mayor, Councilor Flores I will let Sara answer in just a second. Yes, absolutely contractors are certified by the State of New Mexico to do their work. They know perfectly well when they need a permit and when they don't. The fact that they say they don't is them lying to you. That is not them not knowing it's them lying to you.

Councilor Flores said okay, thank you Dr. Pitts.

Sara Gonzales said Mayor, Councilor Flores I would just expand on that. A lot of times when we do work with property owners a lot of the older part of town they don't have surveys and so we do. We go and request them to go and get them and understand what is on their property, where their boundary lines are. Property pins are not clearly marked, sometimes they are unaware of it. It's the education going from the time you purchase your home, working with realtors, working with Community Development, working with different people to educate our public in knowing what is on your property, what you can do and what are the limitations.

Councilor Flores asked excuse me, did you just say that the seller of the home? Who has to provide that information? At what point does it become, who has that duty? To

whom is that duty owed? Who has the onus of getting that information to the home buyer? And what if it is a private sale between two owners?

Tim Pitts said Mr. Mayor, Councilor Flores you are absolutely right. If it is a private sale between two people without professionals involved it can be very problematic this way. It is the obligation of the seller to provide title. They are supposed to provide title to the buyer. That means giving to the buyer an abstract of the entire title what in real estate law is called the bundle of right. What it is you are getting when you get a Warranty Deed that is the seller warranting that what they are giving you is yours and there is no cloud of title.

Councilor Flores said it's called fee simple.

Tim Pitts said I am sorry.

Councilor Flores said it's called fee simple.

Tim Pitts said in fee simple, yes. That would be if you have the full bundle of rights, it would be in fee simple. So yeah, who is obligated to do that generally is the seller. Usually that is done through the title company and the title company gives you the. You are absolutely right that when you get into contracts in which you are doing this family member to family member or friend to friend it gets more complex. But just again my little PSA here for using professionals please, lawyers, realtors, you know bankers, they serve a very good purpose in our world and please make use of them.

Councilor Flores said thank you Dr. Pitts and thank you Sara, Ms. Gonzales.

Mayor Miyagishima said okay so there is no Lindsey Ray Jennings who wishes to speak or James Allen. Okay is there anyone else that wanted to speak? Okay so just a couple of things here. So Councilor Flores since you want to do the PSA , so I think it is the ranking of title goes the best is the Warranty Deed and then it drops to a Special Warranty Deed and then a Quit Claim Deed but yeah you buy land especially if it's a private sale you want to make sure that the land is not contaminated because once you buy it then you are going to be responsible for cleaning it up with the EPA. Okay so the reason why I asked Larry the price of the permit is because I think this is something here that the future city council needs to do. Before I go there the permit is or the setbacks is also needed for a couple of things, one also for and that is why they have a rear setback so that it is not to far so that if there is a fire the Fire Department or firemen, firewoman, or fire fighters can go there and put out the fire. So, I am just going to take it for granted, Chief you don't see any problem with this being how it is right here as far as the setback not being what it should be? I am not going to put you on notice but I will say that I don't think it is a problem but then also the esthetics for the neighborhood, you know? That is one thing there that we have to be cognizant of that neighbors are going to think well I didn't realize you could allow carports and then you have these. Most likely I am going to support it being allowed but there are a couple of things that I think that this council in the future needs to maybe think about doing. The reason why I asked Larry for the cost is and you kind of hit on this Councilor Flores is if the council doesn't do it people are going to keep doing this. So

maybe the council could consider for those that have not pulled the permit that maybe they pay and we can't do it now. Its ex post facto in the future pay five or six times what the cost of what the permit would be to the applicant and then also to the one who installed it, five or six times as well. Whatever council deems necessary. So that is like ten times more than the $85, that is $850 in a way of a penalty for doing that so that way there it would hopefully deter that and also from the contractor point of view they are going to say you know what we need to pull a permit because I don't want to pay 5 times more or whatever future council decides, five or whatever more. So just something to think about. I would have a hard time having the applicant tear it down especially the way and I appreciate the story that you presented Mrs. Stevens and our condolences on your loss. I wondered how it happened, but you know, so but I think this is something that I think our council should consider if that is to move forward in the future because if not you are just going to have these proliferate throughout the neighborhood, any neighborhood. You have a comment? So that concludes, is there anything more Sara? Okay, so just to clarify to vote yes would be to overturn the decision and to vote no would be to uphold the decision, is that correct? To vote yes is to overturn, that means allowing them to keep the carport.

Councilor Corran said okey, so if there is a difference between yes and yes with conditions, how do we, what is the number? It's a number thing? That what I want.

Mayor Miyagishima said or with conditions.

Christine Rivera said that would just be an amendment.

Mayor Miyagishima said where the conditions that was presented. Did you want to review those again please, the conditions?

Sara Gonzales said Mayor, Mayor Pro Tem, and Councilors the conditions if it were to be approved and reverse the decision made by the Planning and Zoning Commission would be that both sides of the structure remain open, the structure does need to be attached to the single family residence, to reduce the side of the utility easement unless you would like to remove that as an option or must obtain a building permit and required inspections.

Councilor Corran said sorry, I would like to, if we could approve the conditions without the utility easement then I would like to advocate for us to do that if we can given that it seems that the utilities aren't actually located there. So, if anyone, I would move to amend it in that way and then the conditions and the resolution to include these conditions.

Mayor Miyagishima said okay so for clarification Councilor you wanted to the one, the third bullet point?

Councilor Corran said the yes, the third bullet.

Mayor Miyagishima asked just remove it completely?

Councilor Corran said mm, huh.

Mayor Miyagishima said okay.

Councilor Graham said second that.

Sara Gonzales asked Mayor, and Councilors if I may? If we do remove to reduce the outside of the utility easement for the 12 feet staff would then recommend that the applicant obtain an encroachment agreement into those utility easements in case there is ever a time or need that utilities does need to go in there and actually remove that structure and put in the utilities for that neighborhood.

Councilor Corran asked okay, did that include, would I need to amend it to include that or would that be part of the permitting that would have to happen anyway?

Sara Gonzales said it is actually part of the amendment in a sense that way we just have it onto the record of knowing that was the next steps because that is an additional cost to the applicant.

Councilor Corran asked so instead of getting rid of that condition we could say, include an encroachment agreement in the permit?

Sara Gonzales said mm huh.

Councilor Corran said okay, I move to amend the thing in that way. Sorry, what were you going to say?

Councilor Graham said second.

Councilor Flores said I have a question.

Mayor Miyagishima said hold on just a second. So moved by Councilor Corran, second by Councilor Graham, that on the third bullet point to add to include an encroachment agreement. Okay. Moved and seconded. Councilor Flores, question?

Councilor Flores said yes, I do. Sara, Ms. Gonzales what is the encroachment potential? If we were to reduce the size to outside, whatever, so her property would be encroaching on the easement, is that correct?

Sara Gonzales said Mayor, Councilor Flores normally through the building process if someone would like to encroach on a utility easement we require them to get an encroachment agreement.

Councilor Flores asked what does that consist of?

Sara Gonzales said that consist of contacting all of the utility departments, getting them to sign a notarized as well as the applicant, it goes through our department, we

work with Land Management to create that encroachment agreement and have it on file, the applicant applies for that and she is able to keep the structure within that easement with the knowledge of knowing that if something or utilities needed to go in that the structure may have to be removed in order for them to install it depending on the circumstance. It gives the option of still being able to maintain the carport as it is now with the understanding that if utility infrastructure does need to go in within that 12-foot utility easement that is designated for utilities then they would have to remove that structure in order for them to put it in. It doesn't mean it is the case they may not have to go in and install it at any point in time, it just leaves that as an open option being that is the only peace located in this subdivision is the front 12-foot utility easement on all of these properties.

Councilor Flores asked and removing the encroachment the burden for paying for it would be on the homeowner?

Sara Gonzales said Mayor, Councilor Flores that is correct.

Councilor Flores said that could be a lot of money, potentially a lot of money.

Sara Gonzales said it could be removing the structure or it could be replacing it but that would be the same condition you would place on if it had to be cut back from the 12 foot utility easement now.

Councilor Flores said thank you so much Ms. Gonzales, thank you Mr. Mayor.

Mayor Miyagishima asked now it's just the, did you say who is in there, El Paso Electric and Comcast, or?

Sara Gonzales said from based on the pictures that I was able to see there is Comcast and El Paso Electric. It doesn't necessarily mean that Lumin won't come in or any other telephone company, any future development.

Mayor Miyagishima said however, it is possible that they could just put a conduit underneath they don't have to break it up, but I think that this would be applicable Councilor Flores. Let's say that there was a water line through there or sewer line and then it broke and the city needs to go in there and fix it and then that is when they break it up and that is but since there is not that there chances are slim although there is that very minuet possibility. Okay so it was moved and seconded and Dr. Pitts, I like him because he doesn't back down from you so.

Tim Pitts said Tim Pitts, Mr. Mayor 98% chance that there will be no need to do it. I think we are pretty confident that they are not going to come in but if they do, they will boar under, it's not an issue if, the agreement is there because there is property rights by utility companies in that 12 feet and they do have the right to know what we are doing there when it is against our code.

Mayor Miyagishima said absolutely, thank you Dr. Pitts. Okay so we have been moved and seconded on the amendments, so this is on the amendment, Christine.

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to amend Resolution 24-054 to add in bullet number three that they will obtain an encroachment agreement.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Becki Graham
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Councilor Becky Corran moved, seconded by Councilor Becki Graham, to Approve Resolution No. 24-054 as Amended.

RESULT:	**Carried**
MOVER:	Councilor Becky Corran
SECONDER:	Councilor Becki Graham
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.2 RESOLUTION NO. 24-055: A RESOLUTION APPROVING AND ADOPTING A REVISED RATE SETTING PROCESS.

Domonique Rodriguez, Assistant Utilities Director gave the overhead presentation.

Mayor Miyagishima said I was probably the only one here when this was put in place by Dr. Jorge Garcia. Dr. Garcia came to us years ago and he said you know what I want do this Utilities Advisory Group made of citizens, by doing so he felt that we are all elected by the public of course and we are accountable to the public but he felt that by having the citizens out there that we could choose from in different areas, not elected, it's like government of them. You know what I mean it came from the neighborhoods from the different parts of the city and also because it is pretty technical and he wanted to have some consistency on there. So, this group was really relatively new at that time. This utility group, UCAG, it was something there that I thought was working well but from what I understand they are wanting to do away with that and allow the Utilities Board to make that call. Now I can tell you and I am just looking to the future if there is a time where the utilities goes up 4%, 4 ½ % because it says anything over 5 and they pass it they are going to have people coming to this council chamber wanting to know why you all allowed that and you are going to have to respond saying well we gave the authority to them and they are going to say that they are not accountable to the public you guys are. So, I just want to give you both sides. I don't think I will be supporting, I know I am not going to be voting for this because I don't think that, that is why we have the Citizen's Board so that we can tell the residents when they tell and come forward you know we put people from your neighborhoods on this board for that reason. They are not politicians, they are not elected officials, they are people who want to serve their community and have went great length to learn about this and listen to the presentation, Dr. Garcia and his team they weren't putting them in the headlocks and you got to vote for this you know. If thought this was good, bring it forward and if not well then don't. That is why I think that I won't be supporting this. I just feel that unless I am wrong. I think that is what they are wanting to do is take that opportunity away

and let them be able to do that and take away the responsibility from City Council.

Councilor Bencomo said as you all know as well as Councilor Abeyta sit on the Utilities Board and I think Mayor, I agree with you. The only thing I don't agree with you is on that I think that we can make an amendment today. I say that because ultimately, we have to remember that our utilities is an enterprise. Our utility literally only makes money to be self-sustaining. As our city grows so are our utility needs, so will ensuring the safety of not only our workers but our community members. That will grow and we have to make sure that they have the funds unless we are willing to give them money from the general fund that is a different question, right? To me it has just been very obvious that we don't like it but rates have to increase because our city is growing and it just depends on how we do that. So, when we discuss this at the Board unfortunately there was an abrupt end to the conversation and so we couldn't make some of these suggestions before they came to you all but I guess to me if this dies today we will go back to the board, right? Which could happen or we can amend it today, correct? And I think for me that feels more important to do because the longer we wait on making this kind of decision the more impact it will have on our utility and the more impact it will have on our customer base. Can you go back to page 6? So, what I see here is this phased in adjustment is approved, LCU Board can approve an annual increase not to exceed 5%. What it says on the packet is different. It says, under tariff approval under C, annual rate increase if phased in and adjustment is approved the LCU Board has the authority to approve and annual increase not to exceed 5% and I think to me that is where I agree with the Mayor in that the responsibility lies within this body, right? I think we take the recommendations of the board and ultimately those rate increases especially if significant ultimately are the responsibility of this governing body and so to me I would at least like to make an amendment here that says LCU Board can with approval from the council can approve an annual increase not to exceed 5%. Okey, so that would be one of my amendments and my other amendment would be around and you actually said it too Domonique, but it is not in here around the three year phase in. Can you repeat that again?

Domonique Rodriguez said if the rates are phased in and I think you are referring to a phased in adjustment is approved for a period of three years which was done with our waste water and gas rates because we review the revenue requirement and do a test year which is a year out of known and measurable changes once that third year is complete things have happened in those years that were not brought up in the rate review which means we are essentially three years behind in the collection of rates. That was very apparent during Covid, inflation rose up, every year annual salaries and benefits are increased and so when the rates are phased in over three years we may have captured the next year after the test year but year 2 and 3 after that are no longer included because we don't know what those are going to be if council will approve them and we for sure didn't know what that inflation was going to be when Covid hit. Is that what you are referring to?

Councilor Bencomo said no I am not but actually, I am glad you explained that again. Honestly think the other thing for me that I remember thinking about during our meeting, I don't know if you remember this for me it was the transparency issue of it all, right? Ensuring that when we are making decisions in the two bullet point in here if

full implementation adjustment is approved LCU Board can approve an annual increase based on consumer pricing index. For me my amendment would be with adequate and thorough public input added to that. I guess for me it is critical that we are explicit about that. So that is my second amendment, did you write it down? Honestly for me if those changes happen, I will be supporting this again because of the fact that we are a self-sustaining utility and we have to ensure that they are able to do their jobs.

Mayor Miyagishima asked so do we need to even do that then? Right now, they need City Council approval to raise the rates. This is taking it away is what it is doing.

Councilor Bencomo asked the current language you feel is taking it away?

Mayor Miyagishima said oh it is.

Councilor Bencomo said correct, I am trying to add that back in with an amendment.

Mayor Miyagishima said it hasn't been removed yet. So, we just vote this down and we are there. Nothing has changed.

Councilor Bencomo said nope because they still need a rate process. This process still needs to be implemented.

Mayor Miyagishima asked is that? Adrienne, is that the case?

Adrienne Widmer, Utilities Director said maybe there is a little bit of confusion here. There will be the whole normal rate process with the input where the Utility Board is the one who is actually going out and gathering that information, coming back, getting the information, putting it together. Then there is going to be recommended rate increase, that will be brought to council. Council has the opportunity as they have in the past of saying either we will go ahead and implement the rates all at once or previously you all have approved rates based on percentages over the next like three or so years, which is what Domonique was referring to. That also stays the same. The only thing that would be slightly different is at on a yearly basis Utility staff will go ahead and take a look at that and see where we are at much like Councilor Bencomo was talking about is that when that one year comes up afterwards because we are already now behind a little bit that 5% we were saying can it be something the board can approve automatically and that is where if I am not understanding correctly, please correct me and that is where Councilor Bencomo was like I would rather Utilities staff come up and say okay if it is phased in the 5% we make that recommendation and then we bring it to the board, after the board says yes, we are recommending that and you all still have to make the decision on that. I believe that is what Councilor Bencomo was saying.

Mayor Miyagishima asked are you saying that if we do these amendments that the UCAG will stay in existence, or it will go away?

Adrienne Widmer said that is the one thing that is that in this particular one the ones

that are acting as the UCAG from then out is actually going to be the Utility Board. This last go around when we did all of the rates by the time we got to the very end of the rates because UCAG, you bring them on and you go through all four utilities. Well by the time we got the very last utility the UCAG that already understood everything they all left and we were left with a bunch of brand new people on the very last stuff and it was difficult to get them trained up, get them figured out what is going on and that is where it made more sense for perhaps the Utility Board that is always consistent to do that outreach. So, the outreach will stay the same it will just be completed by the Utility Board and staff as opposed to the UCAG.

Mayor Miyagishima said basically the UCAG kind of morphs in the Utilities Board. So basically, it does go away.

Adreinne Widmer said yes, that is correct.

Mayor Miyagishima asked so then the Utilities Board becomes the UCAG?

Adrienne Widmer said correct.

Mayor Miyagishima said the reason why I can support that is because in its only little mini way having those five members of the public is like taking 5 people from public participation and saying come here and look at this stuff, what do you think? You are a rate payer, are you going to support this? What I think the future council needs to look at is to make sure that it doesn't like this was already a done deal. We are pulling people from the public here. They give us their application and the Mayor with the advice of council approves those members but I think it is important that people from the public be allowed to serve on this UCAG. Maybe down the road pay them, pay them a little bit of money, $100 a meeting.

Councilor Bencomo said we do that with the Utilities Board is majority members of the public.

Mayor Miyagishima said yeah, but there is still councilors.

Councilor Bencomo said there are only two people who aren't actually.

Mayor Miyagishima said I just think that it is still good that we still have that UCAG. That is my thinking, but I appreciate your compromise on there. I guess they can think about it.

Councilor Abeyta said I am also in support of the amendments brought forward. I think when we have had these discussions at the Utilities Board there has been a bit of a concern that council is ultimately responsible for any fiscal items, and I do hesitate to turn that over to a different entity especially as we have seen you know this year a little bit of issues with different types of boards. Now I will say that the Utilities Board is well versed and trained and so I think it has a really great high quality standard as it needs to be but in the future that could be an issue so I do think it is up to the council itself to really make sure that it is the ultimate decision maker within that so I am in

support of both the amendments and I think adding the language with the public comment, you know that full and thorough it will be able to grasp what we need from the public in those ways.

Mayor Miyagishima said I appreciate it and I appreciate the amendments. I just thought of something. How many people are on the UCAG? Five? And how many people are on the Las Cruces Utilities Board in addition to the two Council members?

Domonique Rodriguez said seven commissioners.

Mayor Miyagishima said how about in the future considering if, I won't be here next year so add, right now the other five members they all have to have certain backgrounds if I remember correctly. How about if the council expands that in the future to 9? Two more people and they don't have to have that background so that you have those people from the public who may not be an engineer, who may not be an attorney who may not have those certain qualifications then that way there it would feel better and you have members of the public at least being able to serve their community. They don't have to have that technical expertise of what they are required on the current Utilities Board, and I think that would be a way to let the public share in some of their concerns.

Councilor Bencomo said sure the conference table is not big enough for sure and/or yes, we also expand the requirements to be on that board. I am not an engineer. I have zero experience and background in anything utilities related but guess what I do have? I am a social worker. I am an organizer. I understand public input ad I think that is why I have been able to number one fall in love with the Utilities Board but also be a good advocate on there because I have that additional expertise and so we could also expand those expertise to be able to include a variety of a larger diverse group of people.

Mayor Miyagishima said if you think about it the larger the more stable it is and so if you get the majority of that wanting to move forward with an increase that is pretty good. That means that you are going to need five people in the affirmatives.

Councilor Abeyta said I think the only requirement I could really think of is just making sure they are a rate payer and then from there because I think we all bring different backgrounds. Even someone who doesn't have any technical experience they are still having to use the services and so they are an expert because of that so that would be the only requirement.

Councilor Corran said I just want to thank you for the presentation and thank you for the amendments. I just want to sort of speak to the idea that we make the decision. I think there is also something to that to speak to the idea that I sat through the gas rate making process. It was painful. We were making up for years of kind of not having kept up with the cost of things and then we were hitting folks with a very large increase in a very short amount of time, and I feel like we all felt that was problematic. To me I would like us to never be in that position again and so this process seems like it is a step to remediate that particular dilemma that we face as policy makers and I

don't want to experience that kind of rate making, bigger rate making process again where we are having to catch up on safety issues, right? So, I think for me this provides a little bit of an outlet to allow us to have less fraught decision at those times when we make those decisions because we are keeping up a little bit. I think it was 11 years or something that it had taken us to update the gas rates and so thinking about how much of a difference this would have made in that conversation I think for me the amendments that include still we have to be accountable to these rate increases. I think given those amendments I would feel more comfortable doing so because I do think we need to be held accountable to that, but I think it is a lot easier to be held accountable in small doses over a long period of time than in one large dose in one year. So, for me that part of it is very persuasive to me so I just wanted to speak to appreciating that you brought a way to include the council's input still in that so thank you.

Mayor Miyagishima asked is there anyone here that wishes to speak on this issue?

Councilor Bencomo said I would like to make a motion to amend the resolution under 8I to read, if a phased in adjustment is approved with City Council approval LCU Board can an annual increase not to exceed 5%.

Councilor Corran said I second the amendment.

Christine Rivera, City Clerk said clarification, it would be 8C-i.

Councilor Johana Bencomo moved, seconded by Councilor Becky Corran, to amend Resolution No. 24-055 in Section 8C-i, if a phased in adjustment is approved with City Council approval LCU Board has the authority to approve.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Becky Corran
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Councilor Johana Bencomo moved, seconded by Councilor Tessa Abeyta, to amend Resolution No. 24-055 to amend Section 8C-ii and put that the LCU Board can approve and at the end add with public input and City Council approval.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 24-055 as Amended.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Johana Bencomo
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa

Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

8.3 COUNCIL BILL NO. 24-009; ORDINANCE NO. 3051: AN ORDINANCE REPEALING AND REPLACING ARTICLE II OF CHAPTER 34, DRAINAGE AND FLOOD CONTROL OF THE LAS CRUCES MUNICIPAL CODE TO AMEND THE FLOOD REGULATIONS TO REFLECT HIGHER STANDARDS ON FLOOD MITIGATION.

Tim Pitts, Deputy Director Community Development gave the overhead presentation.

Mayor Miyagishima asked can you go back to the previous screen please? I just want to mention I don't sell flood insurance anymore but on this subdivision plat are you suggesting that when a developer does the entire subdivision that they raise it or when they sell lots and when they sell a lot the contractor is going to build a house that is when they have to lift it and make sure it is compacted by a foot or so?

Tim Pitts said currently when a developer comes in to develop a subdivision if they are greater than 5 acres we are not going to let them develop with flood plain in lot. So, what we do is we have them raise the lot at that time if they are going to raise them or do whatever they need to do to modify the storm water, build ponds that move the water around, whatever it is they are going to do. Typically, in Las Cruces, typically we fill and we raise the lots and so we will have the subdivision builder, that developer put the lots at above the base flood elevation and so when you come to build a house on your own. Anybody building in a subdivision that has been subdivided in the past 20 years there are virtually no homes in flood plains in those cases. There were a couple of older ones that we still were building on.

Mayor Miyagishima asked just to clarify, so when the homeowner purchases the land, the lot it is mostly already has been lifted if it was in fact put in the flood zone?

Tim Pitts said yes.

Mayor Miyagishima said okey that is all I needed to know. Councilor Corran and then Councilor Flores.

Councilor Corran said I just wanted to say the TSI Committee did recommend and support these amendments and I really want to thank Angela for coming and presenting and for you all for thinking about this and allowing us to have that conversation there.

Councilor Flores asked you are very clear about flooding, if it comes from the sky and floods your house home insurance doesn't cover it, right?

Tim Pitts said if it comes up from the ground. If it rains down on you and you have a hole in your roof that will be covered by your homeowner's insurance or some other insurance. If it comes let's say water comes down the road and washes into your house or the rain comes down and it rises up around your house and comes in that is flood insurance.

Councilor Flores said this is something that I encountered about 6 ½ years ago when I was campaigning in Los Abuelos area, you know that gated community, it is right next to the arroyo. That arroyo did overflow at one point. I don't know if you were in the city working for the city at the time or living in the city but the house, there was a house that was affected. It rose and those people had no recourse whatsoever. I don't know if it ever came to your department?

Tim Pitts said I don't remember the instance of that arroyo does run pretty heavy in heavy rain and it has some issues. I wouldn't be surprised to see that happen and in the circ of it I would say if you are not in a designated special flood hazard area you still can purchase flood insurance and you can purchase it through the federal program if you want and you get a pretty good rate on that if you are in a situation it is worthwhile.

Councilor Flores said there is so much information that the public doesn't know, and Mr. and Mrs. White were the occupants of that house, and they were told and I don't know if it was the city who told them but it was someone that they thought they knew what he or she was doing that if they added to the wall it wouldn't flood. Well, it flooded anyway, and they had no recourse. It was so difficult for them that Mr. White ended up, they were elderly, Mr. White ended up dying from a heart attack because it was so difficult. Now my question is this, why would the city allow any housing to be built so close to an arroyo and don't tell me it never rains in New Mexico or in Las Cruces because that is what did it for them. So, do we have an ordinance apropos to all of this? Do we have an ordinance that addresses how close a structure, home, whatever can be built next to an arroyo? I heard that there is, but it looks like it has to be modified.

Tim Pitts said I think I have a pretty good idea of what you are talking about, and I agree with you. What I would say is that this ordinance is the one that keeps people from building homes in flood plains or if they do they are elevated or somehow modified to modify the flood plain to minimize the damage but keep in mind that one these floods we are talking about here are what are called the base flood and what that means is the flood that has 1% chance of happening based on the rain fall that falls. You can get very localized conditions that are much above the 1% level and based on what people are doing. This is one of the reasons why in Elevate we propose standards for arroyos for flood water, for keeping the flood plains clean and you will recall years ago, it has been six or eight years now. We did an arroyo management plan, and the idea was to put buffers around these arroyos so that they don't get developed. So, these ideas are still here, and we are still working on them. Obviously from a land development prospective you want to use all the land you can but when it comes to risk, we the city has to be aware of the risk that we are taking on when we do those things and sometimes we build to close to an arroyo and it doesn't give much room for error.

Councilor Flores asked as apropos of the Realize Las Cruces you say this and that is in there but I am talking about an ordinance that would prohibit and I wish that Royal Jones was still here so he could hear this and John Moscato, that would prohibit any

structure, any home, any business and whatever it is and I remember talking to Sharon Thomas about it and she said we do have legislation or ordinances or something but it obviously didn't work for Mr. and Mrs. White. Do you know whether we have a very specific ordinance? Someone said it was like 50 feet or something. I know it is off topic but it is still subject.

Tim Pitts said it is not off topic because this is actually the issues that Angela is working on and we are also working Sirjana and her group on open space and open space preservation to exactly handle these issues and I think we have some things. We have some things we will bringing forward. It takes time because there are differences of opinions amongst different people and what we are trying to do is bring forward an ordinance that is enforceable and will last. It is not something that will get gutted by somebody and say we aren't going to do that. We want something that we can enforce going forward. The issue in the Alameda arroyo is a well-known one we know very well with what is going on there. There is a lot of discussion of what to do with it and so in that case we know, and we have dealt with at least several of those subdivisions have had to raise their lots in order to get them out of the flood plain. So, we are enforcing what we have and as we move forward we will be enforcing other things like I said we have goals.

Councilor Flores said I definitely hope it is done soon because you just copped to the fact that the city is aware. I would like to see it before I leave council in a couple of years.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Approve Ordinance No. 3051.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
SECONDER:	Councilor Becki Graham
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

9. BOARD APPOINTMENTS

9.1

None.

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 <u>COUNCIL BILL NO. 24-010; ORDINANCE NO. 3052</u>: AN ORDINANCE AMENDING LAS CRUCES MUNICIPAL CODE, 1997, AS AMENDED, (LCMC) CHAPTER 11, FIRE PREVENTION AND PROTECTION, ARTICLE II, FIRE PREVENTION CODE, BY REPEALING THE ADOPTED 2015 EDITION OF THE INTERNATIONAL FIRE CODE AND ENACTING THE 2021 EDITION OF THE INTERNATIONAL FIRE CODE AS AMENDED WITH CERTAIN RELATED APPENDICES.

Council agreed to bring it forward.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 MAYOR MIYAGISHIMA

This Saturday, normally we get a proclamation to support small business but I got this a little bit late to do a proclamation so I just wanted to remind people this Saturday is Small Business Saturday and if you could shop local, I told her that I would point that out. The majority of those who shop local all those local businesses that money stays here in the community instead of being shipped off to corporate places.

A while back we had and Representative Lujan was here and I think there was supposed to be someone else and if you recall they were wanting to see about getting money from the Legislature to do a study to turn Lohman from four lanes into three and so I think there are a couple of sponsors who are willing to do this but what they are wanting to know was if the city could either front the cost and then get reimbursed by the legislature and in order to do that you would have to have some kind of agreement. I don't know is that is going to be done between now and the end of the year, but I just wanted to put that on your radar.

Councilor Flores asked where does it go from here? They want to do that, but Mr. Sedillo said it would be difficult to do that because there is so many businesses that have access, direct access. I don't know if that can be done.

Mayor Miyagishima said this is just about doing the study. The study may point that out. I don't think I can get this done before the end of December and I think our last meeting is probably December 18th or something like that.

11.2 COUNCILOR GANDARA

I wanted to speak to Ms. Martinez I believe that came and spoke in regard to the parks and the conditions of the park. The pictures speak volumes and I think people misunderstand who runs the tournaments and the different leagues and such. I would advocate for Parks and Rec to be more clear somewhere. Maybe on our website because I think people think well you charge all of these fees for the season and when tournaments come this is what you are charging and people are left with the impression that this money is in some fund that the city has and you are not using it directly specifically parks, like Maag Park and Paz Park and the rest of them. I think it would be nice to have somewhere where it says who the league is and responsible and those things, but we are ultimately responsible for the maintenance of the parks. So Ifo and I have been talking about updating our parks and what can we do more specifically, and I had recommended puling money from different places, maybe specifically Telshor Fund to update. What is it going to cost to update the parks and keep them maintained? I have received in the last few months several complaints about the parks and sort of the maintenance and people getting there that need to open up the parks at different times, the restrooms, the gated areas and more specifically for ADA accessibility and for some reason maybe staff feels like only one set of gates should be opened which makes it really difficult for our elderly community members and people who have issues getting out of their vehicles into the stands or seated to watch their grandkids play so I am hoping that we can be a little more

mindful of that and I know Ikani, you have been great and I appreciate when I have sent complaints over to you and you have addressed them very timely.

Special thanks to the NeighborWoods Program Tree New Mexico who planted our first set of trees across the neighborhood in the Lift Up area. It was a really great Saturday morning to do that. They had a number of volunteers. They had been working in the neighborhood and Lift Up area reaching out to neighbors asking if they wanted to have trees planted so we planted a number of trees and then they gave 50 plus trees away to a number of the neighbors and it was just a great program and I think they are going to be doing that three times a year. They have a certain amount of money to do that. I thought that was a very nice way to continue to beautify our neighborhood in the Lift Up area. Just a PSA the surveys are out. I have received two in that Lift Up area addressing kind of that same survey that was sent initially about what are you seeing? What are the priorities? Those kinds of things. I am not sure if there is a deadline on that and it would be nice to know that so we can get that information out.

11.3 COUNCILOR FLORES

None.

11.4 COUNCILOR CORRAN

A follow up to a meeting I had last week, I am hoping, and I sent a follow up email to Ifo and I am hoping that we can consider the Peach Tree Hills Apartments Phase II Affordable Housing Complex before the end of the year. That plan has been developed. They are going to be breaking ground on Phase I but it is correctly eligible for the low housing tax credit but will end at the end of the year so I am asking if we can somehow move that into the queue so it can be considered by council. I think it is already in the consideration queue, but I am hoping we can make sure that is considered by council before the end of the year so that funding opportunity and frankly then that development don't disappear.

I also want to thank Officer Triston Smith who went out and met with Representatives from the French Brothers to talk to them about opportunities to reduce theft of building and construction materials. So even clarifying some things that were really just confusion about what part of town this was in and if it was the county or the city and so I really appreciate Officer Smith for meeting with them and connecting and following up so thank you for that.

I also want to give a quick shout of gratitude to Representative Rubio who came and talked about mobility justice at the last TSI PRC and what that looks like in terms of our own planning and thinking about mobility in our city. Next month there will be a conversation about bus stop shelters so that will be something, thanks to Councilor Bencomo for providing the lead on that.

I had a community meeting on Saturday at the ASCMV, which was great. The official grand opening will be on December 7th at 2 p.m., so you will be hearing more about that soon and the animals are there and the staff is working from there and adoptions are happening. But I do want to thank from my community meeting in particular Catrina and Grace who really made it happen. It was a weekend thing. It was sort of a

different model then maybe community meetings normally go. There were folks from Economic Development, Codes, including Libby the dog who was a big hit as was McGruff the Crime Dog. Public Works was there, Quality of Life, including the Library and Senior Programs, Animal Control, and ASCMV folks who hosted us and put up with us going around and giving tours so I appreciate everyone that made that happen, thank you.

The last of my items is a shoutout to staff but also just to a shoutout to our city and thank you to Ifo, HR, and in particular Gail Estell in HR. The City of Las Cruces in the past was ranked 73 out of 100 in the Municipal Equality Index which is the human rights campaign measure of a city's support of LGBTQ+ people who live and work there. Last year we were number 73 and number 3 in the state, this year our score was 89 and we are second in the state so that is a really dramatic increase from barely passing to please give me a little extra credit so I can get an A. I think next year we will be in the A range, so I just want to give a shoutout to Gail from HR working on that to increase our score and really just say how proud I am to work here and know that we are committed to making Las Cruces great for LGBTQ folks and that it is recognized by a national organization.

11.5 COUNCILOR BENCOMO

Much to like what of our public comments said today about bringing forth certainly complaints and concerns but also in good faith in a way that says I really want to work on these issues and honestly these pictures are really concerning. This is not a bathroom facility I would feel comfortable using and I think we absolutely need to figure out how to address some of these issues. Ikani, have we allocated the $2 million GO Bond that was for parks infrastructure and improvements? I cannot remember.

Ikani Taumoepeau, Assistant City Manager said at this moment I am under the belief that we are still planning and assessing those. We are still talking with the team and meeting with GO Bond internal team on that, but we haven't spent that from my understanding.

Councilor Bencomo said I know that there is a lot of priorities and not enough money, right? For parks especially. Perhaps that will require a Work Session soon about how we address these things because we should all want a higher standard and I think that is an important conversation for us to have to figure out what the gaps are. What Parks and Rec if they are saying we need XYZ I want to be able to hear that.

A couple of weeks ago I spoke about Casa de Peregrinos requesting for an additional grant given the food cost and Ifo said get us a number and Lorenzo did get something to me in writing and I will share that with Christine so that she can share that with everybody but they are requesting for a $100,000 grant to increase its availability to provide healthy nutritious food to low income residents. One of the biggest reasons is inflation. The increase in food prices of over 12% cost caused by the Covid pandemic has not gone away. Food prices have continued to be on the rise. The second issue is an increased client demand and lastly a decrease in available funding. So, it is really sort of this perfect storm and I would like to honor the work that they do for our community, and I am happy to ask if they have gone to the county as well as perhaps

this could be half and half. I did want to bring that back and put it on staff's radar again and because I think this is a really critical moment especially as we go into winter months.

Mayor Miyagishima said I am supportive of that $100,000 so I would like if there is a consensus to at least have Ikani have Sergio work up something. Put up to $100,000 that way there if we get commitment from the county then we can to up to $100,000 minimum of $50,000 but say up to $100,000.

11.6 COUNCILOR ABEYTA

Reminder that there is not a Quality of Life meeting this month we will have an early one next month. The second item, I do want to say thank you to everyone. I was gone last week I had two conferences that I was attending. One was with Public Health but the other one was National League of Cities. From that acting as a State Affiliate Rep looking at other states and with a western group which is actually quite expanded but honestly New Mexico is doing pretty well in comparison to a lot of different states just as far as what types of funding is coming back into cities and the type of support that we have had especially if we look at what types of capital outlay that has gone back across the state over the last year or so that was fairly positive to look at and view. I attended a few different workshops and some on expanding your municipal policy through afterschool programs, to looking at different types of housing and the governmental agencies so it was very informative and that is all.

Mayor Miyagishima said there will be no Work Session next Monday.

12. CITY MANAGER REPORT

12.1 IKANI TAUMOEPEAU, ASSISTANT CITY MANAGER

I have been told by PIO Office that if you get a chance remind people to vote for the Chile Drop. Link is on the city website, lascruces.gov. Go to Chile Drop in the Hot Topic section and you can vote daily. You get two votes a day for the next two weeks. We are currently in second place right now. It is a USA Today Readers Choice Travel Awards Contest for the best drop on New Years.

During public comments we heard about the resident's experience at the baseball fields, Paz. There is a few things happening and I just wanted to let council I hear that your team is working on bringing to you on budget season Parks and Rec team are currently assessing projects to elevate and enhance certain facilities that have over time that perhaps over time worn down and do need a bit more funding. Our team is working on that and during budget session you should see some of those projects. In addition to that I appreciate David Sedillo for shooting me an update, the Paz parking lot currently has a project they proposed to add some millings and add some upgrade the parking lot. That is something that we have tentatively proposed between December and February right now but due to cost and timing that is something our Public Works team is going to do in house and maybe more in the spring but that is just an update I wanted to share with council happening at that baseball field at Paz Park parking lot.

Additionally, there was mention about Peach Tree Hill development and hopefully

getting that in front of council for before New Years. I appreciate our City Clerk reminding me that is something that is coming in front of you on December 4th for a precommitment for Tax Credit.

The second to last announcement I wanted to make, kudos to our VLC team. They have worked very hard this past year and all years but this past year they have committed themselves to really go all in on the Best of State Events. There is something called the New Mexico Hospitality Association Top Hat Awards which is the best of the state and we had nine nominations and we are finalist on nine of those. We were awarded four awards. The first being the Best Broadcast Campaign for the Real New Mexico Online Broadcast Streaming Campaign. Judges mentioned that the messaging was captivating and visuals as a factor in their decision. The second award was Best Outstanding Event for Spaceport America Cup. The event brings thousands of students from around the world to Las Cruces to participate at the event. The third award went to Hospitality Professional of the Year for Russell Hernandez who is on the VLC Board, Experience Mesilla, and incoming Mayor for Mesilla. Judges mentioned his work in the community and education promotion of Las Cruces and Mesilla and the last award was Best New Experience for Mira Las Cruces. This was a tie, but judges mentioned that the turn out for a first-time event of the highlight of the culture and community was a huge factor in their decision. Visit Las Cruces notes that its dedicated talented staff and the importance of partnership with local state agencies like NMCO, Simply Social, Sinuate, Sunny 505, and some other supporting community partners assisted in this.

Tree Lighting Holiday ceremony will be from 6-8 on Saturday, December 2nd and the celebration features live music, exciting activities, photo opportunities, food trucks, everything and more. The tree is scheduled to be lit at 7 p.m.

13. ADJOURNMENT

13.1

Councilor Becki Graham moved, seconded by Councilor Tessa Abeyta, to adjourn at 4:12 p.m.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
SECONDER:	Councilor Tessa Abeyta
AYES:	Mayor Ken Miyagishima, Councilor Kasandra Gandara, Councilor Tessa Abeyta, Councilor Becki Graham, Councilor Johana Bencomo, Councilor Becky Corran, and Councilor Yvonne Flores

Mayor

City Clerk

24-063

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Barbara Bencomo	**Department:**	City Manager's Office
Program:	Council & Community Support	**Line of Business:**	Council & Community Support

Title: **A RESOLUTION APPROVING THE CITY OF LAS CRUCES' LEGISLATIVE PRIORITIES FOR THE 2024 NEW MEXICO LEGISLATIVE SESSION.**

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

PURPOSE(S) OF ACTION:
To approve legislative priorities.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
Historically, the City of Las Cruces (City) has been successful in obtaining state capital outlay funds through the local legislative delegation annually. At the December 4, 2023 City Council Work Session, staff presented possible capital appropriation projects based on the intersection of input from state legislators and council-approved plans such as Elevate Las Cruces. The list of projects will be used to seek capital outlay funding during the 2024 New Mexico Legislative Session beginning in January 2024. Projects were selected based on project readiness, the project being listed on the State of New Mexico Infrastructure Capital Improvement Plan (ICIP) for 2024-2025, anticipated additional funding sources, and scalability of projects.

Prioritized projects are shown in Exhibit “A”. This Resolution will move those projects forward to be submitted as requests to our legislative delegation. This resolution also puts forth policy-related priorities which the Council supports, such as those related to sustainability, in Exhibit "B". Support for these priorities will be communicated to the legislators for their consideration.

SUPPORT INFORMATION:
2024 Legislative Capital Outlay Priorities Exhibit B
2024 Legislative Capital Outlay Priorities Exhibit A

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 approve the Resolution and authorize City staff to move forward with submitting the projects for the 2024 New Mexico Legislative Session.
2. Vote "No"; this will not approve the Resolution and require Council direction.
3. Vote to "Amend"; this could delay the process and will require Council direction.
4. Vote to "Table"; this will delay the process of preparing for the 2024 NM Legislative Session and require Council direction.

RESOLUTION 24-063

A RESOLUTION APPROVING THE CITY OF LAS CRUCES' LEGISLATIVE PRIORITIES FOR THE 2024 NEW MEXICO LEGISLATIVE SESSION.

The City Council is informed that:

WHEREAS, at the December 4, 2023 City Council Work Session, staff presented capital appropriations projects for consideration; and

WHEREAS, projects were selected based on the input from legislators, alignment with Council-adopted plans, project readiness, the project being on the 2023 New Mexico Infrastructure Capital Improvement Plan (ICIP), anticipated additional capital funding sources, and scalability of the projects; and

WHEREAS, priority capital projects for the City will be taken forward to the 2024 New Mexico Legislative Session; and

WHEREAS, policy-related priorities are also established by this resolution for the 2024 New Mexico Legislative Session.

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

(I)

THAT the City hereby approves the capital appropriations project priorities to be taken forward to the 2024 New Mexico Legislative Session, as shown on Exhibit “A”, attached hereto and made part of this Resolution.

(II)

THAT the City hereby approves the policy priorities to be taken forward to the 2024 New Mexico Legislative Session, as shown on Exhibit “B”, attached hereto and made part of this Resolution.

(III)

THAT the City Manager, or his designee, is authorized to adjust the requests in scope and amount requested based on current trends.

(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

_____
Mayor

ATTEST:

_____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "B"

2024 CITY OF LAS CRUCES LEGISLATIVE POLICY PRIORITIES

- The City of Las Cruces supports and endorses any legislation that establishes and funds: a NM Climate Investment Center; increased green infrastructure development; energy conservation and sustainability measures; and access to funding for green energy investment for assisting lower-income individuals, families, and pueblos.

- The City of Las Cruces supports legislation to expand behavioral health services in the southern New Mexico region, including but not limited to construction of a behavioral health facility in the region and workforce solutions that increase behavioral health workers in the region.

EXHIBIT "A"

2024 CITY OF LAS CRUCES LEGISLATIVE CAPITAL APPROPRIATION PRIORITIES

- CIT/MOBILE INTEGRATED HEALTHCARE BUILDING: Facility for the Las Cruces Fire Department's Mobile Integrated Healthcare program and Project L.I.G.H.T. Mental Crisis Response **($4M)**.

- ACTIVE TRANSPORTATION: Funding to support Active Transportation Plan projects and initiatives, including but not limited to Sidewalk gaps & improvements, ADA improvements, Transit shade structures, street lighting, intersection improvements, bicycle facilities, and street trees. **($6M)**

- AMADOR CROSSING HOUSING: Approximately 40-50 unit master plan housing project on the Community of Hope campus to provide supportive housing, onsite services, and access to campus agencies. **($7M)**

- LIFT UP LAS CRUCES: Valley View Park renovations and trail project in the second Lift Up area, as well as other projects identified by community survey. **($4.2M)**

- FIRE STATION #9: Provide gap funding for the construction of the new Fire Station #9. **($2.4M)**

- EAST MESA PUBLIC RECREATION PROJECT: Continuing construction of this regional park, including, but not limited to, multi-purpose fields, courts, and concessions. **($12.6M)**

- SOUTH MAIN STREET: Funding to support a shovel ready project which will reconstruct S. Main Street from Avenida de Mesilla to Boutz Rd and includes replacement of existing underground utilities, new buffered bike lanes, new sidewalks and curb & gutter, ADA improvements, a road diet, new roadway cross section, street lighting, intersection improvements. and enhanced safe pedestrian access across the railroad. **($1M)**

- SACRAMENTO STREET: Funding to support a current project which will complete reconstruction of Sacramento St from Poplar Ave to Oasis Ave as a part continued improvements within the Lift Up Phase 1 project area, including replacement of existing underground utilities, new sidewalks, ADA improvements, new roadway cross section and street lighting. **1M)**

- WASTEWATER SEPTIC SYSTEMS: Completion of installation of wastewater sewer system to eliminate the use of septic tanks, specifically in the remaining Brittany Estates and Estados Serenos subdivisions. **($1.6M)**

- POLICE DEPARTMENT BUILDING RENOVATION: To construct and furnish a renovated Intelligence and Records & Identification section, including remodel of the CID/Records and Identification section to lay the foundation for a crime lab and a real time crime center within the Las Cruces Police Department. (**$400K**)

- POLICE DEPARTMENT REAL TIME CRIME CENTER: To acquire, design, furnish, install, improve, and establish a Real Time Crime Center for Las Cruces Police Department, including the purchase of technology equipment and software. (**$500K**)

- CAPITAL PROJECTS WITH GAP FUNDING: Additional funding to complete current capital projects funded with legislative capital outlay which have experienced cost escalation beyond the funding appropriation.

24-064

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A**		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Isaac Holguin	**Department:**	City Manager's Office
Program:	Housing and Neighborhood Services	**Line of Business:**	Housing and Neighborhood Services

Title:	**A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT A BUDGET ADJUSTMENT FOR CASA DE PEREGRINOS FROM THE TELSHOR FUND FOR $100,000 THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2024 BUDGET.**

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

PURPOSE(S) OF ACTION:

Amend the FY24 budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Casa de Peregrinos (CdP) is an Emergency Food Pantry serving the greater Las Cruces area based at the Mesilla Valley Community of Hope campus. They provide food baskets containing approximately 85 pounds of food above the nationwide average of 45 pounds for similar-sized pantries. Inflation has deeply affected Casa de Peregrinos. Over the last four years CdP has seen the cost of food nearly quadruple, despite efforts to acquire low and no-cost groceries through food rescue, food drives, wholesale purchases and collaborations with Roadrunner Food Bank. The cost paid for a pound of food has increased from $.05 per pound in 2019 to $.19 per pound in FY 2023. An additional $100,000 will help sustain their ability to provide services to the neediest residents in the community with healthy, nutritious food to help them sustain themselves and their families.

Las Cruces and Dona Ana County have high rates of unemployment, poverty, childhood poverty, and food insecurity. NM Voices for Children's report on Ending Childhood Food Insecurity in New Mexico (Derek Lin, MPH | March 2021) cites: *"New Mexico has long had one of the worst rates of child food insecurity in the country. One out of three New Mexico children are projected to have experienced food insecurity, which is up from pre-COVID-19 levels of one in four... More than ever, New Mexicans are depending on food assistance programs to meet their nutritional needs. This increased demand during the pandemic has put significant strain on these systems, which have had to adapt in order to provide critical food support for more New Mexicans. The state (local governments) can help strengthen the food assistance system and promote food security throughout the pandemic and after by ensuring that food banks, food pantries, and school meal programs are fully funded."*

This action is supported by the City Council Strategic Plan to:
Develop and support programs that provide assistance to traditionally underserved populations.(ELC Goal CP-11: Underserved Populations.)

- Transform Las Cruces into a food-secure community with improved access to healthy food options. (ELC Goal CL-17: Food Security.)

CdP has submitted a request for funding as shown in Attachment "A". Council approval is needed to approve a budget adjustment to award the CdP funding. If approved, the Resolution also authorizes the City Manager to sign an agreement without further consideration from the council.

SUPPORT INFORMATION:
Exhibit "A" Fund Summary 2705
Attachment "A" Casa de Peregrinos Proposal FY2024

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $32,000 **AVAILABLE AMOUNT:** $0.00 **EXPENDITURE AMOUNT:** $100,000

Funding Source(s):
Telshor Facility Fund (2705) 20430051-721080-10176

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 accept the budget adjustment as presented and adjust the City's FY2024 budget.
2. Vote "No"; this will not approve the Resolution, nor adjust the budget as presented.
3. Vote to "Amend"; this would modify the Resolution based on the City Council's direction and then vote "Yes" on the amended Resolution.
4. Vote to "Table"; this would postpone the Resolution and City Council would need to provide direction to staff.

RESOLUTION 24-064

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT A BUDGET ADJUSTMENT FOR CASA DE PEREGRINOS FROM THE TELSHOR FUND FOR $100,000 THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2024 BUDGET.

The City Council is informed that:

WHEREAS, Casa de Peregrinos (CDP) is an Emergency Food Pantry serving the greater Las Cruces area based at the Mesilla Valley Community of Hope campus; and

WHEREAS, they provide food baskets containing approximately 85 pounds of food above the nationwide average of 45 pounds for similar-sized pantries; and

WHEREAS, inflation has deeply affected the cost of food despite efforts to acquire low and no-cost groceries; and

WHEREAS, Las Cruces and Dona Ana County have high rates of unemployment, poverty, childhood poverty, and food insecurity; and

WHEREAS, CdP has submitted a request for funding as shown in Attachment "A".

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

(I)

THAT the City hereby amends the FY2024 City Budget as shown in the Fund Summary, Exhibit “A”, attached hereto and made part of this Resolution.

(II)

THAT the City Manager is authorized to execute necessary agreements on the City’s behalf without further City Council consideration.

(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

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

Exhibit "A"

	2705 TELSHOR FACILITY 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 45,111,761	45,111,761	0	45,111,761
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
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	**0**	**0**	**0**	**0**
TOTAL RESOURCES	**$ 45,111,761**	**45,111,761**	**0**	**45,111,761**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	3,018,000	6,456,000	100,000	6,556,000
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 3,018,000**	**6,456,000**	**100,000**	**6,556,000**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(870,618)	(870,618)	0	(870,618)
Total Other Resources	**$ (870,618)**	**(870,618)**	**0**	**(870,618)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 41,223,143**	**37,785,143**	**(100,000)**	**37,685,143**

Casa de Peregrinos

food for today... hope for tomorrow

Request to the City of Las Cruces
Submitted by Casa de Peregrinos, Inc.
October 30, 2023

Casa de Peregrinos Emergency Food Pantry is submitting a request to the Las Cruces City Council for a grant of $100,000 to increase its ability to provide healthy, nutritious food to low-income residents of the City of Las Cruces. Our request is driven by three factors, which have combined over the last two years to put considerable stress on our ability to provide the help our clients need.

The first is inflation.

The increase in food prices of over 12% caused by the COVID pandemic of 2020-22 has not gone away. Rather, food prices continue to rise: The Bureau of Labor statistics reported an additional increase of 3.7% between September 2022 and September 2023, according to the most recent consumer price index (CPI) report. They are projecting that inflation will continue to rise throughout 2023.

Inflation has deeply affected Casa de Peregrinos. Over the last four years CdP has seen the cost of food nearly quadruple, despite all our efforts to acquire low and no-cost groceries through food rescue, food drives, wholesale purchases and collaborations with our partner, the Roadrunner Food Bank. The cost paid for a pound of food has increased from $.05 per pound in 2019 to $.19 per pound in FY 2023.

With inflation, the cost of one 85-pound basket of food (the equivalent of 71 meals) is estimated to cost $20, an increase from the 2019 pre-pandemic costs of $4.20.

CdP's budget for food purchases in FY 2023-4 has grown to $720,000, compared to $240,000 in FY 2020.

The second is increased client demand

Casa de Peregrinos is seeing a steady and consistent climb in requests for service.

- During the third quarter of 2021 (July 1 to September 30), Casa de Peregrinos served 9,100 unduplicated clients out of its central pantry, distributing 6,444 baskets of food.

- In the equivalent time period of the following year (2022) those numbers increased to 12,057 unduplicated clients, distributing 8,641 baskets of food.

- The same quarter in 2023 showed 14,021 unique, unduplicated clients receiving service, and 10,294 baskets being distributed.

That represents an increase over two years in clients served of 35%, and an increase in the number of baskets distributed of 37%.

This trend is growing even faster: During two weeks in October of 2023, we distributed 1,826 baskets of food from the Las Cruces pantry. Extrapolating this over a quarter will result in 11,934 baskets being distributed.

We know that this increase is driven in large part by inflation's impact on family budgets, as housing, energy, transportation and medical costs, as well as the cost of food, continue to rise. Food pantries such as Casa de Peregrinos may be the only source of relief for inflation, and may be able to help families avoid some of the painful choices they face: choosing, for example, between buying food and paying for utilities, housing, or medical care.

The third is a decrease in available funding.

Public funding for COVID relief during the time frame of 2020 through 2022 was a significant source of revenue for Casa de Peregrinos. It came through direct government grants, but also through private foundations which received and distributed relief funding, most of it one-time funding which we have not seen continue.

Private, individual funding also skyrocketed during the COVID epidemic. Many of our donors signed over their COVID tax rebates, and the devastating affect that the pandemic had on our community inspired significant increases in individual philanthropy.

However, post-pandemic reports are indicating a nationwide decrease in individual donations and donor retention rates. The Association of Fundraising Professionals (AFP) Foundation for Philanthropy is reporting the number of donors decreased by 5.6%, and the donor retention rate, the percentage of donors who gave in 2021 and then gave again in 2022, decreased by 6.2% year-over-year.

It is also concluding that "The pandemic prompted an outpouring of generosity as people sought to help those impacted by the crisis to the point where giving was up for a few years. However, the sheer volume of appeals and fundraising campaigns may have desensitized donors to a certain extent, making it more challenging to elicit the same level of support in the future."

This "post-pandemic donor fatigue" is certainly affecting Casa de Peregrinos. The events and other fundraising activities that we have conducted since the beginning of our fiscal year (July 1, 2023) have all come in below budget, some as much as 20%. We are initiating new fundraising strategies to address this deficit, but they will all take time to come to fruition.

In conclusion:

- These three forces, increased costs, increased need, and decreased funding, are combining to stress our resources.

- Casa de Peregrinos is serving every eligible client who comes to us. We have no waiting list and are not turning anyone away. We are continuing to provide a basket containing

approximately 85 pounds of food, which compares to the nationwide average for pantries our size of 45 pounds.

- The food provided is healthy and nutritious: an analysis conducted by a licensed nutritionist shows: "The contents of an average food cart from Casa de Peregrinos falls within the USDA guidelines for a healthy lifestyle and can feed a family of four for nearly six days."

- Our services have a significant impact of the quality of life for our clients. They allow families to have more options and more freedom: to purchase other necessities, to save money, and to pay other bills.) As a result of coming to CdP they miss fewer meals. And, 89%, indicated that having a cart of food from CdP each month allowed them to worry less. Through our services, CdP is not only affecting families personal finances, but also positively affecting their peace of mind.

- Casa de Peregrinos provides high value for each dollar invested. We continue to be able to provide a cart of food for $20. The USDA values a pound of food at $1.72, so each cart is valued at $146 by the USDA. However, they have not changed this valuation in over 8 years. Partners from Walmart have estimated that each cart has a value of over $250.

- We are engaged in active and sustained fundraising activities to recoup the shortfall in revenues that has been experienced. Our ongoing sustainability plan involves: 1) a grant-writing program which is constantly seeking new and enhanced sources of funding for all its programs, 2) a private fundraising Resource Development Plan created in conjunction with the agency budget development which identifies the activities it will pursue for fundraising and the anticipated revenue to be generated from each. The Resource Development plan includes activities for direct mail, on-line crowd sourcing, targeted outreach to civic, and religious organizations, business outreach, and targeted outreach to lapsed donors and major donors.

This request to the City of Las Cruces for $100,000 will help sustain our ability to provide services to the most needy residents of our community with healthy, nutritious food to help them sustain themselves and their families.

Budget Proposal and Narrative

If funded, Casa de Peregrinos proposes spending the grant as follows:

Food purchases: $80,000.

Casa de Peregrinos spends an average of $.19 per pound on food, and is projecting that it will distribute over 4 million pounds of food in FY 24. This grant would provide almost 400,000 pounds of food which would fill 4,705 baskets of food. As the central pantry in Las Cruces is projected to distribute as many as 41,000 baskets in FY 24, this represents approximately 11% of the funding needed for food purchases. Currently, the City, through its HRPS grant, provides $15,000 for food.

Staff: $20,000

The Food Security Program is staffed by 3 FTE, one Program Manager and two program assistants. Payroll costs (including benefits) total $119,050. This grant would provide 17% of the cost of staffing the Food Security Program. Currently, the City, through its HRPS grant, provides $15,000 for staffing costs.

It should be noted that paid staff represent a fraction of the operations of CdP. In FY 23, volunteers contributed 22,470 hours of service to the pantry, the equivalent of nearly 11 full time employees.

24-065

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	☐ 1 ☒ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Cathy Mathews	**Department:**	Parks & Rec
Program:	Office of the Director	**Line of Business:**	City of Las Cruces, Parks & Recreation Department

Title: **A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) FOR THE LC00290 UNIVERSITY AVENUE FROM MP 1.06 TO 1.4 PROJECT, AND TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE AGREEMENT.**

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

PURPOSE(S) OF ACTION:
To approve a Memorandum of Agreement (MOA).

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The purpose of this action is for City Council to approval an MOA between the New Mexico Department of Transportation (NMDOT) and the City of Las Cruces (CLC) to meet the requirements of the University Avenue from MP 1.06 to 1.4 Project (Project). The NMDOT is currently in the design phase of this project and contemplates the letting of a contract for the construction of the highway project within the boundaries of the CLC. The Project includes a drainage pond on the north side of University Avenue, landscaping, and a multi-use trail located on the south side of University Avenue from Bowman Avenue to Main Street.

The NMDOT and CLC will work together to plan and schedule the Project. The NMDOT requires an MOA be executed by the City to set for their responsibilities on maintenance of the Project drainage pond, landscaping, and multi-use trail. Upon final acceptance of the Project, the City will assume maintenance responsibilities for the drainage pond, landscaping, and multi-use trail, as outlined in the MOA.

If approved, this Resolution will grant the City Manager authorization to execute the MOA for the Project.

SUPPORT INFORMATION:
Exhibit "A" - Multi-use Trail_Maint_Agreement

PLAN(S):
Other, Department Strategic Business Plan, 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 action will approve the Resolution and the MOA and ratify the City Manager's signature on the agreement.
2. Vote "No"' this action will not approve the Resolution nor the MOA.
3. Vote to "Amend"; this action could modify the Resolution to reflect changes on the MOA but may cause the City to not meet the NMDOT deadline.
4. Vote to "Table"; this action will cause the City to not meet the NMDOT deadline.

REFERENCE INFORMATION:

Resolution No. 19-023.

RESOLUTION 24-065

A RESOLUTION APPROVING A MEMORANDUM OF AGREEMENT (MOA) BETWEEN THE CITY OF LAS CRUCES (CITY) AND THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT) FOR THE LC00290 UNIVERSITY AVENUE FROM MP 1.06 TO 1.4 PROJECT, AND TO RATIFY THE CITY MANAGER'S SIGNATURE ON THE AGREEMENT.

The City Council is informed that:

WHEREAS, the NMDOT is currently in the design phase of the University Avenue from MP 1.06 to 1.4 Project; and

WHEREAS, the overall project will include a drainage pond, landscaping, and a multi-use trail; and

WHEREAS, the NMDOT is requesting an MOA be executed to solidify the entire project scope and terms for maintenance of the University Avenue from MP 1.06 to 1.4 Project.

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

(I)

THAT the City Manager is authorized to execute the MOA, Exhibit "A", attached hereto and made part of this Resolution, for the University Avenue from MP 1.06 to 1.4 Project, Control Number LC00290.

(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

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

Contract No.: _____

MAINTENANCE AGREEMENT

DRAINAGE POND, LANDSCAPE, AND MULTI-USE TRAIL

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

RECITALS

Whereas, the Department contemplates the letting of a contract for the construction of a highway project within the boundaries of the Public Entity, identified as Project Number LC00290 University Avenue from MP 1.06 to 1.4, (Project);

Whereas, the Department and Public Entity agree with the need for maintenance of the drainage pond located on the north side of University Avenue (Pond E2-B), landscaping, and multi-use trail located on the south side of University Avenue from Bowman Avenue to Main Street; and

Whereas, the parties want to set forth their responsibilities on maintenance of the above identified drainage pond, landscaping, and multi-use trail.

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

1. **Definitions.**
   a. Structural Maintenance is defined as any physical improvement to include repair and/or replacement to protect the structural integrity of the asphalt multi-use trail in place.
   b. Non-structural Maintenance is defined as any routine maintenance to include litter and debris pick up.

2. **The Department Shall:**
   a. Assign a Project Development Engineer to oversee the development of the Project.
   b. Provide the required funding for the installation of the multi-use trail portion of the project.
   c. Be responsible for the design and construction of the multi-use trail portion of the project.
   d. Include the multi-use trail portion of the Project in the bid documents for the Project.
   e. Perform all structural maintenance on the storm drain system lateral and truck line pipes, drop inlets, manholes, drainage pond and fencing.
   e. Perform the non-structural maintenance of the drainage pond sediment.

3. **The Public Entity Shall:**
   a. Upon completion of the Project, assume non-structural maintenance of the landscape areas, and multi-use trail to include weed removal, litter pick up, and removal of debris.

b. Perform non-structural maintenance on the drainage pond to include weed removal, litter pick up, and removal of debris.
c. Perform routine structural maintenance of the multi-use trail. With respect to the portion of the multi-use trail located within BNSF's right-of-way, prior to performing any maintenance, contact the Department Transit and Rail Division at 505-827-3248 to request from the Rail Bureau the latest requirements to perform any work within BNSF right-of-way.

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

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

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

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

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

9. Equal Opportunity Compliance.
The parties agree to abide by all federal and state laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, pertaining to equal employment opportunity. In accordance with all such laws and rules and regulations, and executive orders of the Governor of the State of New Mexico, the parties agree to assure that no person in the United States shall, on the grounds of race, color, national origin, ancestry, sex, sexual preference, age or handicap, be excluded from employment with, or participation in, any program or activity performed under

this Agreement. If the parties are found to not be in compliance with these requirements during the term of this Agreement, the parties agree to take appropriate steps to correct these deficiencies.

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

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

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

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

14. Principal Contacts and Notices.
The principal contacts for this Agreement are listed below. Except as otherwise specified, all notices shall be in writing (including notice by facsimile or E-mail) and shall be given to the principal contacts listed below.

DEPARTMENT
Name: Aaron Chavarria
Title: District One Engineer
New Mexico Department of Transportation
Address: 2912 E. Pine Street, Deming, NM 88030
Office: (575) 640-6804
E-mail: Aaron.Chavarria@dot.nm.gov

PUBLIC ENTITY
Name: Steven Bingham
Title: Director of Parks & Recreation
Public Entity: City of Las Cruces
Address: 1501 E. Hadley, Bldg. B, Las Cruces, NM 88001
Office: (575) 541-2557

E-mail: sbingham@lascruces.gov

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

The remainder of this page is left intentionally blank.

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

NEW MEXICO DEPARTMENT OF TRANSPORTATION

By:_____ Date: _____
Cabinet Secretary or Designee

Recommended by:

By:_____ Date: _____
District Engineer

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

By: DocuSigned by: John Newell Assistant General Counsel C750CEC1625D488... _____ Date: 8/30/2023
Assistant General Counsel

CITY OF LAS CRUCES

By:_____ Date: _____

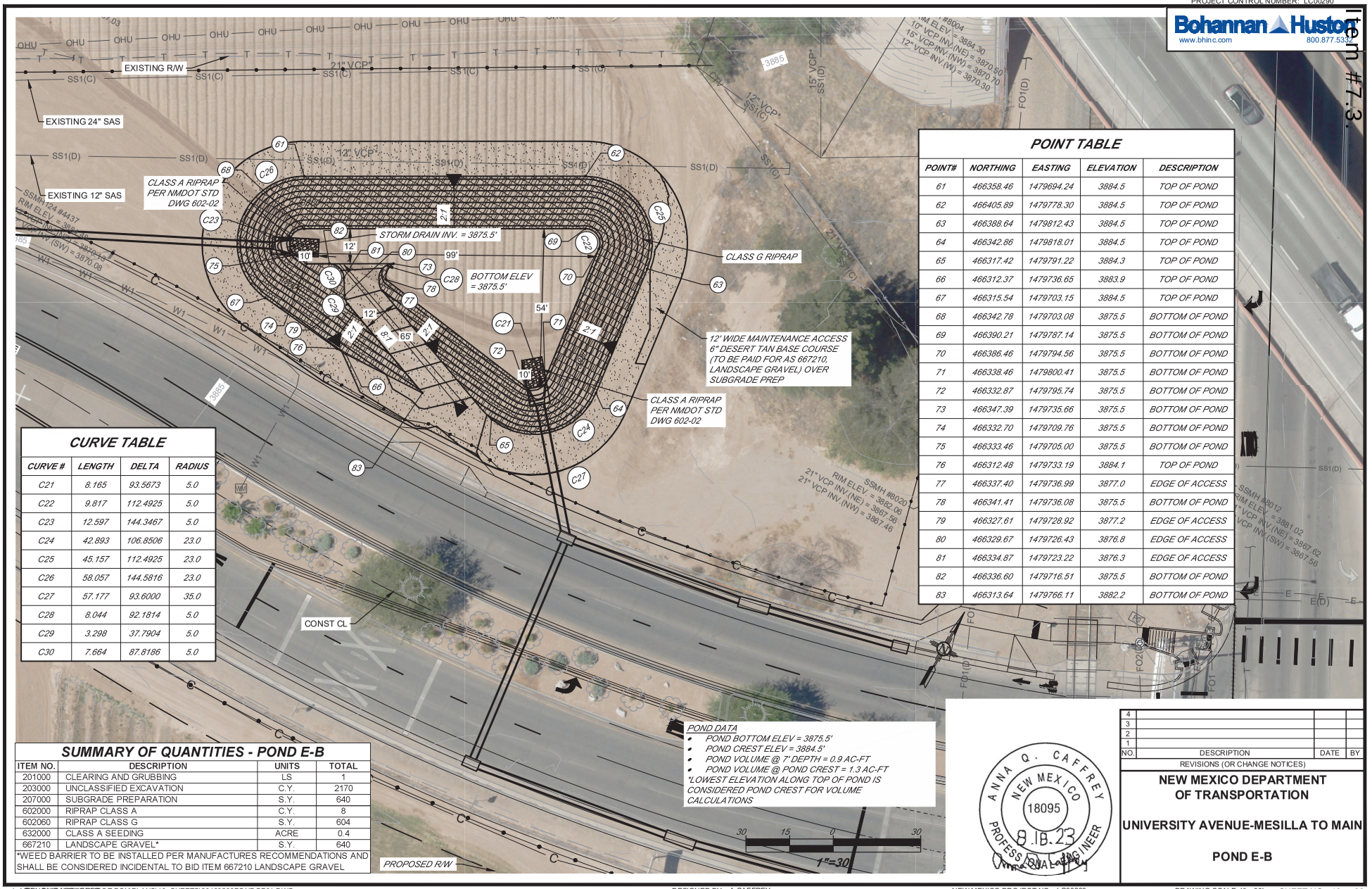
Title: _____

Attest: _____

DocuSign Envelope ID: 8D0C5972-3FB5-4E6D-B64A-B9A6F1300DE8

PROJECT CONTROL NUMBER: LC00290

Bohannan Huston
www.bhinc.com 800.877.5332



POINT TABLE

POINT#	NORTHING	EASTING	ELEVATION	DESCRIPTION
61	466358.46	1479694.24	3884.5	TOP OF POND
62	466405.89	1479778.30	3884.5	TOP OF POND
63	466388.64	1479812.43	3884.5	TOP OF POND
64	466342.86	1479818.01	3884.5	TOP OF POND
65	466317.42	1479791.22	3884.3	TOP OF POND
66	466312.37	1479736.65	3883.9	TOP OF POND
67	466315.54	1479703.15	3884.5	TOP OF POND
68	466342.78	1479703.08	3875.5	BOTTOM OF POND
69	466390.21	1479787.14	3875.5	BOTTOM OF POND
70	466386.46	1479794.56	3875.5	BOTTOM OF POND
71	466338.46	1479800.41	3875.5	BOTTOM OF POND
72	466332.87	1479795.74	3875.5	BOTTOM OF POND
73	466347.39	1479735.66	3875.5	BOTTOM OF POND
74	466332.70	1479709.76	3875.5	BOTTOM OF POND
75	466333.46	1479705.00	3875.5	BOTTOM OF POND
76	466312.48	1479733.19	3884.1	TOP OF POND
77	466337.40	1479736.99	3877.0	EDGE OF ACCESS
78	466341.41	1479736.08	3875.5	BOTTOM OF POND
79	466327.61	1479728.92	3877.2	EDGE OF ACCESS
80	466329.67	1479726.43	3876.8	EDGE OF ACCESS
81	466334.87	1479723.22	3876.3	EDGE OF ACCESS
82	466336.60	1479716.51	3875.5	BOTTOM OF POND
83	466313.64	1479766.11	3882.2	BOTTOM OF POND

CURVE TABLE

CURVE #	LENGTH	DELTA	RADIUS
C21	8.165	93.5673	5.0
C22	9.817	112.4925	5.0
C23	12.597	144.3467	5.0
C24	42.893	106.8506	23.0
C25	45.157	112.4925	23.0
C26	58.057	144.5816	23.0
C27	57.177	93.6000	35.0
C28	8.044	92.1814	5.0
C29	3.298	37.7904	5.0
C30	7.664	87.8186	5.0

SUMMARY OF QUANTITIES - POND E-B

ITEM NO.	DESCRIPTION	UNITS	TOTAL
201000	CLEARING AND GRUBBING	LS	1
203000	UNCLASSIFIED EXCAVATION	C.Y.	2170
207000	SUBGRADE PREPARATION	S.Y.	640
602000	RIPRAP CLASS A	C.Y.	8
602060	RIPRAP CLASS G	S.Y.	604
632000	CLASS A SEEDING	ACRE	0.4
667210	LANDSCAPE GRAVEL*	S.Y.	640

*WEED BARRIER TO BE INSTALLED PER MANUFACTURES RECOMMENDATIONS AND SHALL BE CONSIDERED INCIDENTAL TO BID ITEM 667210 LANDSCAPE GRAVEL

POND DATA

- POND BOTTOM ELEV = 3875.5'
- POND CREST ELEV = 3884.5'
- POND VOLUME @ 7' DEPTH = 0.9 AC-FT
- POND VOLUME @ POND CREST = 1.3 AC-FT

*LOWEST ELEVATION ALONG TOP OF POND IS CONSIDERED POND CREST FOR VOLUME CALCULATIONS

ANNA Q. CAFFREY
NEW MEXICO
18095
8.18.23
PROFESSIONAL ENGINEER

NO.	DESCRIPTION	DATE	BY
4			
3			
2			
1			

REVISIONS (OR CHANGE NOTICES)

NEW MEXICO DEPARTMENT OF TRANSPORTATION

UNIVERSITY AVENUE-MESILLA TO MAIN

POND E-B

Drawing: V:\ENVIRONMENTAL\DOT-PCN\PLANS\10_SHEETS\20190569PONDGP01.DWG
11:57 AM Aug-23

DESIGNED BY: A.CAFFREY

NEW MEXICO PROJECT NO. LC00290

DRAWING SCALE: 1" = 30'

SHEET NO. 10 - 38

24-066

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5 ☐ 6 ☐ N/A**		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Cathy Mathews	**Department:**	Parks & Rec
Program:	Office of the Director	**Line of Business:**	City of Las Cruces, Parks & Recreation Department

Title: **A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SIERRA NORTE DEVELOPMENT INC., FOR THE DESIGN AND CONSTRUCTION OF A NEIGHBORHOOD PARK LOCATED IN THE TRAILS AT METRO PHASES 1 AND 2 SUBDIVISIONS, IN AN AMOUNT NOT TO EXCEED $1,003,600.00.**

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

PURPOSE(S) OF ACTION:
To approve the agreement for reimbursement of costs for park and trail design and construction.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
One method to add new parks to the Parks & Recreation (P&R) system is to make agreements with developers of new housing subdivisions who pay Park Impact Fees (PIF) during the entitlement process, either when the subdivision is approved or when building permits are issued PIF is currently set at $2,600.00 per lot. The PIF is an assessment imposed on new residential development to recoup the cost of new park design and construction. The developer works with City staff to select the site and design a park to meet the needs of the residents while achieving the goals of the Parks & Recreation Master Plan. The developer, at their own cost, will design and build the park with oversight from P&R and other City departments. When the park is completed, a final walkthrough occurs and, if the park is deemed acceptable, the next step may occur. With a Council-authorized agreement in place, the developer then works with Land Management to transfer land ownership and responsibility for maintenance to the City. The transfer of the land is at no cost to the City. Since the purpose of the PIF is to recoup the costs of new park design and construction, a reimbursement payment is made back to the developer, per the Council-approved agreement. The reimbursement is made from the PIF account and is based on a portion of the amount collected or anticipated to be collected from the subdivision within which the park is located and other subdivisions within a 1/4-mile distance from the park. If the park is not built or is not built to the City's specifications for acceptance, then the City is not obligated to accept the park or to reimburse the developer.

P&R staff completed negotiations with the developer, Sierra Norte Development, Inc. (SNDI) to provide a full design and build-out of a neighborhood park and trails in the Trails at Metro Phases 1 and 2 subdivisions. The park and trails will also serve Metro Verde South Phase 3E, Metro Verde South Phase 3F, and Red Hawk Central subdivision residents. The park and trails will serve residents in all five (5) subdivisions with a total of 386 residential lots served.

The park is comprised of two tracts at 1.114 acres and 0.668 acres (Tract F, Trails at Metro Phase 1 and Tract H, Trails at Metro Phase 2, respectively) for a total park size of 1.782 acres. The tracts are joined by a short trail that crosses over Tract F in Trails at Metro Phase 1, a stormwater management tract. Another trail portion extends from the park along Tract F to connect with Bayberry Rd. Additional trails will be located in Tracts A, B, C, and D in Trails at Metro Phase 1. These lots are sized at 2.128 acres, 0.523 acres, 0.664 acres, and 0.238 acres, respectively. Tract I, located in both Trails at Metro Phase 1 and Phase 2 will also have trail improvements. That Tract is sized at 0.749 acres. The total size of all tracts to be dedicated to the City is 6.084 acres.

The park and trails will be constructed in compliance with City codes as well as with State and Federal standards. All construction will be completed by the developer and delivered to the City free of all liens, claims, and demands. The amount of reimbursement for the park will not exceed $1,003,600.00, the total amount of PIF to be paid from all the relevant subdivisions, and will be paid from the Public Park Development Fund (PIF).

The completed park will contain two playgrounds, a drinking fountain, picnic furnishings, landscape and irrigation improvements, and shade structures, among other amenities in accordance with City standards. The cost for the design and construction of the park is estimated at $1,003,600.00, not including the cost of the land. The land will be donated to the City by SNDI, and the developer will contribute any costs above $1,003,600.00 to the project without reimbursement.

SUPPORT INFORMATION:

Exhibit "A" - Trails at Metro Park and Trail Agreement

PLAN(S):

Other, Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

ASCMV Board

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
$4,919,568.00	$4,198,079.15	1,003,600.00

Funding Source(s):

Park Development Impact Fees 40145011-805000

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 the Reimbursement Agreement between the City and SNDI.
2. Vote "No"; this will not approve the Resolution and the Reimbursement Agreement between the City and SNDI.
3. Vote to "Amend"; this could modify the Resolution based on direction by City Council to Staff.
4. Vote to "Table"; this could delay the Resolution and would require direction by City Council to Staff.

RESOLUTION 24-066

A RESOLUTION APPROVING A REIMBURSEMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SIERRA NORTE DEVELOPMENT INC., FOR THE DESIGN AND CONSTRUCTION OF A NEIGHBORHOOD PARK LOCATED IN THE TRAILS AT METRO PHASES 1 AND 2 SUBDIVISIONS, IN AN AMOUNT NOT TO EXCEED $1,003,600.00.

The City Council is informed that:

WHEREAS, the City of Las Cruces negotiated a reimbursement agreement with Sierra Norte Development, Inc., (SNDI), the developer of the Trails at Metro Phases 1 and 2; and

WHEREAS, the developer completed design and is completing construction of a park and trails for the benefit of the city's residents; and

WHEREAS, staff will inspect the park to determine that the improvements are in compliance with City rules and regulations; and

WHEREAS, based on negotiations with the developer and upon successful review of invoices, staff recommends reimbursement in an appropriate amount not to exceed $1,003,600.00.

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

(I)

THAT the Reimbursement Agreement for the neighborhood park at Trails at Metro Phases 1 and 2 attached hereto as Exhibit "A", and made part of this Resolution, and disbursement is hereby approved to Sierra Norte Development, Inc. and is hereby authorized in an amount not to exceed $1,003,600.00.

(II)

THAT the City Manager is hereby authorized to execute the agreement and payment amount on behalf of the City

(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

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

REIMBURSEMENT AGREEMENT CONSTRUCTION OF ONE NEIGHBORHOOD PUBLIC PARK AND TRAILS

THIS AGREEMENT made and entered into this _____ day of _____, 2023, by and between the City of Las Cruces, Dona Ana County, New Mexico, a Municipal Corporation, hereinafter referred to as "Owner", and Sierra Norte Development, Inc. Developer of Trails at Metro Phases 1 and 2 Subdivision, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, for valuable consideration, the Contractor will furnish the labor, tools, equipment, material and complete in every detail the design and construction of a Neighborhood Public Park and Trails for a total area of 6.084 acres within the Trails at Metro Phases 1 and 2 Subdivision.

FOR SAID CONSIDERATION, IT IS AGREED BETWEEN THE PARTIES AS FOLLOWS:

ONE PUBLIC PARK will be designed and constructed within the Trails at Metro Phases 1 and 2 Subdivision. The park will be a total of 1.782 acres in size and will be deeded to the City of Las Cruces. The park is identified as Tract F, Trails at Metro Phase 1 consisting of 1.114 acres and Tract H, Trails at Metro Phase 2 consisting of 0.668 acres.

ONE PUBLIC TRAIL SYSTEM will be constructed within the Trails at Metro Phases 1 and 2 Subdivision. The trail system is comprised of five (5) tracts and contains a total of 4.302 acres which will be deeded to the City of Las Cruces. The trail system is identified as Tract A, Trails at Metro Phase 1, consisting of 2.128 acres; Tract B, Trails at Metro Phase 1, consisting of 0.523 acres; Tract C, Trails at Metro Phase 1, consisting of 0.664 acres; Tract D, Trails at Metro Phase 1, consisting of 0.238 acres, and Tract I, Trails at Metro Phases 1 and 2, consisting of 0.749 acres.

The total size of all tracts to be dedicated to the City for a park and trails is 6.084 acres. The subdivisions to be served by the park and trails include Trails at Metro Phases 1 and 2, Metro Verde South Phases 3E and 3F, and Red Hawk Central Subdivisions. The number of residential lots within these subdivisions is 386 lots.

1. The Contractor will design and construct the park and trails at its cost in exchange for the City's reimbursement of the costs of design and construction of said park and trails from park impact fees.
    a. The Park and Trails will be constructed in compliance with City codes as well as applicable State and Federal standards (e.g. AMERICANS WITH DISABILITIES ACT).
    b. The Park and Trails will include finish grading, irrigation system, walking paths, playground equipment, shade structures, tables, benches, fencing, other site furnishings, and landscape elements per the agreed plan.

c. The work will be completed by Contractor and shall be delivered to the Owner free of all Liens, claims and demands of any kind for materials, equipment, supplies, services, labor, taxes and damages to property or person.

2. The amount of reimbursement will be based on the actual costs of design and construction for the parks and invoices provided to the City by the Contractor and will not exceed $1,003,600.00. The total projected park impact fees to be collected in Trails at Metro Phases 1 and 2, Metro Verde South Phases 3E and 3F, and Red Hawk Central Subdivisions is based on the current Park Impact Fee of $2,600.00 per dwelling unit and the projected build-out is for 386 residential lots for total Park Impact Fees of $1,003,600.00 for the subdivisions. The park impact fees to be collected in Trails at Metro Phases 1 and 2 is based on the current Park Impact Fee of $2,600.00 per dwelling unit and the projected build-out is for 251 residential lots for total Park Impact Fees of $652,600.00 for the subdivision. The projected park impact fees to be collected in Metro Verde South Phases 3E and 3F is based on the current Park Impact Fee of $2,600.00 per dwelling unit and the projected build-out is for 88 residential lots for total Park Impact Fees of $228,800.00. The projected park impact fees to be collected in Red Hawk Central is based on the current Park Impact Fee of $2,600.00 per dwelling unit and the projected build-out is for 47 residential lots for total Park Impact Fees of $122,200.00. The City will reimburse Contractor for designing and building the park and trails from the Park Impact Fee General account.

3. The Contractor will submit invoices to the City outlining actual costs and/or expenses associated with design and construction for all park and trail improvements. City Staff will review the invoices for completeness.
4. The final design and construction of the Park and Trails will be completed to the satisfaction of the Owner, under the direction of the City's Landscape Architect and Parks & Recreation Director.
5. The Contractor will deed all park and trails tracts to the City by Special Warranty Deed prior to City remitting reimbursement payment.
6. This Agreement incorporates all 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. This agreement shall inure to the benefit of and be binding upon the parties and upon their respective successors and assigns.

CITY OF LAS CRUCES SIERRA NORTE DEVELOPMENT, INC.

By: _____ By: _____

Ifo Pili, City Manager John Moscato

APPROVED AS TO FORM

_____

CITY ATTORNEY

ACKNOWLEDGEMENTS

STATE OF NEW MEXICO)
) ss.
COUNTY OF DOÑA ANA)

The foregoing instrument was acknowledged before me on this ____day of _____ 2023, by Ifo Pili, City Manager of the City of Las Cruces, a New Mexico municipal corporation, on behalf of said municipal corporation.

_____
Notary Public

My commission expires: _____

STATE OF NEW MEXICO)
) ss.
COUNTY OF DOÑA ANA)

The foregoing instrument was acknowledged before me on this _____day of _____ 2023, by John Moscato, property owner.

_____
Notary Public

My commission expires: _____

24-067

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A**		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Suri Molina	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION AUTHORIZING A CONTRACT FOR AIRPORT CONSULTANT - ENGINEERING, ARCHITECTURE, AND CONSTRUCTION MANAGEMENT SERVICES WITH DUBOIS & KING, INC. OF RANDOLPH, VERMONT FOR A TERM OF FIVE (5) YEARS, IN AN AMOUNT NOT TO EXCEED $1,000,000 ANNUALLY, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-050).**

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

PURPOSE(S) OF ACTION:

To authorize a contract for an airport consultant.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Las Cruces International Airport undertakes annual capital improvement projects that require specialized architectural, planning, and engineering services. The City lacks in-house airport engineering expertise and must contract with airport engineering firms to provide those services.

The firms are retained on an on-call basis and offer various services, including large-scale project design, construction document preparation, assistance with bidding and negotiating construction contracts, airport planning, and technical support. The Federal Aviation Administration and New Mexico Department of Transportation - Aviation Division, recommend using on-call contracts to ensure the necessary expertise is available.

On July 14, 2023, the Purchasing Program issued Request for Proposals (RFP) No. 22-23-050 for airport consultant engineering, architecture, and construction management services. Four (4) proposals were evaluated by the Selection Advisory Committee (SAC). The SAC recommends an award to DuBois & King of Randolph, Vermont.

Airport staff is requesting authorization to contract with DuBois & King, Inc., for a term of eight (8) years in an amount not to exceed $1,000,000 annually, subject to approved budget appropriations.

SUPPORT INFORMATION:

Exhibit "A" 22-23-050 - Airport Consultant Engineering, Architecture, Construction Management Services DuBois & King

PLAN(S):

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $60,000 **AVAILABLE AMOUNT:** $42,915 **EXPENDITURE AMOUNT:** $1,000,000

Funding Source(s):
50140002-721070

Overall Budget Impact:
A grant award will be presented at the December 4, 2023 City Council meeting, adding $1,050,000 to the budget; those funds will be used in part for these services.

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 a professional service agreement with DuBois & King, Inc. for airport consultant services for a term of eight (8) years, in an amount not to exceed $1,000,000 annually.
2. Vote "No"; this will deny the Resolution, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution, based on direction from City Council to staff.
4. Vote to "Table"; this will delay procurement for airport consultant services, which could have a negative impact on airport operations.

RESOLUTION 24-067

A RESOLUTION AUTHORIZING A CONTRACT FOR AIRPORT CONSULTANT - ENGINEERING, ARCHITECTURE, AND CONSTRUCTION MANAGEMENT SERVICES WITH DUBOIS & KING, INC. OF RANDOLPH, VERMONT FOR A TERM OF FIVE (5) YEARS, IN AN AMOUNT NOT TO EXCEED $1,000,000 ANNUALLY, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-050).

The City Council is informed that:

WHEREAS, the Las Cruces International Airport undertakes annual capital improvement projects that require specialized architectural, planning, and engineering expertise; and

WHEREAS, the Federal Aviation Administration and New Mexico Department of Transportation - Aviation Division, recommend using on-call contracts to ensure the necessary expertise is available; and

WHEREAS, on July 14, 2023, the Purchasing Program issued Request for Proposals (RFP) No. 22-23-050 for airport consultant - engineering, architecture, and construction management services; and

WHEREAS, four (4) proposals were received and evaluated by the Selection Advisory Committee (SAC), and the SAC is recommending award to DuBois & King, Inc., of Randolph, Vermont; and

WHEREAS, airport staff are requesting authorization to contract with DuBois & King, Inc., for a term of eight (8) years, in an amount not to exceed $1,000,000 annually.

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

(I)

THAT the contract with DuBois & King, Inc. of Randolph, Vermont, for airport consultant - engineering, architecture, and construction management services in an amount not to exceed $1,000,000 annually for a term of eight (8) years, as outlined in Exhibit "A", attached hereto and made part of this Resolution, is hereby approved.

(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

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES

22-23-050
Airport Cons
Eng, Arch, Const

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of October, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and DuBois & King, Inc., of 28 N. Main St., Randolph, Vermont 05060, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION
Airport Consultant for Engineering, Architecture, Construction Management Services on as-needed basis via Task Orders (Attachment A) during the term of this AGREEMENT.

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. 22-23-049, 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 $1,000,000.00 annually, as agreed to for each assigned project, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project 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 five years.

CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR in Exhibit A and as agreed to for each project assigned under the terms of this Agreement.

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
   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: Andy Hume
With Copies to:	City Attorney Purchasing Manager
TO CONTRACTOR:	DuBois & King, Inc. 28 N. Main St Randolph, Vermont 05060 ATTENTION: Guy Rouelle

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.

DUBOIS & KING, INC.

BY: _____
Guy Rouelle
Director of Aviation

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

10/24/23
City Attorney

22-23-050
Airport Cons
Eng, Arch, Const

EXHIBIT A

CITY OF LAS CRUCES



Airport Engineering Services

Airport Consultant - Engineering, Architecture, and Construction Management Services

RFP No. 22-23-050

August 15, 2023

Submitted by DuBois & King, Inc.

DuBois & King inc.

Table of Contents

Letter of Transmittal	**ii**
RFP Compliance Declaration	
Technical Approach (Evaluation Critera No. 1)	**1**
Ability to Meet Deadlines	4
Funding Experience	5
Innovative Engineering Solutions	6
Qualifications/Competence (Evaluation Criteria No. 2)	**8**
Organizational Chart	9
Key Staff	10
Support Staff	11
Subconsultants	11
Performance of the Firm (Evaluation Criteria No. 3)	**12**
Project Examples	13
Appendix: Professional Resumes	

DuBois & King inc.

329226X
August 15, 2023

City of Las Cruces
Andy Hume, Airport Administrator
bidclerk@las-cruces.org

Subject: Airport Consultant—Engineering, Architecture, and Construction Management Services, RFP No. 22-23-050

Dear Members of the Selection Advisory Committee:

The Las Cruces International Airport (Airport) is a thriving transportation hub poised for explosive growth. With the completion of the Airport Master Plan, the City of Las Cruces (City) is now primed to capitalize on investments made through recent improvements, including strategically developing air service; airport rebranding; strengthened stakeholder relationships; developments in aerospace, including UAS and space operations; collaboration with the Las Cruces Innovation and Industrial Park; and locally and federally funded projects.

Located near the US-Mexico border, the City of El Paso, and the I-10 corridor, the Airport is an important resource to the local and regional transportation network. Further developing commercial passenger service and charter operations will directly support the Airport's role as a strong economic driver for the City and the region. Accommodating over 36,000 annual operations, the Airport is the home and workplace for many civilian, local government, and military employees.

DuBois & King (D&K) has supported the City through many of these efforts and is very excited and committed to continue to grow our professional relationship with the City and the Airport by providing services outlined in RFP 22-23-050. We have assisted the Airport with the 2019 Facilities Needs Assessment, the 2020 Air Service Development Plan, the 2020 Airport Security Plan, and the 2021 Airport Lease Rate Analysis with pro forma. We have developed preliminary design plans for the Transitional Terminal with vehicular parking, conducted the 2023 Airport Master Plan, including commercial aviation forecasting to set the stage for continued growth, and provided on-call services regarding hangar development, lease agreements, document reviews, and the Airport Certification Manual.

I will continue to serve as the Principal in Charge, bringing all of the resources needed to complete the projects outlined within the RFP, as well as additional design projects that may be included in the Airport's capital improvement program. I will use my 38 years of broad experience to support the Airport in airport design; environmental NEPA and permitting; airport maintenance; maintenance equipment and storage facilities; operations; navigational aid design; installation and operation; terminal enroute procedures; and energy conservation, resiliency and sustainability. I am the Vice President of AOPA ASN, Vice President of aviation business associations, one of the founders of Vermont Flight Academy, and an appointed member of numerous state-sanctioned aviation advisory councils focusing on airport financial and environmental sustainability.

The D&K team includes Senior Airport Planner Patrick Sharrow, AAE, who will serve as the client manager. Mr. Hume and Patrick worked very closely together, bringing the master plan to successful completion. Our subconsultant partners are well known to Las Cruces, including Wilson & Company, a multidisciplinary consulting firm that has supported the City with US 70 updated plans, traffic counts, TIA review, and the East Mesa Recreation Complex, serving the City from their Las Cruces office. We are also supported by regular teaming partner, Geopro, which previously served the Airport. As aviation industry experts, Geopro successfully completed the Airport's AGIS/-18B survey and is a pending WBE. Aviation Planning Group (APG) is also a registered DBE/WBE and will work closely with our New Mexico professional engineering team with all aspects of construction phase services. D&K regularly works with DBE and WBE partners, and will actively pursue additional subconsultant team members if needed to meet the Airport's federal DBE requirements.

D&K's approach to any project is defined by maintaining proactive, open lines of communication with the Airport regarding schedules, costs, issues, and opportunities for all assignments. Our aviation leadership staff have built long-lasting relationships with staff at the Fort Worth FAA Airport District Offices, and have significant experience advancing projects using airport improvement funding programs.

Thank you for the opportunity to support the Las Cruces International Airport. If you have any questions, please do not hesitate to contact me at (802) 917-5598 or via email at grouelle@dubois-king.com.

Sincerely,
DuBois & King, Inc.



Guy Rouelle, CM
Principal-in-Charge

City of Las Cruces

RFP COMPLIANCE DECLARATION

RFP TITLE: **Airport Consultant – Engineering, Architecture, and Construction Management Services**

RFP NO.: **22-23-050**

DUE DATE/TIME: **August 15, 2023 / 4:00 p.m.**

In compliance with the requirements of this RFP, I, the undersigned, offer and agree to furnish any or all materials and/or services to the City of Las Cruces within the time agreed.

I further certify that this company has not been debarred, suspended, or otherwise made ineligible for participation in Federal Assistance programs under Executive Order 12549 Debarment and Suspension as described in the Federal Rules and Regulations.

Receipt of Addenda Nos.: ____1____is hereby acknowledged (where none received, place a zero in this space)

Company Name and Address:

DuBois & King, Inc.

28 N. Main St.

Randolph, VT 05060

Authorized Signature

Guy Rouelle, CM

Typed or Printed Name

Director of Aviation

Title

grouelle@dubois-king.com

Email Address

Telephone number 802.728.3376 Fax number 866.783.7101

NM Tax & Revenue Dept. CRS # N/A

Current NM Secretary of State Business ID # 6486592 (corporations only)

Current CLC Business Registration # N/A (respondents located in Las Cruces only)

Federal I.D. number 03-0224555 (mandatory for all respondents)

NM Resident Certificate from NM Tax and Revenue Department enclosed _____ Yes X No

THIS FORM MUST BE COMPLETED AND INCLUDED WITH PROPOSAL
FAILURE TO INCLUDE WILL SUBJECT RESPONSE TO REJECTION

TECHNICAL APPROACH

PROPOSED TECHNICAL APPROACH

Following is a description of D&K's proposed engineering technical approach and a demonstration of our familiarity with each of the anticipated projects listed in the RFP.

Plan, Design, and Construct the Relocation and Replacement of AWOS-3PT

The Las Cruces International Airport's (LRU) current AWOS-3 weather station is frequently out of service or under maintenance and requires sourcing replacement parts that are no longer being manufactured. A new AWOS-3PT will increase the safety and reliability of the general aviation and commercial aviation community at the Airport. Under this contract period, D&K will site and install a new Automated Weather Observation System (AWOS-3PT), utilizing the current air-to-ground VHF and ground-to-ground UHF FCC discrete frequencies. D&K will provide design phase services, including FAA coordination and antenna siting, equipment procurement, construction safety and phasing, decommissioning and demolition services for the current AWOS-3, and construction phase services.

Plan, Design, and Construct the Relocation and Replacement of Rotating Beacon

The Airport's current rotating beacon is installed on a metal Rhon tower. The beacon is constantly failing and in very poor condition due to its age. The beacon meets the location and land requirements prescribed in AC 150/5300-13b; however, it does not meet the clearance requirements due to an issue produced by southerly water tower obstructions that are in close proximity and surpasses the height of the rotating beacon tower. A new rotating beacon will increase the safety and reliability of the general and commercial aviation community at the Airport. D&K will install a new airport rotating beacon in accordance with AC 150/5340-30J and at a location that would meet the location, land, and clearance requirements prescribed in AC 150/5300-13b. Our team will provide design phase services, including FAA coordination and beacon siting, equipment procurement, construction safety and phasing, decommissioning and demolition services for the current beacon, and construction phase services.

Plan, Design, and Construct the Rehabilitation/ Reconstruction of Runway 4-22

Airport leadership made the decision to close Runway 4-22 on August 19, 2022. At the time of closure, the pavement deterioration included longitudinal and transverse cracking, large pieces of foreign object debris, and the runway rating was downgraded from a poor to a failed condition. To this day, the runway is NOTAM closed, and the Airport has closure markers in place so that the flying public recognizes the closure. The FAA has determined that this crosswind runway is ineligible for airport improvement program funding and the City has searched for funding to reconstruct the runway. D&K will provide services to reconstruct the runway to a shorter length and narrow it to 60 feet in width to support group A-I aircraft.

Plan, Design, and Construct the Extension of Fiber Optics/ Internet in Buildings at 8990, 8960, and 8950 Zia Boulevard

A focus of the 2023 Master Plan was to enhance business opportunities and expand aerospace research and development at the Airport. To achieve this goal, D&K will support a project to provide fiber optics/internet to key facilities. In addition, Interstate Airlines will require fiber optics to connect their on-site equipment with the airline's base operations. D&K mapped all of the Airport's utilities during the Airport Master Planning process, and we are acutely aware of the airline's needs, as well as the needs of the businesses the Airport is working to attract.

Plan, Design, Construct, Equip, and Furnish an Airport Maintenance Building with Equipment and a Fuel Farm

With the removal of the sunshades on the east side apron, the Airport is left without an enclosed maintenance facility to house maintenance equipment, parts, materials, and supplies. Airport maintenance facilities are essential to prolonging the operational life span of the equipment housed in it. D&K has the knowledge and experience with adequately sizing and designing maintenance facilities aimed at protecting vital airport equipment from the elements and harsh environments of the Southwest, such as mowing, groundskeeping, brush hogging, operations, and emergency vehicle runways. D&K's previously designed and constructed maintenance facilities include maintenance staff office space, bathrooms, airport supplies, and security access hardware.

© DUBOIS & KING 2023

The Airport also requires an economical and efficient way to refuel airport equipment on site. The D&K team has designed and constructed both aviation and non-aviation fuel farms. By designing a maintenance facility that supports all airport maintenance and equipment fueling needs and is strategically located to support both on-airport and off-airport operations, the Airport will be more sustainable and will experience cost savings, efficiency, and decreased response times.

Resolve the Perpetual Lease of the West and East Apron

In 2020, the Airport requested D&K to fully review its leases, which revealed that the Southwest Aviation leasehold was very large, limited the responsibility of the leaseholder to maintain the property, and did not provide the Airport with reasonable lease revenue given the size of the lease area. To meet FAA Grant Assurances, D&K determined that the best course of action will be for the Airport to not renew the lease at the next renewal interval and to renegotiate a more favorable lease between Southwest and the Airport. D&K is familiar with this lease, FAA Grant Assurances, and property management of airports and will continue to work with the City to resolve this issue.

Plan, Design, Construct, and Equip the Relocation and Expansion of the Aviation Fuel Farm to a More Centralized Location

In 2022, the Airport constructed taxilanes to the East Side Hangar Development Area. These taxilanes afford new hangar owners access to the area and will enable the Airport to solicit the construction of additional general aviation hangars; however, due to taxilane object-free area issues, both the Southwest Aviation and the City-owned fuel farm facilities will need to be relocated. D&K identified the new location of the fueling facilities in the 2023 Airport Master Plan.

The new location of the fueling facilities will have enough space for fuel farm growth. With the construction of additional hangars, the Airport will realize more based aircraft, gain the associated operations, and increase revenue. The Airport started commercial passenger service in early 2023, and this service is forecasted to increase within the planning period. D&K will consider the need for additional fuel capacity during this relocation so that the Airport can continue to serve its current and forecasted clients.

Review, Revise, and Implement an Airport Pavement Maintenance Management Plan

FAA grant assurance #11 requires that the Airport develop and maintain an airport pavement maintenance management plan, which includes inspection procedures, condition assessment, maintenance protocols and procedures, management and oversight of completed works, and staff competence needs. The D&K team has experience working with airports, the FAA, and state DOTs to find optimum strategies for maintaining pavements in a safe, serviceable condition over a given period for the least cost. To prolong the useful life of pavements, the D&K team will follow the recommendations outlined in FAA Advisory Circular 150/5380-7B, Airport Pavement Management Program (PMP), NMDOT Routine Maintenance Guidelines, and plan for routine pavement maintenance to address normal wear. NMDOT Pavement Management System Update will be referenced in The New Mexico Department of Transportation, Aviation Divisions website. D&K will conduct a comprehensive review of the current Pavement Program and outline revision needs. D&K will draft the recommended changes to the Pavement Program and work directly with the Airport Administrator and the FAA to update the current plan.



D&K has successfully designed and provided construction phase services for fuels farms at many airports, including at Greenville Municipal Airport (shown above).

© DUBOIS & KING 2023

Plan, Design, and Construct the Extension of Runway 12-30 and Taxiway C

As part of the Master Plan D&K completed in 2023, our team held a series of public and technical meetings. It was determined that Runway 12-30 will require an extension to 11,110 ft. to support the current and forecasted general aviation and interstate air service operations for the 20-year planning period. D&K will relocate various navigational aids (NAVAID) as necessary, including localizer antenna, threshold lighting, and Visual Approach Slope Indicator (VASI). D&K will negotiate a reimbursable agreement with the FAA for the NAVAID design and flight check.

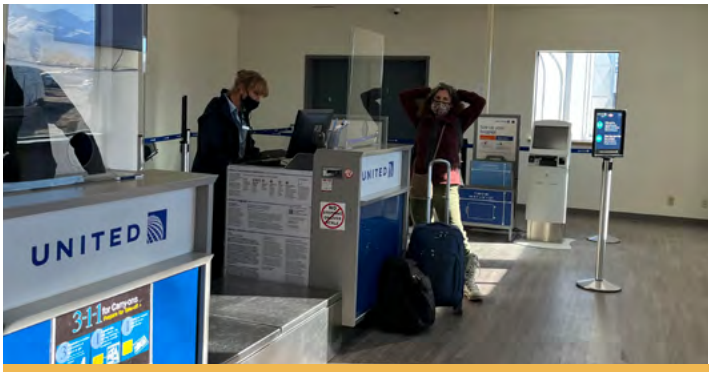
Plan, Design, and Construct the Realignment of Taxiway B to Parallel Runway 12-30 to a Width of 50 ft.

D&K will support the Airport with services to extend Runway 12-30, relocate Runway 8-26, and address and correct basic design standards, including eliminating direct access from apron space to runways and crossing runways in the touchdown zone. These projects, along with the realignment of Taxiway B to create a full parallel taxiway for Runway 12-30, will increase safety and efficiency and adhere to FAA design standards. The D&K team understands the FAA design standards, and the demands of current and future critical design aircraft and has experience managing both taxiway and runway construction projects.

Plan, Design, Construct, Equip, and Furnish a Transitional Terminal with Parking

D&K has worked with the City for the previous four years to develop intra- and interstate air service to support the desire for annual enplanements greater than 10,000, while providing service to various air travel destinations from Las Cruces. D&K and the City have successfully established intra-state air services to Albuquerque. Interstate air service will require a terminal facility with services, including TSA, sterile holding areas, rental car concession space, and vehicular parking. D&K has worked with the City to complete a preliminary design for the transitional terminal that will meet the needs of interstate air service for the next 7–10 years. The City has been seeking funding for the construction of the transitional terminal. Once built, the Airport will be poised to solicit and attract airlines, such as American, Southwest, and JetBlue.

The equippage required by TSA will need to be coordinated with U.S. Customs and Border Protection (CBP). D&K will collaborate with CBP on the location, spatial requirements, power, and IT infrastructure, and will work closely with TSA, the City, and the Airport Administrator on this project.



D&K recently provided construction phase services for a transitional terminal building at Eastern Sierra Regional Airport in Bishop, California.

Plan, Design, and Construct the Relocation and Extension of Runway 8-26 by 3,914 ft. to a Length of 11,410 ft. and a width of 100 ft. Publish Instrument Approach Procedure for Runway 8-26

Key areas in the 2023 Master Plan included decoupling the runway ends to increase safety, lengthening Runways 12-30 and 8-26 to accommodate 100% of the design fleet at 90% useful load, shifting Runway 8-26 to the north to provide adequate safety areas, and opening more space on the apron to accommodate future C-III aircraft operations. The Master Plan designated the Bombardier Challenger 600 series aircraft to be the critical design aircraft. As commercial passenger service evolves at the Airport, it is anticipated that a critical design aircraft change will be implemented within the 10-year planning period. The D&K team will take a phased approach to plan, design, and provide assistance in funding instrument approaches and adhere to FAA design standards as the demand for longer runways increases. We will also consider the associated Taxiway A and apron expansion projects in the phasing plan.

Plan, Design, and Construct the Relocation and Extension of Taxiway A on the Abandoned Runway 8-26 to a Width of 50 ft.

D&K will support a future shift of Runway 8-26 by utilizing the current runway as a parallel taxiway. This would constitute an extension of the new taxiway

© DUBOIS & KING 2023

A to support a full-length, parallel taxiway, and reduction of the width to 50 ft. Utilizing the pre-existing pavement and sub-base will yield significant cost savings, and the project will reduce the pavement width and return the vacated area to native soils. D&K will provide services to extend Taxiway A to match the length of the new Runway 8-26. This portion of new construction will require geotechnical exploration, design, and construction phase services. D&K assumes that the previously started Environmental Assessment will result in a FONSI determination and will meet NEPA requirements.

Plan, Design, and Construct the Expansion of Apron Space to Meet the Facility Needs for Transient and Based Aircraft

The 2023 Master Plan indicated that a future shift of Runway 8-26 to the north, combined with a full parallel taxiway in the location of the current runway, would open up the possibility for the main apron to shift to the north, allowing additional space for larger transient and based aircraft and future aeronautical development. D&K is prepared to support these projects with planning, design, and construction phase services.

Plan, Design, and Construct West Area ADG II/III Taxilane

In support of the City's strategic business plan, D&K will conduct the west area development with a phased approach to support aeronautical and aerospace business development. This will provide areas for future hangar development, a Maintenance Repair & Overhaul (MRO) facility, cargo operations, and space/UAS development facilities.



D&K is leading the development of the Las Cruces International Airport Master Plan, which includes support for UAS research and development.

Plan, Design, Construct, Equip, and Furnish a Long-Term Terminal With Parking

As both intra- and interstate air service increases, the Airport will outgrow the transitional terminal. The March 2023 Commercial Air Service Forecast plans to use the transitional terminal until approximately 2030, when it is expected that a larger terminal will be required to meet the projected annual enplanements. The 2023 Airport Layout Plan (ALP) depicts a long-term terminal building with parking to be constructed east of Runway 12-30 and south of Runway 4-22. The goal of the long-term terminal will be to meet the Airport's needs for the remainder of the planning period FY 2030–2043. When preparing the 2023 ALP, D&K reserved adequate area to construct the vehicular parking for this new terminal. The FAA may require an amendment to the Airport's environmental assessment (EA) or require a standalone EA to advance the long-term terminal project. Under this contract, D&K will support the Airport to preserve space for the long-term terminal and parking and prepare the Airport to apply for necessary funding and obtain required permits for this future project.

ABILITY TO MEET DEADLINES

D&K understands that responsive, timely service and cost-effective, high-quality deliverables are the keys to our success and longevity. In the previous four years of working with Las Cruces Airport Administrator Andy Hume, we have worked out a system to begin each project with a kickoff meeting, which includes the introduction of the project manager and team, a general review of the scope of work, a project schedule, and a description of the deliverables. D&K's schedule specifies the frequency of project meetings to review progress and keep the Airport Administrator informed. Shared goals and frequent, regular communication of the status of each project is at the core of effective and on-time project delivery.

Project Managers receive weekly time and accounting charge reports from our accounting software, and hold regular project status meetings; These reports provide project information, such as labor time charges, labor invoices, and expenses. This information is used to track project-expended funds against project-completed milestones, and this information is used to make adjustments as required to adhere to project schedule and/or budget.

© DUBOIS & KING 2023

Some of D&K's most recent projects include the Las Cruces International Airport Master Plan update (on time and on budget); an Environmental Assessment for a runway extension at Plymouth Municipal Airport (in progress); design, bid, and construction phase services for the installation of terminal area fencing and gates (in progress), and design for a self-serve AvGas system (on time and on budget) and design of a new taxilane (in progress) for Machias Valley Airport.

FUNDING EXPERIENCE

Grant Administration, Funding Assistance, and CIP Development

D&K supports project formulation, CIP development, and grant assistance and administration. The D&K team includes airport grant administrators who have extensive experience with state and FAA grant requirements and are heavily involved in the firm's full array of aviation services, including airport planning, design, environmental, and construction projects. D&K has worked closely with the City of Las Cruces Contracts Administration and Airport Administrative Assistant Lisa Flores on customary administrative functions, including contract execution, work orders, pay requisitions, and invoicing. These functions are critical to maintaining a flow of information and timely payment of subcontractors.

State and Federal Funding, Administration, and Regulation

D&K is engaged with NMDOT Aviation, assisting and advocating for our clients' projects to receive state funds. Our contacts with local and state legislators, representatives, and congressional delegates enable us to leverage discretionary funding for the Airport's projects.

The D&K aviation team has developed a strong understanding of aviation-related advisory circulars, compliance orders, and engineering briefs relevant to aviation planning. Our in-house grants administrator has mastered financial procedures related to grant administration as she manages grants for our clients. Aviation Division Director Guy Rouelle, CM, has direct contact with the FAA in Washington, D.C., and has personal relationships with most Aviation District Office (ADO) managers, senior engineers, senior planners, and environmental managers assigned to the regional offices. Client Manager Patrick Sharrow, AAE, has contacts in



D&K team members have secured over $87,000,000 in airport capital funding for our clients in the last eight years.

NMDOT and at the Fort Worth ADO. This enables D&K to streamline communications, secure funding, and complete projects on time and budget.

Experience with Alternative Funding Sources

D&K is experienced at working with a variety of funding sources to advance projects for our airport clients. This includes traditional FAA-AIP funding options and other non-traditional options, such as FAA-Omnibus and BIL funding, FEMA funding, Congressional Directed Spending, and state and local funding sources.

Federal Aviation Administration. The D&K team has worked with the staff at the FAA for decades. These strong professional relationships help D&K maintain the necessary critical communication so that our clients' interests are clearly understood by the staff at the FAA.

FAA-Omnibus Funding. D&K has experience securing FAA-Omnibus funding for airport projects. In 2017, D&K assisted the Stephen A. Bean Municipal Airfield in Rangeley, Maine, to secure a $12.5M Omnibus grant to support an 1,100-foot runway extension at the airport. The runway was used by LifeFlight of Maine, a nonprofit medical transport company, to provide its services. However, the FAA found the Airport to be out of compliance for its design aircraft. D&K

© DUBOIS & KING 2023

provided the required planning and engineering services to successfully apply for the grant to fund 100% of the project.

Congressional Directed Spending (CDS). D&K has assisted clients in securing CDS funding for airport projects. Recently, D&K worked closely with the office of Maine Senator Susan Collins to secure a $1.2M grant on behalf of the Town of Machias for an Environmental Impact Study and Property Acquisition project in order to lay plans for a brand new crosswind runway. The new runway will allow the airport to serve LifeFlight and provide necessary emergency service to the region.

FEMA. D&K has a 25-year history of working with FEMA on a variety of projects, including flood and natural disaster recovery. After Tropical Storm Irene devastated parts of New England, D&K staff served as Vermont Agency of Transportation (VTrans) representatives for sites in 23 communities, determining repair quantities/cost, and evaluating repairs, including identifying codes and standards to be followed and hazard mitigation designs for affected facilities.

American Recovery And Reinvestment Act (ARRA). D&K supported VTrans to complete the design and bid phase of a $6M project to take advantage of ARRA funding for improvements at the E. F. Knapp State Airport. D&K worked with the Vermont Agency of Transportation Aviation Program and the Agency's Contract Administration to develop a consultant-led bid process using FAA documents.

State DOT Funding. D&K has written and received multiple grants from NMDOT on behalf of Las Cruces International Airport. D&K also assisted the South Albany Airport in New York to secure funding for a Snow Removal Equipment (SRE) building. Part of the funding mechanism for this project included incorporating renewable energy and environmental sustainability into the project. To qualify the project for funding, D&K provided services to develop a solar array and stormwater collection system at the airport. NYSDOT approved the grant to fund this project in December 2021.

THREE EXAMPLES OF INNOVATIVE ENGINEERING AND PRODUCT SOLUTIONS

Stephen A. Bean Municipal Airport



Town of Rangeley
Rebekah Carmichael, Former Airport Manager
15 School Street, Rangeley, ME 04970
(207) 864-3326; treasurer@rangeleyme.org
Duration: 2018-2020

The State of Maine identified **Stephen A. Bean** as a high priority airport to connect remote regions of the state with critical medical services. The FAA found the airport to be out of compliance for the airport's design aircraft and for a critical user of the airport, LifeFlight of Maine, a nonprofit medical transport company. D&K provided planning, design, and permitting services to the Airport for the $12M, 1,110-ft runway extension and other improvements to enable LifeFlight to provide critical medical transport services. In the course of this project, D&K identified limitations on airport operations and economic opportunities that could be addressed with strategic infrastructure improvements to support additional economic development and operational efficiencies at the airport. Improvements include a full-length parallel taxiway, new terminal building, apron, aircraft maintenance hangar, aircraft storage hangar, solar array, and the relocation of 425 ft of a municipal road.

D&K conducted a technical master plan update with runway length analysis to determine the required runway length, design parameters, and airport improvements and to identify the human and natural resources that could be impacted by the proposed improvements. The Runway Length Analysis/Master Plan update was completed in three months and approved by the FAA.

© DUBOIS & KING 2023

D&K completed and submitted NEPA-required EA documentation for approval in four months. D&K designed the project in five months so the construction grant application could be filed on May 1, 2018. Construction was completed in the Fall of 2019. This project was also completed on budget. Services included:

- Airport Layout Plan update
- Environmental Assessment design, focused on resiliency and sustainability
- Plan, design, permit, and construction phase services for 1,100-ft Runway 14-32 Extension
- Plan, design, and construction phase services for hangar Taxilane 1
- Plan and permit full parallel Taxiway A
- Property Management Plan with fuel farm study
- Environmental Stormwater and Land Alteration permitting
- Plan, design, permit, and construction phase services for Loon Lake Road realignment
- Snow Removal Level of Service document

With the successful completion of the runway extension, LifeFlight has been able to utilize the airport and save lives.

Eastern Sierra Regional Airport



Inyo County
Ashley Helms, Airport Director
Public Works Department – Airport Division
703 Airport Road, Bishop, CA 93514
(760) 878-0200; ahelms@inyocounty.us
Duration: 2020-2022

United Express, operated by SkyWest Airlines, was preparing to cease flight operations at Mammoth Yosemite Airport, Mammoth Lakes, CA to resume flight operations at **Eastern Sierra Regional Airport**, Bishop, CA. Over the years, reliability at the Mammoth Yosemite Airport was affected, as wind and weather caused a very high cancellation rate, with months where the cancellation rate was as high as 30%. With a minimum revenue guarantee, the Mammoth Mountain Ski Area (MMSA) was assuming significant risk during the winter months when cancellations were high. Due to this and the desire to increase destination visits, MMSA and Mammoth Lakes Tourism have a strong vested interest in United Express's move from Mammoth to Bishop. D&K attended numerous meetings with the County of Inyo, Bishop Airport management, the FAA, United Airlines, and MMSA to determine the status and progress related to the move. D&K determined there were numerous details that would require additional focus and resources to minimize the risk of a continued delay with United Express move to Bishop.

In February 2020, D&K drafted a summary report which included findings and recommendations. Inyo County executed an on-call planning services agreement with D&K. A partial list of services and work effort is outlined below:

- Commercial Aviation Forecast
- Index B ARFF equipment acquisition
- Airport Emergency Plan
- Airport Certification Manual
- Energy efficiency-rated sprung steel terminal building design and construction phase services
- United Airlines Lease Agreement
- Fuel Farm Maintenance Plan
- Environmental Assessment funding
- Vegetation control during runway reconstruction
- Airport operations staff training
- Ground Transportation Plan
- Advice and assistance with Independence Airport leasing

The project was a success with the inaugural flight of United Express on December 19, 2021.

© DUBOIS & KING 2023

Machias Valley Airport



Town of Machias
Bill Kitchen, Town Manager
Town Offices, POB 418, Machias, ME 04654
(207) 271-0808; kitchsync@gmail.com
Duration: 2019-Present

LifeFlight of Maine identified the **Machias Valley Airport** as their number one priority in the entire state, as the Town of Machias submits over 80 annual requests to LifeFight for emergency medical services. The Machias Valley Airport was in need of improved aviation support facilities for LifeFlight to properly and consistently serve the Downeast region. The current runway cannot be extended due to its proximity to US Route 1 and the natural limitations of the Machias River. The airport's current runway length, width, and the weather in the Downeast region has been the cause of a decreased success rate for LifeFlight in transporting critical patients during their time of need. D&K was hired to plan, environmentally clear, design, and provide construction phase services for a second runway to meet the needs of LifeFlight and other charter aircraft. D&K is currently completing a full evaluation of the installation of a solar array.

Following the completion of the requisite planning, D&K will conduct an environmental assessment, followed by property acquisitions. Construction is planned for 2025. Services for Machias have included:

- Terminal Area Layout Plan update
- 20-year aviation forecast, approved by FAA
- Second Runway Feasibility Study
- Property Management Plan with fuel farm study
- Construction phase services for an aviation fuel farm
- Environmental Assessment for second runway
- Snow Removal Level of Service document

D&K wrote and received grant funding for all planning necessary to complete this project. The Congressionally Directed Spending was issued in 2022.

QUALIFICATIONS/COMPETENCE

D&K has assembled a team of highly-qualified professionals experienced at leading airport projects similar to the projects requested by the City. Our aviation team integrates engineering, planning, and airport maintenance and operations into all aspects of project development. D&K team members understand the connection between FAA-funded infrastructure projects and the City's responsibility for sustainable fiscal management, operation, and maintenance of the Airport. The qualifications of key personnel who will be assigned to provide the services described in the RFP follow, including percentage of time assigned to the project. Available support staff are also listed. A D&K team organizational chart is included. 100% of D&K's work will come from our Randolph, VT, office.

Resumes for key D&K staff and subconsultant partners are included in the appendices.



Guy Rouelle, CM

Principal-in-Charge

Guy has 38 years of experience in the planning, design, management, and budgetary responsibility for airports and airport capital improvement programs. He previously served as the Vermont Aviation Administrator overseeing Vermont's state-owned airports. Guy's experience encompasses all aspects of aviation to include air traffic control; airport operations; flight operations; airport design; navigational aid design, installation, and operation; Terminal Enroute Procedures; energy conservation; and federal, state, and local environmental permitting. He is the Principal-in-Charge for planning services as Las Cruces International Airport.

Responsible for administration of contract
28 N. Main St. Randolph, VT 05060
(802) 917-5598
grouelle@dubois-king.com

© DUBOIS & KING 2023

AIRPORT ENGINEERING SERVICES

CITY OF LAS CRUCES

GUY ROUELLE, CM
Principal-in-Charge

MARK GOODRICH, PE
QA/QC, Senior Airport Engineer

PATRICK SHARROW, AAE
CLIENT MANAGER

ENGINEERING

MARK GOODRICH, PE
Senior Airport Engineer

DAVE CONGER, PE
Senior Airport Engineer

JEFF ADLER, PE
Senior Airport Engineer

ALAN GOULD, PE
Senior Electrical Engineer

STEVE DUMAS, PE, CXA, BCXP, LEED AP
Senior Mechanical Engineer

WIL HORTON, PE
Senior Electrical Engineer

GARRETT ORGANEK, PE
Project Engineer

ANDREW LEWIS
Civil Engineering Technician

MARK WENTZEL, PE, LEED AP (WILSON)
Mechanical Engineer

MARC HESS, PE (WILSON)
Electrical Engineer

CONSTRUCTION

OWEN SILBAUGH, PE, PMP (APG)
Construction Phase Services

SURVEY

BEN ARAGON, PS (WILSON)
Professional Surveyor

CHAD SNOKE (GEOPRO)
Aerial GIS Survey

ENVIRONMENTAL

BRENDA BHATTI, QAWB (IN TRAINING)
Environmental Planner/ Wildlife Biologist

MICHAEL HILDENBRAND, PE
Senior Environmental Engineer

HMMH
Noise and Air Quality Studies

ADMINISTRATIVE

JULIE DICKER
FAA Grant Administrator

ARCHITECTURE

BRETT BEATY, AIA, NCARB (WILSON)
Senior Architect

RICK GREEN, RA, FCSI, CCA (WILSON)
Senior Architect

TIMOTHY RUGG, RA (WILSON)
Senior Architect

LAURA BRUNIK, RA, AIA (WILSON)
Architect

PLANNING

JEN RICCIARDI
Senior Airport Planner

BRIAN PINSONAULT
Airport Planner

IMMORTAL DATA, INC.
Master Planning, Business & Marketing

RANDALL WIEDEMANN
Business & Economic Consulting

AIRPLANNERS
Sustainability Plan/Master Plan Forecasting

LEAH WHITFIELD, CM, ACE (APG)
Senior Planner

JUSTIN HEID, AAE (APG)
Senior Aviation Planner

© DUBOIS & KING 2023

D&K KEY STAFF

TEAM MEMBER	EXPERIENCE	PERCENT ASSIGNED
PATRICK SHARROW, AAE Client Manager	Patrick is a Senior Airport Planner with over 18 years of experience in the planning, management, and operation of both general aviation and Part 139 commercial service airports. Patrick's experience encompasses all aspects of airport leadership, including airport capital improvement program development, grant administration, master planning, construction of land- and airside infrastructure, and customer service management for major airline operations. He is currently serving as Senior Airport Planner for the Las Cruces International Airport Master Plan, commercial aviation forecast, and AGIS aeronautical survey.	**70%**
MARK GOODRICH, PE* QA/QC & Senior Airport Engineer *In direct charge of engineering work* **licensed in NM* *6 Green Tree Dr.* *South Burlington, VT 05403*	Mark has 26 years of professional airport engineering experience, including runway, taxiway, and apron reconstruction; land acquisition; obstruction removal; edge lighting design; pavement geometry; drainage calculations and stormwater drainage system design; site grading; utility modifications; pavement markings; bituminous concrete pavement design; construction phasing; erosion control measures; quantity take-offs and construction estimates; construction administration and supervision; and coordination with subconsultants. Mark is the Project Manager for Engineering Services for the Las Cruces International Airport Plan.	**40%**
DAVE CONGER, PE Senior Airport Engineer	Dave has 30 years of experience in transportation and civil engineering for municipal, state, and federal clients. He is currently working with the City of Las Cruces to design a new transitional terminal building for the Airport. David is thoroughly familiar with the planning, design, permitting, and management of apron, taxiway, runway, intersection, access, hangar, maintenance facilities, and terminal projects. He is experienced in airport lighting and signage design, construction safety, and security and perimeter access systems.	**25%**
JEN RICCIARDI Senior Airport Planner	Jen has 23 years of experience in the aviation industry. She has extensive airport management, operations, and maintenance experience enabling her to view projects from the airport's perspective. While managing six of Vermont's state airports, Jen provided oversight for projects ranging from the development of airport master plans and runway and taxiway construction to obstruction removal, avigation easements, ALP narratives, and vegetation management plans. Her experience includes lease execution, contract agreements, fuel farm installations, and airport system plans. She is a Senior Airport Planner for the Las Cruces International Airport Master Plan.	**50%**
ALAN GOULD, PE* Senior Electrical Engineer **licensed in NM*	Alan has more than 30 years of electrical engineering experience performing and supervising the design of electrical systems for commercial, industrial, and institutional clients. His experience includes commercial electrical design and installation, utility infrastructure design and installation, residential, healthcare, institutional, and industrial electrical installations. Alan has led MEP services for airports and terminal renovations and design.	**25%**
BRENDA BHATTI, QAWB (IN TRAINING) Environmental Planner & Wildlife Biologist	Brenda has over 20 years of natural resources, environmental planning, and regulatory permitting and consulting experience on over 800 projects throughout the United States. She has completed the requisite training for Qualified Airport Wildlife Biologists (QAWB) under FAA AC 150/5200-36B. Brenda has significant experience in environmental and land use project planning and management, ecological and wildlife studies, land protection, state and federal agency coordination and negotiations, and regulatory and permitting strategy.	**25%**
JULIE DICKER FAA Grants Administrator	Julie is a Senior Administrative Assistant with over 20 years of experience providing office support, accounting duties, and project support to management and staff. Julie has supported the development of contract documents, grant applications, FAA and MaineDOT monthly construction reports, preparation of addenda, and construction phase support and management of bid process. Julie has experience supporting D&K services as Airport Engineer for the Towns of Machias, Rangeley, and Greenville, ME.	**50%**

© DUBOIS & KING 2023

D&K SUPPORT STAFF

TEAM MEMBER	EXPERIENCE
JEFF ADLER, PE Senior Airport Engineer	Jeff has 41 years of experience in civil and airport engineering, including runway extensions and reconstructions, taxiway design and construction, lighting systems, apron expansions, land acquisitions, obstruction removal, fuel farm upgrades, access roadway relocations, and environmental documentation and permitting. Jeff is throughly familiar with FAA grant application and submission requirements and is serving as a Quality Assurance Reviewer and Senior Airport Engineer for Airport Planning Services at Las Cruces.
STEVE DUMAS, PE, CXA, BCXP, LEED AP* Senior Mechanical Engineer **licensed in NM*	Steve is a mechanical engineer with 41 years of experience in project management, design, and construction administration services for projects ranging from conceptual design studies and facility evaluations to complex multidisciplinary design packages for multimillion-dollar projects. Steve provides commissioning services to a wide variety of clients and facilities primarily focusing on HVAC and specialty ventilation systems.
WIL HORTON, PE Senior Electrical Engineer	Wil is a senior electrical engineer with 36 years of engineering experience. His responsibilities include the review and design of electrical engineering documents for commercial, institutional, water treatment, and wastewater treatment facilities. His aviation experience includes electrical design for runway and taxiway extensions, fuel farms, parking garages, and ramps.
GARRETT ORGANEK, PE Project Engineer	Garrett has 11 years of experience with residential and commercial site design, including utility, grading and drainage, septic, and subdivision design work, as well as feasibility studies, cost estimating, preparation of specifications and construction inspection. He has also conducted 3-dimensional modeling, visual simulation, and rendering work for a variety of projects.
ANDREW LEWIS Civil Engineering Technician	Andrew is a recent graduate from Eastern Maine Community College, where he earned an associate's degree in civil engineering technology. His experience includes construction inspection, AutoCAD Civil3D drafting, and technical report writing. He has supported drafting for a terminal expansion at Greenville Municipal Airport and provided editing for pavement condition reports for airports across Maine.
BRIAN PINSONAULT Airport Planner	Brian has over 10 years of experience in aviation planning and previously served as an airport manager for Middlebury State Airport. He has vast knowledge of FAA regulations and airport operations and is familiar with NFPA 407 standards and UAS. Brian's experience includes updating Airport Certification Manuals (ACM); training employees, tenants, and first responders to meet ACM standards; performing FAA Part 139 inspections; overseeing fuel farm and mobile fueling vehicle procurement, maintenance, and inspections; and managing facility improvements. He has served as an Aviation Planner for Las Cruces Airport Master Plan updates.
MICHAEL HILDENBRAND, PE Senior Environmental Engineer	Michael has 20 years of experience in design, permitting, construction, and post-monitoring of development projects. He has served as an environmental engineer for runway and taxiway extensions and runway safety areas, providing stormwater permitting support and design of stormwater collection and treatment swales.

SUBCONSULTANTS

D&K has relationships with a number of subconsultant partners who assist in providing airport services. These partners provide services for aeronautical forecasting, noise studies, business and market planning, environmental studies and permitting, surveying, air service development, construction materials testing, and geotechnical services. D&K will request consent from the Airport Administrator prior to using subconsultants. Our anticipated subconsultant partners and their roles in airport projects follow.

SUBCONSULTANT/AREAS OF SERVICE	EXPERIENCE
WILSON & COMPANY Master Plan, Survey, Architecture, & Design 414 N. Main St. A Las Cruces, NM 88001	After 90 years of business, Wilson & Company, Inc., Engineers & Architects has brought more than 600 people together in 15 offices to build higher relationships through discipline, intensity, collaboration, shared ownership, and solutions with our clients, partners, and communities. Professionals include civil, mechanical, electrical, and structural engineering; architecture; planning; biology; surveying; mapping; GIS specializations; drone piloting; financial analyses; program and constructionmanagement; inspecting, and a growing number of multidisciplinary specialties. With an office in Las Cruces, Wilson & Company has significant transportation and public infrastructure experience to support Airport projects.

© DUBOIS & KING 2023

SUBCONSULTANT/AREAS OF SERVICE	EXPERIENCE
AVIATION PLANNING GROUP Airport Engineering & Planning Remote, Various Locations	Aviation Planning Group, LLC (APG) is a majority woman-owned collaborative aviation firm focused on general aviation (GA) and small commercial service airports. Founded in January of 2020 by Justin Heid and Leah Whitfield, APG has worked on more than a dozen aviation planning studies for a variety of private aviation companies and airports. APG staffs planners and engineers across the country, including those with Maine experience. APG staff have experience as airport managers, airport staff, active pilots, and state aeronautics staff with decades of planning experience across the US. Their staff have experience in aeronautical and non-aeronautical development, bringing businesses and air service to airports across the country.
GEOPRO Aerial GIS Survey 1441 E. Stroop Rd. Dayton, OH 45429	Since 2007, Geopro Consultants, LLC, has been providing aviation geospatial services, including surveying, aerial mapping, and geographic information systems (GIS). Geopro's team has successfully completed several multidisciplinary projects at airports across the globe. In the last five years, Geopro has visited 16 countries and completed more than 100 aeronautical surveying and mapping projects.
IMMORTAL DATA, INC. Airport Master Planning, Business & Marketing Planning 8990 Zia Blvd., Suite D Las Cruces, NM 88007	Immortal Data, Inc. ,(IDI) provides goods and services to the commercial space industry. Company personnel includes seasoned lifetime veterans of space launch and commercial space enterprises with a wide range of experiences and familiarity with spaceport practices at spaceport facilities in the USA and abroad. One payload built to test IDI's space technology will be flown in a NASA launch by Up Aerospace at Spaceport America this coming November, in conjunction with New Mexico Tech.
AIRPLANNERS Sustainability Plan Development & Master Plan Forecasting 108 Castle View Dr. Basalt, CO 81621	AirPlanners develops air service into airports in the United States and Canada. The firm specializes in the strategic development, strategy, and implementation of commercial air programs.
HMMH Noise & Air Quality Studies 700 District Ave., Suite 800 Burlington, MA 01803	HMMH is an international leader in environmental and transportation planning, including noise and vibration control, air quality analysis, airport and airspace planning, and sustainable energy consulting.
R.A. WIEDEMANN & ASSOC. Business & Economic Consulting Remote, Various	RAWA is a leading, high-quality, specialized firm devoted to airport business planning, economic impact analyses, airport master planning, and airport branding and marketing.

PERFORMANCE OF THE FIRM

Founded in 1962, DuBois & King is an employee-owned, C-corporation providing engineering, environmental, planning, survey, and other professional multidisciplinary services to local, state, and federal clients.

D&K's Aviation Division has been serving general aviation and Part 139 airports in the United States for 35 years. In addition to airport planning and engineering services, D&K's in-house services include transportation and municipal planning; survey, including sUAS/drone; environmental; grant writing and administration; property management; airport/FBO management; airport maintenance; and construction phase services for aviation projects. D&K is familiar with the requirements and guidelines contained in the latest editions of FAA Advisory Circulars and has a strong working relationship with state aviation offices and the FAA Regional ADO.

Airport Design Services. D&K employs airport engineers, planners, and in-house staff to provide design services for all aspects of general aviation and commercial service airports. Services include runway, taxiway, and apron design for extensions, repairs, rehabilitation, and reconstruction; airport drainage systems; airport lighting systems ranging from runway and taxiway lighting to box signs, PAPIs, REILs, VASIs, and new electrical vaults; and off-airport lighting and marking, such as hazard beacons. D&K team members have designed fuel farms, ARFF buildings, hangars, heliports for airports, pavement management systems, and runways.

© DUBOIS & KING 2023

Airport Building Facilities. The D&K team includes mechanical, electrical, and plumbing professionals licensed in New Mexico with airport facility design capabilities, including fueling systems, conventional hangars and T-hangars, airport support buildings (SRE and equipment), terminals, FBOs, business centers, and airport industrial parks. The firm coordinates with the TSA and airline staff on airport facility design services. D&K staff are experienced at incorporating security and airport operational requirements in airport facilities and our MEP staff provide a broad range of mechanical-HVAC engineering services, including HVAC system analysis and assessments; forensic evaluations, commissioning (Cx) and retro-commissioning (RCx) of systems; new facility designs and existing system upgrades; and energy calculations and modeling.

Airport Electrical and NAVAID Services. D&K electrical engineering staff are experienced with providing comprehensive services to design airport electrical systems and terminal buildings.

Surveying and Mapping. D&K uses the latest robotic total station and RTK GPS systems to achieve greater accuracy and efficiency. Equipment is fully compatible with our in-house computer and MicroStation/AutoCAD systems. Our equipment supports providing one-man survey crews to projects for increased productivity and budget control. Survey staff offer expertise in land surveying and mapping projects and topographic, property, and construction survey. For Las Cruces, subconsultants Geopro and Wilson & Company are available to complete survey and mapping with support from D&K.

Construction Administration. D&K's construction professionals operate as liaisons between the Airport and the contractor to facilitate adherence to project design, schedule, and budget. They provide services for airport projects from the bid phase through final completion and work closely with the client, contractor, and other project participants to assure that construction activities adhere to design intent and permit requirements. For Las Cruces, subconsultant APG is available to complete construction administration with support from D&K.

Environmental Documentation and Permitting. D&K's aviation planners, environmental documentation specialists, wetlands scientists, field naturalists, surveyors, and GIS specialists are highly experienced at providing services for environmental documentation and permitting for airport projects. Over the last 10 years, D&K has written over 100 NEPA documents, including EA, EIS, and CE documentation in addition to federal, state, and local permitting, wildlife hazard assessment and mitigation, stormwater permitting, airport underdrain studies, visual assessments, groundwater management programs, hazardous materials, USTs, SWPPPs, and SPCCs.

Airport Planning. D&K's aviation planners have completed numerous airport master plans, master plan updates, and community planning studies for clients across the Northeast, Florida, New Mexico, and California. Planning for the long-term sustainable future of an airport and its surroundings is a complex process that requires client, local, county, state, and federal engagement to produce an environmentally balanced and financially viable development program for the Airport. Our aim is to assist with the growth of the Airport's air transportation system while considering the needs of its neighbors. D&K provides leadership in the areas of regional economic development; airport business development; revenue generation; airport operations, maintenance, and property management; and prioritizing AIP and non-AIP projects.

D&K is prepared to immediately begin supporting the Airport with the projects outlined in the RFP and future projects assigned. Through our experience serving Las Cruces, the D&K team has developed a thorough understanding of the needs of the Airport's flying community; the goals outlined in the City's strategic plan; the Airport's operations, maintenance, and lease management; and the City's economic development priorities.

PROJECT EXPERIENCE

Following is a list of three airport planning and engineering clients and select projects completed for them by D&K's Aviation Division. The projects listed are relevant to the projects listed in the RFP, and were completed in the past five years. Additional experience is listed to demonstrate the depth and breadth of the firm's GA and Part 139 primary airport experience.

© DUBOIS & KING 2023

CLIENT	SUMMARY	PARTIAL LIST OF SERVICES
PLYMOUTH MUNICIPAL AIRPORT Matt Cardillo, Airport Manager Plymouth Airport Commission 246 S. Meadow Rd, Plymouth 02360 508.746.2020 mcardillo@plymouth-ma.gov 1987–Present	As the airport consultant in Plymouth for 35 years, D&K has provided planning, environmental, design, and construction phase services for a wide variety of airport projects, including numerous taxiway and apron reconstructions/extensions/expansions, runway extensions with safety area, roadway extensions, fencing and automated gates, utility improvements, Jet A/AvGas fuel farm installation, cost estimating, FAA coordination, grant application preparation, airport approach lighting addition and conversion, planning, security, and environmental permitting.	• Taxiway reconstruction • Runway 15-33 reconstruction • Taxiway reconstruction, 1,300 ft extension • 1,100-ft. runway extension and construction phase services for safety area • Construction phase services for taxiway • SRE acquisition • Master Plan update (multiple) • Apron construction/ expansion • Design, permit, and construction phase services for a new terminal building • Airfield pavement markings/maintenance • Reconstruction phase services for taxiway lights • Safety area and apron expansion • Runway 6-24 extension, reconstruction, and lighting • Apron and taxiway feasibility evaluation • Fuel farm upgrade • Taxiway realignment and taxiway relocation
NORWOOD MEMORIAL AIRPORT Russ MaGuire, Airport Manager 125 Access Road, Norwood, MA 02062 (781) 255-5616 airport@norwoodma.gov Duration: 2007–Present	D&K has served as Norwood Memorial Airport's Airport Engineer since 2007 and is currently supporting an environmental assessment. D&K recently completed a technical master plan update and has provided services that include runway and taxiway relocation, realignment, and reconstruction; environmental assessments and permitting; master planning; lighting design; SRE acquisitions; pavement markings and maintenance; and construction phase services.	• Design Runway 17-35 extension with safety area improvements • Design, permit, and construction phase services for Taxiway A realignment • Plan grid-tied solar array • Design, permit, and construction phase services for Taxiway D relocation • Master Plan update • SRE acquisition • Airfield pavement markings/ maintenance
STEPHEN A. BEAN MUNICIPAL AIRPORT Rebekah Carmichael, Former Airport Manager 15 School Street, Rangeley, ME 04970 (207) 864-3326 treasurer@rangeleyme.org Duration: 2018–2020	D&K conducted a runway length analysis and Master Plan update to determine the required runway length, design parameters, and airport improvements, and to identify the human and natural resource impacts by the proposed improvements. The runway length analysis and Master Plan update were completed in three months and approved by the FAA. D&K completed and submitted the EA documentation for approval in four months. D&K successfully completed the design of the project in five months so the construction grant application could be filed with the FAA on time.	• Master Plan update w/runway length analysis • Environmental Assessment • Wetland mitigation • Environmental permitting • Runway 14-32 design 1,100-ft Extension • New Taxiway A design • Construct Runway 14-32 with 1,100-ft extension • Reconstruct terminal apron • Relocate 925-ft of Loon Lake Road • Hangar taxilane design, construction phase services • Utility relocation • Solar array design • Lease Analysis/Property Management Plan • Fuel farm study

© DUBOIS & KING 2023

CITY OF LAS CRUCES



Appendices

DuBois & King inc.

GUY ROUELLE, CM



Principal-in-Charge

Rotating Beacon, Las Cruces International Airport, Las Cruces, NM. Client Manager and Senior Airport Planner for a project to design, permit, and construct a rotating beacon.

Airport Planning Services, Las Cruces International Airport, Las Cruces, NM. Project Manager/Principal in Charge for multiple planning projects focused on maximizing growth opportunities for the Airport. Projects to date include conducting an Airport Facilities Needs Analysis and Terminal Building Feasibility Study and preparing an Airport Lease Analysis and Property Management Plan, a Commercial Air Service Development Plan, an Airport Security Plan, and an Airport Pro Forma.

Stephen A. Bean Municipal Airport, Rangeley, ME. Project Manager/ Senior Airport Planner for capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract. Led day-to-day development, airport planning, scheduling and budgeting, and client coordination. Relevant projects include:

- **FBO and Hangar Lease Agreement Review.** Reviewed the current lease and operating agreements on the airfield, including the FBO agreements. Prepared recommendations to help facilitate growth and diversity in the services provided at the airport. Reviewed individual hangar lease agreements for compliance with FAA standards and regulations.
- **Runway Length Analysis and Technical Master Plan Update.** Project Manager for planning, evaluation, concept design, and environmental resource analysis supporting an 1,100 ft runway extension and appurtenant improvements. The FAA found the airport to be out of compliance for its design aircraft. A principal user of the airport, LifeFlight, a nonprofit medical transport company regularly uses this type of aircraft to provide its services. Additional updates to the CIP include new terminal building, new aircraft maintenance facility, new hangars, apron improvements, perimeter fencing, snow removal equipment acquisition, and construction of a snow removal equipment building. Led day-to-day development, airport planning, scheduling and budgeting, and client coordination. Typically a one-year process, this service was performed in three months.

EDUCATION

M.A.S., Airport Operations, Embry-Riddle Aeronautical University, 2002; B.S., Aeronautical Science, Embry-Riddle Aeronautical University, 1994; US Army, Fort Rucker, Alabama, Air Traffic Control, Flight, Terminal Enroute Procedures, 1984

CERTIFICATIONS

AAAE Certified Member (CM); Certified FAA Form 5010 Inspector; Part 107 sUAS Remote Pilot; Flight Instructor; Commercial; Multi-engine and Single Engine, Rotary Wing; Instrument Rated Pilot; FAA Safety Team Senior Representative

- **Environmental Assessment for Runway and Taxiway Extensions and Town Highway Relocation.** Project Manager for preliminary design and environmental resource assessments and submitted NEPA EA documentation for construction of the following improvements: 1,100-ft runway extension, 1,100-ft taxiway extension, 400-ft relocation of Loon Lake Road, new terminal building, new aircraft maintenance facility, new hangars, and apron improvements. Responsible for leading preliminary design suitable for permitting plans. Typically a one-year process, the EA documentation was completed and submitted in four months.
- **Runway and Taxiway Extension Design.** Project Manager for design of a 1,100-ft runway extension, a 1,100-ft taxiway extension, and a 400-ft relocation of Loon Lake Road to bring the runway into compliance with current FAA requirements for the airport's design aircraft. Responsible for client coordination, and scheduling and budgeting of firm resources. Typically a one-year process, the design was developed in a five-month timeframe.

RSA Improvements, Inyo County, Bishop Airport, Independence, CA. Project Manager for Runway Safety Area improvements to Runway 12-30, to be conducted in two phases; Implementation of declared distances on Runway 12; and Amendments to the Operations Specifications for United Airlines (United Express).

Airfield and Airport Reconstruction, Northeast Kingdom International Airport, VTrans, Coventry, VT. Project Manager for the expansion of the Terminal Apron, which was part of a $24M project that included a 1,000-ft extension of Runway 36, a 300-ft extension of Runway 18, a 5,400-ft full-parallel taxiway, a new three-bay snow removal equipment building, 78 acres of obstruction removal in the approach surfaces, installation of a new on-site water/waste water system, and preparation of 300,000 SF of new privately-funded hangars and bonded and non-bonded warehouses. Oversaw the planning, design, permitting, bidding, and construction of the project funded with FAA discretionary funding. The onsite water/wastewater system was funded through a Northern Borders grant.

© DUBOIS & KING 2023

PATRICK SHARROW, AAE



Client Manager

EDUCATION

M.B.A., Organizational Leadership and Strategic Planning, Norwich University, 2013; B.S., Aerospace Studies - Aviation Safety & Science/ Airport Management, Embry Riddle Aeronautical University, 2003

CERTIFICATIONS

American Association of Airport Executives (AAAE) - Accredited Airport Executive, Certified Snow Expert, Airport Security Coordinator, Part 107 UAS Pilot, Private Pilot

Airport Planning Services, Las Cruces International Airport, Las Cruces, NM. Senior Airport Planner for the Airport Master Plan, commercial aviation forecast, and AGIS aeronautical survey. The Master Plan project includes Las Cruces's aerospace program for lower-altitude, smaller operation, and exploring the potential to extend the main runway to accommodate Virgin Galactic's White Knight.

Millinocket AMPU-Supplemental Phase, Millinocket Municipal Airport, Millinocket, ME. Airport Planner to conduct planning level photogrammetry of leaf-on conditions to support master planning study of a potential runway extension, alternative threshold locations, and obstruction clearing requirements.

Airport Master Plan Update, Marion County Airport, Dunnellon, FL. Airport Planner for a project to prepare an Airport Master Plan Update for the Airport in accordance with the requirements of the FAA, the Florida Department of Transportation (FDOT), and the needs of Marion County.

PAPI Design and Construction Administration, Eastport Municipal Airport, Eastport, ME. Airport Planner for a project for the design and construction administration phase services for the installation of a new PAPI for recently reconstructed Runway 15.

Runway 15-33 Construction Phase Services, Eastport Municipal Airport, Eastport, ME. Airport Planner to reconstruct Runway 15-33, including run-up area, as well as replace rotating beacon, REILS on both runway ends, MIRLS, and VGSI.

Rehabilitate, Extend, and Widen Runway 13-31, Obstruction Removal, Newton Field, Jackman, ME. Airport Planner for pavement rehabilitation with widening and lengthening of Runway 13-31. The needed obstruction removal associated with Runway Safety Areas for B-II design criteria was also completed.

Reconstruction of Runway 11-29 and Replace VASA with PAPI, Millinocket Municipal Airport, Millinocket, ME. Airport Planner for a project to reconstruct one of the highest priority runway reconstruction projects in Maine. The Millinocket Municipal Airport is critical to medical support and evacuations in this region.

West Ramp Layout Study, Manchester-Boston Regional Airport, Manchester, NH. Airport Planner for the preparation of a planning-level study to produce alternatives for an expansion of aircraft parking for an existing flight school. The study also included the preparation of ramp expansion build-out alternatives for a future flight school expansion or development of other commercial aeronautical activity.

Master Plan Update, Lake Wales Municipal Airport, Lake Wales, FL. Airport Planner for a project to prepare an analysis of airside and landside development alternatives, a potential funding plan, and update the Airport Layout Plan to guide future development on the Airport.

Airport Master Plan Update, Eastport Municipal Airport, Eastport, ME. Airport Planner responsible for the research and development, presentation and public coordination of the Airport Master Plan and Layout Plan Update. The project identified changes and improvements necessary to accommodate the airport's aviation activity 20 years into the future. An ALP drawing set, including an updated Exhibit A Property Map and supporting narrative report, was provided.

Obstruction Study, Northeast Kingdom International Airport, Coventry, VT. Airport Planner responsible for creating wind roses utilizing the FAA Wind Analysis Tool and analyzing obstruction data to identify approach obstructions. The project goal was to determine the justification for continued FAA funding of alternative improvements to the crosswind runway. Additional data was analyzed to identify approach obstructions.

Airport Layout Plan Update, Danbury Municipal Airport, Danbury, CT. Airport Planner responsible for creating wind roses utilizing the FAA Wind Analysis Tool and analyzing obstruction data to identify approach obstructions. Additional data was analyzed to identify approach obstructions.

© DUBOIS & KING 2023

JEN RICCIARDI



Senior Airport Planner

EDUCATION

Master of Business in Aviation Management, Dowling College, Oakdale, NY; B.S. in Professional Pilot, Creative Writing Minor, Dowling College, Oakdale, NY

CERTIFICATIONS

Certified Flight Instructor, Single Engine Land and Sea, Instrument, Glider; Airline Transport Pilot Multi-Engine Land; Commercial Pilot Single Engine Land and Sea, Glider; FAA Part 107 sUAS Pilot

Airport Planning Services, Las Cruces International Airport, Las Cruces, NM. Senior Planner for Airport Planning/Senior Airport Planner for projects including conducting an Airport Master Plan Update, Facilities Needs Analysis and Terminal Building Feasibility Study and preparing an Airport Lease Analysis and Property Management Plan, a Commercial Air Service Development Plan, an Airport Security Plan, and an Airport Pro Forma.

Bishop Airport Part 139 Certificate, Inyo County, CA. Senior Airport Planner responsible for assisting the Project Manager supporting the conversion of a county-owned airport to Part 139 commercial use. Developed material for the ARFF training program and ACM revisions. Assisted in the procurement of terminal equipment.

Design and Construction of Full Parallel Taxiway, Stub Taxiways and adjoining Taxilane for Hangar Development, Northeast Kingdom International Airport, Coventry, VT. Aviation Operations Manager responsible for the design, review, and construction oversight of a large scale parallel taxiway and taxilane project. The taxiway created a full parallel taxiway, with four stub taxiways along 5,000 feet of runway, complete with new marking and lighting. This corrected an unsafe direct routing of runway to ramp configuration. The taxilane project added a connecting taxilane between the current apron and newly constructed taxiway, creating buildable lots for six new hangars as well as generating easier access for operators from the apron to the north side of the airport.

Design and Construction of Apron, Northeast Kingdom International Airport, Coventry, VT. Aviation Operations Manager responsible for the design, review, and construction oversight of a 60,000-SF apron expansion project that tied in to the existing apron. This project added connections to two stub taxiways, connecting the apron to a parallel taxiway. This allowed for the construction of a new fuel farm with two 12,000-gallon fuel tanks and a state-of-the-art self-serve fuel kiosk, expansion of apron space to accommodate large business jets, and the addition of a customs box to accommodate onsite international arrivals.

Design and Construction of a Runway Extension, Parallel Taxiway, and a New Fuel Farm, Morrisville-Stowe State Airport, Morrisville, VT. Aviation Operations Manager responsible for the design, review, and construction oversight of a multi-faceted airport improvement project. The first part of the project was to pave 250 ft on each end of the 3,700-ft runway to add declared distances of 4,200 ft for takeoff and 3,950 ft for landing. The second included a redesign of a partial parallel, lighted taxiway. and apron. Finally, the project included decommissioning two underground fuel tanks and the constructing a fuel farm pad hosting two 10,000-gallon fuel tanks to service both Jet A and 100LL aviation fuel. This project included state and local permitting, a detailed construction safety and phasing plan as the airport remained open during construction, and a new SPCC plan for the updated fuel system.

Airport Layout Plan Narrative, Machias Valley Airport, Machias, ME. Project Manager to prepare an Airport Layout Plan (ALP) Narrative to identify improvements necessary to accommodate aviation activity within the 20-year planning period. The ALP Narrative included topographic and geotechnical surveys, a complete inventory of the existing airport conditions, and a forecast of operations and based aircraft. The focus of the ALP Narrative was on the terminal area development of taxilanes and hangar space to accommodate the forecasted-based aircraft.

Airport Feasibility Study, Dean Memorial Airport, Haverhill, NH. Senior Aviation Planner participating in an Airport Feasibility Study developing solutions to rectify safety and non-compliance issues, such as penetrations to the primary surface, Engineering Brief-99a surfaces, and Part 77 surfaces. The study included the development of a Facility Needs and Alternatives document for improving the runway environment and determining additional facility needs, including a new terminal building, fuel farm, several hangar facilities, navigational aids, and an AWOS facility. Services included research and analysis to conduct a thorough review of non-compliant facilities, developing alternatives, and reviewing with the public through a public engagement process. A preferred alternative was drafted on an updated Ultimate Airport Layout Plan (ALP).

© DUBOIS & KING 2023

MARK GOODRICH, PE

Las Cruces



QA/QC

Senior Airport Engineer

EDUCATION

B.S., Civil Engineering, University of New Hampshire, 1996

REGISTRATIONS

Professional Engineer: NM 27315, NH 10962, MA 47199, ME 15745, RI 12777; NCEES: 18-348-34

Airport Planning Services, Las Cruces International Airport, Las Cruces, NM. Project Manager for Engineering Services/ Senior Airport Engineer on the Las Cruces Airport Security Plan, Master Plan, and AGIS Survey.

Stephen A. Bean Municipal Airport, Rangeley, ME. Senior Airport Engineer for capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Rangeley's municipal airport. Responsibilities include quality assurance review and senior-level engineering. Relevant projects include:

- **Runway and Taxiway Extension Design.** Senior Airport Engineer for design of a 1,100-ft runway extension, a 1,100-ft taxiway extension, and a 400-ft relocation of Loon Lake Road to bring the runway into compliance with current FAA requirements for the airport's design aircraft. Responsibilities include quality assurance review and senior-level engineering. Typically a one-year process, the design was developed in a five-month timeframe.
- **Runway Length Analysis and Technical Master Plan Update.** Senior Airport Engineer for planning, evaluation, concept design, and environmental resource analysis supporting a 1,100-ft runway extension and appurtenant improvements. The FAA found the airport to be out of compliance for its design aircraft. A principal user of the airport, LifeFlight, a nonprofit medical transport company regularly uses this type of aircraft to provide its services. Additional updates to the CIP include new terminal building, new aircraft maintenance facility, new hangars, apron improvements, perimeter fencing, snow removal equipment acquisition, and construction of a snow removal equipment building. Responsibilities include quality assurance review and senior-level engineering. Typically a one-year process, this service was performed in three months.

Dean Memorial Airport, North Haverhill, NH. Project Manager for land acquisition, obstruction study, snow removal equipment (SRE) purchases, road relocation, and safety area improvements. Currently providing land acquisition services for multiple properties that are located within runway approach surfaces and runway protection zones. Professional services included land acquisition analysis and NHDOT grant application. For the obstruction analysis, ALP Update, and land acquisition study, D&K provided survey, basemap development, geotechnical and NRCS soil map review, historical records research, obstruction analysis for three parcels of land, field inspection of the land, and a Level 1 Environmental Site Assessment. D&K staff coordinated with an aerial photogrammetrist and a borings contractor for basemap development, attended conferences with the Owner and NHDOT, prepared a report of the land acquisition study and analysis.

Norwood Memorial Airport, Norwood, MA. Project Manager/ Senior Project Engineer for multiple Indefinite Delivery Contractsto provide planning, engineering, and construction services for capital improvement projects. Projects have included design and reconstruction of TW A and C; land acquisition; reconstruction of RW 10-28; and an Environmental Assessment, with NEPA and MEPA review, to support the realignment of a taxiway. Projects have included relocation design of existing medium intensity edge lights and signs, grading, erosion control, stormwater drainage design, paving, and marking.

Plymouth Municipal Airport, Plymouth, MA. Senior Airport Engineer for multiple Indefinite Delivery Contracts to provide planning, engineering, and construction services for capital improvement projects. Services have included design and permitting for TW E reconstruction; Environmental Assessment/Environmental Impact Report permitting for extension of RW 15-33; southwest apron expansion; relocation of access roadway; and lighting design (including replacement of 122 MITLS/MIRLS, construction of new MALSF, PAPI, obstruction lighting, and hold signs, detailed safety plan and improvements to safety area); and Gate 4 back taxilane reconstruction. Services included design for grading, erosion control, stormwater drainage, paving and marking, and construction observation.

- **Technical Master Plan Update, Plymouth Municipal Airport, Plymouth, MA.** Senior Airport Engineer for a Technical Master Plan Update to develop a runway length analysis with corresponding alternatives.

© DUBOIS & KING 2023

DAVE CONGER, PE



Senior Airport Engineer

EDUCATION

B.S., Civil Engineering, University of Vermont, 1992

REGISTRATIONS

Professional Engineer: VT 7689, NH 17489, ME 18121; NCEES

Bishop Airport Terminal, Inyo County, CA. Assistant Project Manager responsible for supporting the conversion of a county-owned airport to Part 139 commercial use. Construction of the terminal is being fast-tracked to meet commercial airline schedule requirements. Providing expertise in airport, FAA, TSA, and building master planning and methodologies to procure design-build services for multiple contractor contracts. The primary bid packages and contracts prepared incorporate a tensioned fabric structure and a general contractor/building fit-up procurement. Assisting Inyo County in coordinating these procurement packages along with existing terminal building modifications to be self-performed by the County.

Runway 19 Safety Area Extension Construction Phase Services, Rutland Southern Vermont Regional Airport, North Clarendon, VT. Project Manager for construction administration and observation to extend the Runway Safety Area to 1000 ft. The project required the construction of a 30-ft-tall by 300-ft-long segmented retaining wall system, reinforced stabilized slope, and the installation of 250,000 CY of fill material. Construction elements included: modifications to the Medium Intensity Approach Lighting System with Runway End Indicator Lights (MALSR). The construction safety and phasing plans (CSPP) were coordinated with the Runway 1 Safety Area project. Services included full-time inspection, monitoring of environmental permit compliance, quality review, materials sampling, and testing.

Runway 1 Safety Area Extension, Rutland Southern Vermont Regional Airport, North Clarendon, VT. Quality Control Review for a 600-ft runway safety area extension for Runway 1 and 1,300-ft parallel Taxiway E. The extension included a 300-ft Engineered Material Arresting System (EMAS). Reviewed design for conformance with FAA standards. Coordinated apron ramp modifications. *The Runway 1 project received an Award for Engineering Excellence from the Vermont Chapter of the American Council of Engineering Companies.*

Vermont Air Guard Survey, Burlington International Airport, South Burlington, VT. Senior Civil Engineer for QA/QC of topographic survey of aprons for three hangars and service buildings in support of VTANG's F-35 program.

Port Authority of New York and New Jersey, IDIQ Engineering Support Services. Project Manager of a multi-year IDIQ contract to provide civil and structural design services in support of PANYNJ facility capital expansion and maintenance. Directed project teams in the development of numerous task orders providing civil, aviation, utility, and structural designs including the following:

- Security Perimeter Intrusion Rapid Deployment Program, JFK International Airport
- Stormwater Pump Station Outfalls, LaGuardia Airport, New York
- Runway 4L-22R, 13L-31R, and 13R-31L Safety Area Rehabilitation, JFK International
- Van Wyck Expressway Lighting, JFK International
- Parking Lot Pavement Rehabilitation Master Planning, LaGuardia
- Parking Garage Rehabilitation, LaGuardia International Airport, Queens, New York Central
- Terminal Area Parking Exit Toll Plaza and Administration Building, Newark International Airport
- Brewster Road Rehabilitation, Newark International
- Runway 13L-31R and 13R-31L Safety Area Rehabilitation, JFK International
- Central Terminal Aircraft Tenant Gates Rehabilitation, LaGuardia
- Structural Deck Rehabilitation and Leak Prevention, PA Bus Terminal
- JFK 13R-31L "Bay Runway" Full Runway Reconstruction, JFK International

© DUBOIS & KING 2023

BRENDA BHATTI, QAWB

Las Cruces



Environmental Planner

EDUCATION

M.S., Environmental Studies, Antioch New England Graduate School, 2001; B.S., Zoology/Wildlife Biology, Ohio University, 1991

CERTIFICATIONS

Qualified Airport Wildlife Biologist (in training) 2022

Environmental Assessment, Plymouth Municipal Airport, Plymouth, MA. Environmental Planner responsible for an EA, which includes as EA under NEPA, a Joint NEPA EA and Environmental Impact Report under Massachusetts Environmental Policy Act, and an Environmental Notification Form filing for a 351 extension of Runway 6 and associated taxiways, runway protection zones, and navaids. This project is scheduled to be completed within a six-month timeframe in order to begin design work in the fall of 2023 and construct in 2024.

Environmental Assessment, Lebanon Municipal Airport, West Lebanon, NH. Senior Environmental Planner responsible for overseeing and developing an Environmental Assessment under the National Environmental Policy Act (NEPA) in accordance with FAA criteria. Evaluations encompass runway safety improvements, including a runway extension that involves vegetative clearing. Leading the natural resource field investigation efforts, including participating in wetlands delineations, preliminary potential bat roost locations within the project area, and overseeing other species investigations in conjunction with D&K naturalists, the New Hampshire Natural Heritage Bureau, and the USFWS. Conducted historical and archeological desktop reviews in collaboration with the New Hampshire Division of Historical Resources. Led NHDOT Natural Resource Agency Coordination (NRAC) meeting and presented the project. Collaborating with other consulting firms regarding engineering specifications, stormwater studies, alternatives impacts, and mitigation. Successfully acquired a Finding of No Significant Impact for the project.

Machias Valley Airport, Fuel Farm Stormwater Pollution Prevention Plan (SWPPP) and Oil Spill Prevention Control and Countermeasure Plan (SPCC), Machias, ME. Senior Environmental Planner to prepare SWPPP and SPCC documents for the installation of a fuel farm to ensure regulatory compliance and protection of nearby wetlands.

Dean Memorial Airport, North Haverhill, NH. Senior Environmental Planner providing services to the airport for improvements related to runway updates, property acquisitions, and alternatives analyses as part of updated Airport Layout Plan (ALP). Developing NEPA documentation for CEs and other task assistance regarding natural resource and environmental impact analyses.

Dillant-Hopkins Airport, Keene, NH. Senior Environmental Planner responsible for developing supplemental CE documents under NEPA for airport taxiway improvements. Developing NEPA support documentation and natural resource investigations, including evaluation of potential wetland impacts and related permitting efforts.

West Swanzey AA Memorial Park Redevelopment, Swanzey, NH. Senior Environmental Planner on a municipal project using federal funding. Responsible for evaluating impacts to jurisdictional natural resources adjacent to the Ashuelot River, including field studies to determine the Ordinary High Water (OHW); permitting to include state permits under the NH Department of Environmental Services (NHDES) wetlands, shoreland, and Alteration of Terrain (AOT) programs and regulations; and collaborating with the Town Planner, NHDES, and USFWS agents to confirm jurisdictional and permit concerns.

Environmental Constraints Analysis and Wetlands Protection Act Permitting, Dracut, MA. Project Manager for wetlands and natural resource investigations on a 12-acre forested site surrounded by a golf course community. Led environmental evaluation efforts and participated in wetlands delineation. Led habitat and wildlife research, reviewed relevant zoning and conservation regulations, and prepared report outlining development constraints. Prepared Abbreviated Notice of Resource Area Delineation (ANRAD) for five on-site and two adjacent wetlands classified as Isolated Land Subject to Flooding (ILSF) and Notice of Intent (NOI) permit application. Presented both at Conservation Commission hearings. Provided exhibit for Zoning Board of Adjustment variance application, and attended public hearing.

© DUBOIS & KING 2023

ALAN GOULD, PE

Las Cruces



Sr. Electrical Engineer

EDUCATION

B.S., Electrical Engineering, University of Vermont, 1989

REGISTRATIONS

Professional Engineer: NM 27612, VT 100299, NH 14844, ME 17381, NC 053339; NCEES: 14-864-75

Morrisville-Stowe Airport Terminal Updates, Vermont Agency of Transportation, VT. Project Manager for the MEP design of a new terminal hangar building, flight simulation classroom and simulator space, and airport operator's building. The project was part of a substantial economic development effort to draw more tourists from Canada and New York to the heart of Vermont's ski country and involved design and permitting for an 8,000-SF gateway terminal building and an attached 22,000-SF aircraft storage and heavy maintenance facility. Responsible for revising the site electrical systems, relocating the weather station, and revising parking spaces.

Vermont State-Owned Airport Revitalization, VT. Project Manager responsible for MEP services for building upgrades at multiple Vermont State Airports. The project included energy efficiency and other improvements for airport buildings and hangars at the Rutland-Southern Vermont Regional Airport, Burlington International Airport, Morrisville-Stowe Airport, Franklin County State Airport, Hartness State Airport, and E.F. Knapp State Airport.

Terminal Renovation Design, Snow Removal Equipment Building, Maintenance Building Assessments, Subsequent Renovation Design, and Lebanon Airport, Lebanon, NH. MEP Team Project Manager performing a building assessment for each building, reviewing the electrical and HVAC installations. Providing a written report describing the systems and the conditions and providing recommendations for MEP renovations with an estimated costs of the recommendations. After the grant was received based on the recommendations and estimated costs, Alan managed the MEP design team to implement the recommended renovations. The MEP issued construction drawings of the renovations, and provided contact administration during construction to meet design intent.

New TSA Check-In Area and New Terminal, Burlington International Airport, Burlington, VT. Team Project Manager tasked with providing electrical coordination and construction drawings. The tasks included management of the and review of the electrical team, coordinating with the contractors and architectural team, and providing construction drawings to the electrical contractor. Tasks also included providing electrical as-built drawings of the project after completion.

Terminal Building Renovations and Addition of the TSA Security Gates, Rutland Airport, Rutland, VT. MEP Project Manager tasks included detailed field observations, as-built conditions assessment, and electrical design of the newly remodeled space. Coordination and meetings with airport officials, architects, mechanical design staff, and TSA staff to see project desires and security measures were incorporated into the renovation. Provided contract administration throughout construction to verify the installations met the design intent.

Biathlon Training Facility and Timing Building, VT Army National Guard, Camp Ethan Allen Training Site, Underhill, VT. Electrical Project Manager responsible for project coordination, site investigations, and overseeing the electrical design for the renovations and upgrades. The biathlon course is an Olympic-class facility used for the training of local and national athletes and for Olympic training. The project included new lighting, new power distribution, new target control wiring, and new timing/control building, and an observation building. All lighting was LED and energy-efficient. The heating systems are high-efficiency LP gas-fired units.

Range 6-3/6-5 Saroca Buildings, VT Army National Guard, Camp Ethan Allen Training Site, Jericho, VT. Electrical Project Manager responsible for project coordination, site investigation, and overseeing the electrical design for the renovations and upgrades. The Range 6-3/6-5 Saroca Buildings consisted of a General Instruction/Latrine building, a Training building, (2) Ammo Breakdown buildings, and a Target Storage building. The project included new lighting and new power in each building. The site included new power distribution including some new medium voltage distribution. All lighting was LED and energy-efficient.

© DUBOIS & KING 2023

JULIE DICKER



Grants Administrator

EDUCATION

A.S., Applied Science, Accounting Information Systems, No. Maine Community College, 2014

Dean Memorial Airport, North Haverhill, NH. Administrative Support for multiple projects under a contract, including a feasibility study, property acquisition, pavement maintenance, and DBE program.

Technical Master Plan Update, Plymouth Municipal Airport, Plymouth, MA. Administrative Support for D&K services to conduct a Technical Master Plan Update to develop a runway length analysis with corresponding alternatives for Plymouth Municipal Airport. Firm services include reviewing existing conditions, determining the critical aircraft and required runway length to accommodate current and future traffic, formulating an aviation demand forecast, and conducting an overview of the affected environment. D&K is working with the Airport, Stakeholders, MassDOT, and FAA to determine the preferred alternative, update the airport layout plan based on that alternative, and will assist the Airport to develop financial and proposed project implementation.

Stephen A. Bean Municipal Airfield, Rangeley, ME. Administrative Support for D&K services for capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Rangeley's municipal airport.

Taxiway, Pavement Maintenance, and Gates/Fencing, Greenville Municipal Airport, Greenville, ME. Administrative Support for D&K services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Greenville's municipal airport.

Pavement Condition Index Study, MaineDOT, Statewide, ME. Administrative Support for D&K services. Developed an Airport Pavement Maintenance System (APMS) to be used by MaineDOT, and each individual airport, to track pavement maintenance work, facilitate capitalizing on FAA funding and enable the State of Maine to effectively budget for critical infrastructure maintenance projects.

Princeton Municipal Airport, ME. Administrative Support for services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Princeton's municipal airport.

DeWitt Field, Old Town Municipal Airport, ME. Administrative Support for services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Old Town's municipal airport.

Caribou Municipal Airport, ME. Administrative Support for services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Old Town's municipal airport.

Taxilane, Machias Valley Airport, Machias, ME. Administrative Support for services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at the Machias Airport.

Knox County Regional Airport, Owls Head, ME. Administrative Support for services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Knox County's regional airport.

Northern Aroostook Regional Airport, Frenchville, ME. Administrative Support for services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract at Frenchville's regional airport.

Houlton International Airport, Houlton, ME. Administrative Support for services including capital improvements planning (CIP), technical, environmental, and regulatory issues under a multi-year contract.

© DUBOIS & KING 2023

BRETT E. BEATY, AIA, NCARB, LEED AP

Senior Project Architect/Project Manager

YEARS OF EXPERIENCE	TOTAL	33	WITH FIRM	4	
EDUCATION	M.Arch., Master of Architecture, The University of New Mexico, 1999 B.S., Business Administration and Management, University of Phoenix, 1995				
REGISTRATIONS	Registered Architect (RA) New Mexico 003874, 2003 Arizona 72258, 2020 Texas 30558, 2022				
CERTIFICATIONS AND LICENSES	American Institute of Architects (AIA), 1998-present National Council of Architectural Registration Boards (NCARB) Leadership in Energy and Environmental Design Accredited Professional (LEED AP), Green Building Certification Institute (GBCI)				
SOFTWARE	Adobe Creative Cloud AutoCAD, 2020 Bluebeam, Revu 20 Microsoft® 365 Revit, 2020				

Brett Beaty is an experienced project architect and an accomplished project manager who enthusiastically pursues a holistic approach to the design and construction of the built environment. Mr. Beaty's work combines the creative architectural design process with the project's technical, environmental, and functional concerns. Having a history of project management on various complex building programs has reinforced the importance of effective communication, cooperation, and the appropriate allocation of resources. He believes in a team approach that brings together the experience and talents of the client, architect, consultants, and contractor to establish a framework of cooperation and synergy.

Mr. Beaty has worked on a wide range of projects in the public and private sectors. These have included educational facilities, community centers, multi-family housing, scientific, judicial, retail, and office/administrative. He has diverse and balanced skills that demonstrate a solid technical background, strong organizational traits, and leadership. These experiences and abilities translate into value for clients and communities.

Project Experience

Mr. Beaty's recent experience includes:

Bishop Municipal Airport Terminal Expansion, Inyo County, CA. Project architect assisting Inyo County with their general aviation terminal expansion by providing technical support and outline specifications for the systems and construction. Project involves design consultation with the County Project Manager. Project had a very challenging schedule that required a fast track procurement process. **Duration:** 05/2021-present

Public Safety and Judicial Complex, Navajo Nation, Fort Defiance, AZ. Project architect and project manager responsible for a master planning effort for the proposed Navajo Nation Public Safety campus with the Navajo Nation Code Talkers Museum and Veterans Center. It includes public/private development for restaurants, retail, and lodging. Project includes the programming and conceptual planning of 113,880 sf for the Navajo Nation courts, corrections, police, and public safety headquarters. **Duration:** 2020-present

Code Talkers Museum and Veterans Center, Navajo Nation, Tse Bonito, NM. Project architect and project manager for the programming and conceptual design for a museum of approximately 48,000 sf and a Veterans Center of approximately 21,000 sf. **Duration:** 2020-present

Transportation Facility, Navajo Division of Transportation, Whitehorse Lake, NM. Project architect and project manager for the plan and design of the facility to include an office, large vehicle covered storage, and salt and cinder stockpile storage. Project involves the design of three buildings and open yard storage near the Whitehorse Chaper House. **Duration:** 2020-present

© DUBOIS & KING 2023

CHARLES RICK GREEN, RA, FCSI,CCS, CCCA

Senior Project Manager

YEARS OF EXPERIENCE	TOTAL 42 WITH FIRM 29
EDUCATION	M.S. Architecture, University of Michigan, 1976 B.S. Architecture, University of Michigan, 1974
LICENSES AND REGISTRATIONS	Registered Architect: Arizona #25411, California #C 27143, Georgia #AR014025, Iowa #06096, Michigan #1301027943, New Mexico #2151, New York #036757, Ohio #1516340, Oklahoma #a5911, Washington #10661

Rick Green is a Senior Project Manager with more than 40 years of professional experience and is an expert in building science and project delivery. Rick leads the technical direction and development of Wilson & Company's architectural projects. This includes initiating, developing, and monitoring methods of technical production, technical content, quality assurance, and construction phase services. His expertise includes educational facilities, commercial and retail projects, offices, renovations, building codes, programming, site analysis, design, cost analysis, drawings, specifications, procurement requirements, and construction administration services. Rick is a Certified Construction Specifier (CCS), a Certified Construction Contract Administrator (CCCA), and a LEED Accredited Professional. He is also a co-author of the U.S. National CAD Standard and a co-author of the Architect's Guide to the U.S. National CAD Standard.

Recent Project Experience

- Jomax WRF Administration Building Preliminary Space Plan – City of Peoria, Programming services for a new administration building at the Jomax Water Reclamation Facility. | 2018. Project Architect.
- Zia Pueblo Ceremonial Building – Pueblo of Zia, Construction document and construction administration services for a ceremonial building on tribal property located in New Mexico. | 2017. Project Architect.
- Low Moor Run-Through Facility – UPRR, Construction document and construction administration services for pre-engineered metal building located in Iowa. | 2017. Project Architect.
- Twin Buttes O & M Building D/B – Richardson & Richardson Construction, Construction document and construction administration services for a pre-engineered metal building located in Colorado. | 2017. Project Architect.
- Deer Valley WTP CA Services – City of Phoenix, as a sub-consultant to Wilson Engineers, WCI provided construction administration services for architectural and mechanical disciplines| 2016. Project Architect.
- Deer Valley WTP Design Services – City of Phoenix, as a sub-consultant to Wilson Engineers, WCI provided architectural and mechanical design services for an addition to the Finished Water Electrical Building at the Deer Valley Water Treatment Plant.| 2016. Project Architect.
- Luna County Detention Center Renovations – Luna County, Provided programming services to establish goals, priorities, and scheduling requirements and was then selected to provide design and construction administration services for the facility program.| 2016. Project Architect.
- Arrey Elementary School Roof Replacement – T or C Municipal Schools, Provided design services to identify a cost-effective re-roofing solution for an occupied elementary school facility.| 2016. Project Architect.
- Village of Columbus Community Center – Columbus, NM, Provided design services to renovate and convert an abandoned school campus into a new community center.| 2015. Project Architect.
- Master Site Plan Design Study – Floyd Municipal Schools, Provided design services to include a master site plan design study identified for reconfiguration or additions for multiple components on the campus.| 2015. Project Architect.

© DUBOIS & KING 2023

TIMOTHY J. RUGG, RA

Senior Architect

YEARS OF EXPERIENCE	TOTAL 39 WITH FIRM 24
EDUCATION	MA, Architecture, University of Michigan, 1982 BA, Architecture, Kent State University, 1979 BS, Science, Kent State University, 1979
LICENSES AND REGISTRATIONS	Registered Architect Colorado B-2173 Registered Architect Wyoming C-2390 Registered Architect New Mexico 005669 NCARB Certified

Tim is a senior architect with 39 years of experience as a project architect and project manager. He has been involved in numerous projects throughout Colorado and New Mexico involving many different architectural styles, including primary and secondary schools, colleges and universities, commercial, municipal, industrial, and medical facilities. He is equally adept at working with additions and renovations as with new facilities. Tim has a successful history of planning, organizing, and completing architectural projects on time and within budget. His expertise includes project design, design development, production and coordination, detailing, specification writing, estimating, and serving as client liaison.

Relative Experience

- BNSF Maintenance Facility and Employee Welfare Center , Vancouver, Washington, Project Architect
- BNSF Maintenance Facility and Crane Repair, San Bernardino, California, Project Architect
- BNSF Storage Facility and Tank Farm, Alliance, Nebraska, Project Architect
- BNSF Operations Facility, Long Beach, California, Project Architect
- UPRR Fueling Facility, Pocatello, Idaho, Project Architect
- UPRR Fueling Facility, North Platte, Nebraska, Project Architect
- UPRR Fueling Facility, Green River, Wyoming, Project Architect
- UPRR Fueling Facility, Herrington, Kansas, Project Architect
- Central Park Boulevard Interchange with I-70 Design-Build, Denver, Colorado, Project Architect
- I-15 Springville 400 South Interchange (SR-77) Design-Build, Springville, Utah, Project Architect
- Uintah Street Bridge, Colorado Springs, Colorado, Project Architect
- COSMIX Design-Build, Colorado Springs, Colorado, Project Architect
- Powers Boulevard Corridor Aesthetics Guidelines, Colorado Springs, Colorado, Project Architect
- I-25 Sound Barrier, Fountain, Colorado, Project Architect
- I-25 Corridor Design Standards, El Paso County, Colorado, Project Architect
- I-25 Sound Barrier, Colorado Springs, Colorado, Project Architect
- Piñon Rest Areas, Pueblo, Colorado, Project Architect
- Valley View Elementary School, Roswell NM, Project Architect
- 41 & Tennyson, Denver, CO, Project Manager
- Cedar & Holly, Denver, CO, Project Manager
- Mettie Jordan Elementary School, Eunice NM, Project Architect

© DUBOIS & KING 2023

LAURA N. BRUNIK, RA, AIA
Project Architect

YEARS OF EXPERIENCE	TOTAL	11	WITH FIRM	1	
EDUCATION	M.Arch., Architecture, North Dakota State University, 2011 B.S., Environmental Design, North Dakota State University, 2010				
REGISTRATIONS	Registered Architect (RA) New Mexico 6247, 2021 Minnesota 59140, 2021				
CERTIFICATIONS AND LICENSES	National Council of Architectural Registration Boards, 101819, 2012 Revit Architecture Certified Professional, 2013				
PROFESSIONAL AFFILIATIONS	American Institute of Architects National Council of Architectural Registration Boards				

Laura Brunik's architecture experience involves designing buildings for safety, functionality, and aesthetics. She understands the durability and strength of building materials and is skilled in the use of light, color, and textures in a space. She is effective at all phases of project development from initial concept to completion, including meeting with clients to discuss expectations and drafting walls, windows, doors, plumbing, and furnishings while using BIM software.

Project Experience

Ms. Brunik's recent project experience includes:

Public Safety Building, City of Anthony, NM. Project manager. Programming effort for the new Department of Public Safety Building.

Fire Sation 6 Construction Administration, City of Rio Rancho, NM. Project manager. Construction administration for renovation of the floors, ceilings, storefront systems, and restrooms to repair previous flood damage.

New Urgent Care, City of Anthony, NM. Project architect for the construction administration. Stand-alone building to serve as urgent care within the Dos Lagos Development.

Lee Belle Facility Assessment, City of Truth or Consequences, NM. Project manager. Scope involves visual inspection (non-destructive) and will assess the general condition of the building, followed by a Building Conditions Assessment Report. The report will consist of an executive summary that describes the substructure, shell, interiors, services, equipment and furnishings, special construction, site, and notable code issues. The report will address probable short and long-term capital expenses necessary to correct structural or building integrity issues and possible cost considerations to bring the building up to current code requirements. **Duration:** 11/2022

Palms Building Addition, Dona Ana County, NM. Project architect. Plan, design, and manage a building addition to the existing flood control warning system building and add a back-up generator.

Prior to joining Wilson & Company, Ms. Brunik's experience included:

Primrose Retirement Communities, Aberdeen, SD; Kenosha, WI; Lubbock, TX; Tyler, TX; Washington, UT. Job captain, project architect. Responsible for managing a team to create safety, functionality, and aesthetics within a building, as well as understanding the durability and strength of building materials, use of light, color, and textures in a space. Working with the building from beginning to end with the Hospitality team. This includes, but is not limited to, meeting with the client to discuss expectations, drafting walls, windows, doors, plumbing, electrical, ventilation, structural, and furnishings while using BIM software. Primrose Retirement Communities was founded in 1989 based on the premise that a retirement community must provide its residents with value, comfort, security, and convenience. Through the years, this philosophy has been enthusiastically welcomed in all communities where Primrose has been established. Design included apartment homes and townhome villas complemented by internal common areas such as libraries, movie theaters, fitness centers, ice cream parlors, and pubs. **Duration:** 2020-2022

© DUBOIS & KING 2023

AIRPORT ENGINEERING SERVICES

MARK W. WENTZEL, PE, LEED AP

Mechanical Engineer

YEARS OF EXPERIENCE	TOTAL 31 WITH FIRM 21
EDUCATION	B.S., Architectural Engineering, Kansas State University, 1990
LICENSES AND REGISTRATIONS	Professional Engineer in Arizona, California, Kansas, Missouri, New Mexico, & Utah *USGBC LEED Accredited*
ORGANIZATIONS, TRAINING, PUBLICATIONS, AWARDS	American Society of Heating, Refrigeration, and Air Conditioning Engineers (Treasurer, Secretary, Vice President, and President-Elect); ITT Industries Training Seminar, Large Chilled Water Systems; U.S. Green Building Council

Mark brings 31 years of experience in mechanical and electrical building design and is responsible for the mechanical systems design and specification, construction administration, and general administration of mechanical projects. He has worked on a wide variety of projects including military facilities, industrial and rail operations, office buildings, large hotels, performance theaters, churches, schools, restaurants, motels, dormitories, banks, and large residential apartment facilities. His design experience includes HVAC systems, piping and plumbing systems, temperature controls, process piping, industrial ventilation, fire protection systems, lighting systems, power systems and fire alarm systems. As a LEED Accredited Professional, he is experienced with energy related processes and evaluations.

Healthcare Project Experience

- North Valley Medical Clinic – HVAC and Plumbing Systems, Project Engineer
- Cheyenne County Hospital Renovation – HVAC Systems, St. Francis, KS, Mechanical Design Project Manager
- Carroll Regional Medical Center Remodel and Addition – HVAC, Plumbing, lighting and electrical power systems, Berryville, AE, Project Engineer
- Cox South Hospital Radiation Clinic – HVAC and Plumbing, Springfield, MO, Project Engineer
- Cox South Surgical Suite Addition – HVAC and Plumbing, Springfield, MO, Project Engineer
- Cox Plaza II Oncology Office Infill – HVAC, Plumbing, Lighting and Power Systems, Springfield, MO, Project Engineer
- Doctor's Medical Office Plaza – HVAC and Plumbing Systems, Joplin, MO, Project Engineer

Military Project Experience

- Large Vehicle Wash Facility, Ft. Riley Army Base, Ft. Riley, KS, Project Manager / Engineer
- Kansas National Guard Field Maintenance Shop Renovation and Systems Upgrade, Iola, KS, Project Manager / Engineer
- Kansas National Guard Building 217 Renovation, Salina, KS
- Kansas National Guard Building Pressure Testing – Multiple Projects – Hays, Salina, Great Bend, KS, Project Manager
- Chapman Hall Renovation, Kirtland Air Force Base, NM, Project Engineer
- Kansas National Guard Armory Projects – HVAC renovation and new construction for 6 buildings., Hays, Russell, Clay Center, Pratt and Salina, KS, Project Engineer
- Operations Support Facility with Levels 3 and 4 SCIF, Peterson Air Force Base, CO, Project Engineer
- Kansas National Guard Nickell Hall Retro-Commissioning, Salina, KS, Project Engineer
- Forbes AFB Hangar 680, 681, 682 Lighting Upgrades, Topeka, KS, Project Engineer
- McConnell AFB Building 714 Addition – HVAC, Lighting & Systems Upgrades, Wichita, KS, Project Engineer
- McConnell AFB Building 1090 Renovation – HVAC, Lighting & Systems Upgrades, Wichita, KS, Project Engineer
- McConnell AFB Building 804 Renovation – HVAC, Lighting & Sprinkler Systems, Wichita, KS, Project Engineer

Educational Facility Project Experience

- Mettie Jordan Elementary School, Eunice, NM, Mechanical Systems Project Engineer
- Missouri Avenue Elementary School, Roswell, NM, Mechanical Systems Project Engineer

© DUBOIS & KING 2023

WILSON & COMPANY

BENJAMIN ARAGON, PS
Survey Project Manager

YEARS OF EXPERIENCE	TOTAL 22 WITH FIRM 22
EDUCATION	B.S., Surveying, New Mexico State University, 1996
LICENSES AND REGISTRATIONS	Professional Surveyor New Mexico #15268, California #8016, Nevada #19224, Wyoming #12222, Washington #47604
ORGANIZATIONS, TRAINING, PUBLICATIONS, AWARDS	Member California Land Surveyors Association, New Mexico Professional Surveyors, Nevada Association of Land Surveyors, Professional Land Surveyors of Wyoming, Land Surveyors Association of Washington

Ben has been a member of the Wilson & Company team since college graduation, and has developed project management expertise on a wide variety of surveying projects for more than 22 years. He has performed slope-staking, control, GPS, cadastral, topographic, boundary, ALTA, hydrology, control surveys, office calculations, preparation of set ups for crews during construction of projects. Ben has been the Survey Manager on various projects, which include contracts for the Pueblo of Laguna, Corps of Engineers, Federal Highway Administration, National Park Service, New Mexico Department of Transportation, Union Pacific Railway, Kansas City Southern Railway and the Burlington Northern Santa Fe Railway Company and various Municipalities.

Federal Projects

- Holloman Air Force Base: West Trench Repair – US Army Corps of Engineers, Albuquerque District, Holloman, NM | 2018. Survey Project Manager
- LPOE Diversion Berm – New Mexico Border Authority, Santa Teresa, NM | 2017. Project Manager.
- Design Renovate LRS Warehouse – Kirtland Air Force Base (Subconsultat to Vigil Enterprises), Albuquerque, NM | 2016. Survey Task Leader.
- Repair Hot Cargo Pad 5 – Kirtland Air Force Base (Subconsultat to Vigil Enterprises), Albuquerque, NM | 2016. Survey Task Leader.
- Design Rebuild 46kV Feeder #3 – Kirtland Air Force Base (Subconsultant to Vigil Enterprises), Albuquerque, NM | 2015. Survey Task Leader.
- Various Surveying Services – Los Alamos National Laboratory, Los Alamos, NM | Ongoing. Survey Task Leader.
- Gunship Road Topographic Survey – US Army Corps of Engineers, Albuquerque District, Cannon AFB, NM | 2015. Survey Project Manager.
- Candy Cane Road Cadastral Survey – US Army Corps of Engineers, Albuquerque District, Columbus, NM | 2014. Survey Project Manager.
- Tamaya Drainage Mitigation Pond Survey – US Army Corps of Engineers, Albuquerque District, Santa Ana Pueblo, NM | 2014. Survey Project Manager.
- Nellis Air Force Base – US Army Corps of Engineers, Albuquerque District, North Las Vegas, NV | 2013. Survey Project Manager.
- Santa Teresa Cadastral Survey – US Army Corps of Engineers, Albuquerque District, Santa Teresa, NM | 2012. Project Manager.
- Holloman AFB Survey and Mapping – US Army Corps of Engineers, Albuquerque District, Holloman AFB, NM | 2011. Project Manager.
- Cochiti Flowage Easement – US Army Corps of Engineers, Albuquerque District, Cochiti, NM | 2011. Project Manager.
- Antelope Wells Border Station Boundary – US Army Corps of Engineers, Albuquerque District, Antelope Wells, NM | 2010. Project Manager.
- Cannon AFB Survey and Mapping – US Army Corps of Engineers, Albuquerque District, Cannon AFB, NM | 2010. Project Manager.
- Periodic Surveys – US Army Corps of Engineers, Albuquerque, District, John Martin Dam, Colorado, Jemez Dam, Jemez, New Mexico, Santa Rosa Lake, Santa Rosa, New Mexico, Conchas Lake, Conchas, New Mexico | 2010. Project Manager.

© DUBOIS & KING 2023

MARC HESS, PE
Electrical Engineer

YEARS OF EXPERIENCE	TOTAL 12 WITH FIRM 12
EDUCATION	B.S., Electrical Engineering, University of Kansas, 2008
LICENSES AND REGISTRATIONS	Professional Engineer Kansas No. 23099, Louisiana No. PE.0039623, California No. E 21169, Washington No. 53405, Oregon No. 90940PE, Wyoming No. PE 15650, Iowa No. 24492, Arkansas No. 19178, Nevada No. 26319, Missouri No. 2020013488, Minnesota No. 58530
ORGANIZATIONS, TRAINING, PUBLICATIONS, AWARDS	Institute of Electrical and Electronics Engineers (IEEE), IEEE Industry and Applications Society (IAS), Tau Beta Pi Engineering Honor Society, Eta Kappa Nu (HKN) Electrical and Computer Engineering Honor Society

Marc has 12 years of electrical design and consulting engineering experience. During this time, Marc's expertise has centered around industrial electrical design with a focus on rail yards and oil and gas projects. His industrial knowledge covers all aspects of industrial electrical design including site power distribution, lighting, instrumentation, electrical equipment, cabling, hazardous area classifications, PLC control networks, loop diagrams, and arc flash hazard analysis. Additionally, he has commercial electrical design experience with a focus on educational facilities and small offices. Commercial design capabilities include building power systems, lighting, telecom, and various specialized systems. Outside of design, Marc's capabilities include project management and construction support.

Lighting & electrical design

- On-Call Electrical Services, electrical design to support Public Works Department, Belton, MO | 2020-2025. Electrical engineer.
- I-35 & 75th Street Interchange, electrical design for widening of north and south lanes from three to four, and modify three ramps, Kansas Department of Transportation | 2019. Electrical engineer.
- Electrical Distribution System Improvements, electrical design for replacement/modernization of the existing primary electrical distribution system line and reconnection of secondary services, Seneca, KS | 2021. Electrial engineer.
- Parking Lot Reconstruction, electrical design for three parking lots, Overland Park, KS | 2019. Electrical engineer.
- 115kV Transmission Line, electrical design, Garden City, KS | 2018. Electrical engineer.
- 52nd & Emerson Water Quality Facility (Heron Pond), electrical design, City and County of Denver, CO | 2020. Electrical engineer.
- Forbes Airforce Base, electrical design for hangar lighting, Topeka, KS | 2009. Electrical engineer.

Railroad facilities

- UPRR Hinkle Yard Neutral Addition Project, Hermiston, Oregon | Under Construction
- Primary Power Distribution Replacement, UPRR South Morrill Yard, Morrill, NE | 2018. Project manager.
- Pump House Rehabilitation and Fuel Line Replacement, UPRR South Morrill Yard, Morrill, NE | 2019. Project Manager.
- BNSF Railway Company Glendale Yard, Phoenix, AZ | Ongoing
- UPRR Hinkle Yard Neutral Addition Project, Hermiston, Oregon | 2015. Electrical engineer. Wilson & Company designed the electrical improvements and performed construction management at the UP Hinkle Yard. Our design team was instrumental in anticipating obstacles, and helping the UP develop the right solutions based on the yard's unique needs and requirements. Design and construction management were undertaken with a clear understanding of system integration and rail operation schedules, while adhering to safety procedures and processes.

© DUBOIS & KING 2023



Justin Heid, AAE

Senior Aviation Planner

APG

EDUCATION

Masters of Science Aerospace Administration & Logistics, Southeastern Oklahoma State University, 2012

Bachelor of Science Aviation Management and Business Minor, University of Oklahoma, 2011

CERTIFICATIONS

Accredited Airport Executive, AAAE

Private Pilot

PROFESSIONAL BIO

Justin is a Principal and Senior Aviation Planner at APG. He is an Air Force Veteran and active pilot, with a strong airport management background. His experience includes management of multiple general aviation airports, master planning, forecasting, public outreach, land use planning, grant preparation and submission, FAA coordination and construction administration. Justin's knowledge of FAA regulations, policies and procedures, coupled with his past experiences, help him understand the needs and issues stakeholders are working through and allow him to identify issues and provide solutions with a full understanding of each stakeholder's desires and requirements.

RELEVANT PROJECT EXPERIENCE

Monte Vista Municipal Airport (MVI) Construction Administration

Justin assisted with construction administration for the runway pavement sealcoat and crack seal project and the relocation of the fuel farm. Justin also wrote reports and documented the construction process for both projects and supported all grant administration.

Astronaut Kent Rominger Airport (RCV) ALP update

As Project Manager, Justin worked with the client to develop and evaluate three future land use development concepts for the terminal area, led the preferred alternative selection, and ALP creation. The resulting product provided a completely updated ALP with future development planned through an updated CIP.

Olympia Regional Airport (OLM) Master Plan Update

Justin is the Assistant Project Manager/Lead Planner for the project. Justin led the development of the forecast, aided land use planning, agency coordination, grant administration, CIP preparation, and planning for emerging technologies.

Tacoma Narrows Airport (TIW) Landside Planning Study

Justin served as a planner for a landside planning study developing the aviation forecast, facility requirements and alternatives for the market demand. The study included space and layouts for hangar developments, emerging technologies, and future use by eVTOL aircraft.

Johnson County Airport (BYG) Equipment Acquisition

Justin assisted with specifications, design report, and contract and grant administration for the acquisition of snow removal equipment for the airport.

© DUBOIS & KING 2023



Leah Whitfield, C.M, ACE
Senior Project Manager/Planner

APG

EDUCATION

Masters of Aeronautical Science

Bachelor of Science Applied Meteorology, Research concentration, Minor in Air Traffic Control

Embry-Riddle Aeronautical University

PROFESSIONAL BIO

Leah is the majority owner of APG, which she started in early 2020 after serving as a Senior Planner and Aviation Practice Lead for a civil firm overseeing both the planning and design staff. Previously, Leah served as Airport Manager and Projects & Programs Manager at two Part 139 certificated airports in Wyoming. Leah's planning and project management experience includes on-call planning contracts and a variety of planning studies such as airport master plans, aviation system planning, regional transportation plans, airport siting studies, airport land use studies, and security projects at general aviation and commercial services airports across the western states and Alaska. Leah has served as project manager or assistant project manager on more than ten airport plans and as planner on more than an additional ten within the last five years. Following many planning studies Leah has led the implementation of the projects determined by the planning study. Leah has often overseen design and construction phases of the project. With experience implementing projects Leah takes an integrated approach to planning facility needs to minimize impacts to operations. Leah applies FAA and local design standards on all projects she completes ensuring that applying these standards does not result in operational issues.

RELEVANT PROJECT EXPERIENCE

Monte Vista Municipal Airport On-Call Engineering
Leah serves as the Project Manager for this multi-year on call engineering contract. Through this contract APG has completed runway rehabilitation design, taxiway design, fuel tank design, and is currently completing design of a taxilane for future hangar development.

FedEx Trench Drain Replacement
Leah led construction services for this trench drain replacement on the FedEx apron at ANC. Leah performed site visits, prepared RFIs, and performed project management.

Johnson County Airport On-Call Engineering
Leah served as Project Manager for this multi-year on call. Leah led a team of engineers for pavement maintenance, taxiway turnaround design and construction, slope repair, snow removal equipment procurement, and capital planning.

Cheyenne Regional Airport On-Call
Leah served as Project Manager for a multi-year planning and design contract providing capital planning, sustainability planning, FBO assistance, snow removal equipment specification and procurement and inspection.

Ardmore Cargo Feasibility Study
Working for a private developer, Leah served as the principal in charge and as a planner for a cargo study at the Ardmore Municipal Airport. The study included analysis of existing conditions and development of alternatives for a future cargo apron and facility. A follow-on grant application was prepared for a RAISE grant.

© DUBOIS & KING 2023



Owen Silbaugh, PE, PMP

Senior Researcher

Boston, Massachusetts

EDUCATION

Masters of Science
Civil Engineering, 2004

University of
Pittsburgh

Bachelor of Science
Civil Engineering, 2002

Carnegie Mellon
University

CERTIFICATIONS

Professional Engineer
(MA, NH)

Project Management
Professional (PMP)

PROFESSIONAL BIO

Owen is a senior airport engineer with more than 16 years of aviation experience as project manager, airfield designer, and field engineer. His experience includes strategic planning, quality control reviews, budget management, airfield design, pavement design, safety plans, electrical design and layout, NAVAID design and layout, and airspace evaluation.

Owen is an adjunct professor at the University of Massachusetts Lowell. He developed the graduate-level course based on the concepts of airport design and airport planning. The course included all aspects of project delivery from planning to closeout including airport planning and airport design.

Owen has a spent over seven (7) years as a field engineer providing construction oversight for runway and taxiway projects that include the installation of airfield lighting systems, electrical vaults, constant-current regulators, communication systems, and navigational aids. He assisted airports with the electrifying airports during phased construction and troubleshooting electrical issues.

Owen is active with two groups that are focused on accessibility and inclusion including an employee resource group and technology advisory group.

RELEVANT PROJECT EXPERIENCE

Construct Parallel Taxiway and NAVAID Project, Northeast Kingdom International Airport, Newport, Vermont

Working with a team of engineers, Owen was the project manager for the design of a new parallel taxiway and associated runway navigational aids. The project included new pavement geometry, taxiway lighting, guidance signs, electrical vault, wind cone, runway end identifier lights, stormwater drainage, pavement design, and pavement markings.

Reconstruct Runway 11-29, Harriman-and-West Airport, North Adams, Massachusetts

Owen led a team of engineers and subconsultants to assist with the redesign and reconstruction of Runway 11-29 and associated taxiways. The project included pavement design, runway lighting, guidance signs, new electrical vault, pilot communication systems, lighted wind cone, and unsuitable soil remediation. This was a challenging environment due to existing groundwater and poor soils which caused the existing edge lighting to heave out of the ground. Advanced design of the soils surrounding and beneath each stake mounted light help to alleviate this heaving over the past 10 years.

© DUBOIS & KING 2023

AIRPORT ENGINEERING SERVICES

BILL TOMCICH

108 Castle View Drive	Bill@TomcichTravel.com	Office: (970) 927-4612
Basalt, CO 81621		Mobile: (970) 471-0320

EXPERIENCE

AIRPLANNERS, INC, Basalt, CO **2018-Present**

Managing Partner & Air Service Development Consultant. Having exclusively handled air service development and maintenance for the Aspen / Pitkin County Airport (ASE) since 1995 as part of employment agreements with Aspen Skiing Company and Stay Aspen Snowmass, a contractual arrangement was formalized with a group called Fly Aspen Snowmass in 2018 to continue that role. In 2020, Tomcich became a partner with Airplanners, Inc. serving clients across five western states. In addition to ASE, current airport clients include:

- Gunnison / Crested Butte Regional Airport, CO (GUC)
- Lea County Reginal Airport, Hobbs, NM (HOB)
- Angel Fire Airport, Angel Fire, NM (AXX)
- Mammoth Yosemite Airport, Mammoth Lakes, CA (MMH)
- Eastern Sierra Regional Airport, Bishop, CA (BIH)
- Elko Regional Airport, Elko, NV (EKO)
- Yakima Air Terminal, Yakima, WA (YKM)

STAY ASPEN SNOWMASS, Aspen, CO **1998-2018**

President, Stay Aspen Snowmass, Inc. Oversaw the merger between Aspen Central Reservations and Snowmass Central Reservations to create Stay Aspen Snowmass (SAS) and ran the business, which functioned like an inbound tour operator, for twenty years while concurrently serving the role of community liaison and air service development expert for ASE and the airlines that served it. Facilitated the transition of SAS from a shareholder owned reservations and travel service to one that became wholly owned and operated by Aspen Skiing Company in 2018.

ASPEN SKIING COMPANY, Aspen, CO **1995-1998**

Managing Director, Travel Services. Hired to manage the resort's air service efforts during a crisis in the wake of ASE having lost all commercial flights between Denver and Aspen previously operated by Continental Express after Continental shut down their DEN hub.

VAIL ASSOCIATES, INC., Vail, CO **1989-1995**

Air Transportation Manager, Vail Associates, Inc. Developed the initial direct flight program into the Eagle County Regional Airport (EGE), including recruiting Delta, Northwest and United Airlines into this emerging mountain gateway that would become one of the busiest mountain resort airports in the world.
Travel Agency Manager, Beaver Creek Resort Travel
Reservations Sales Agent / Airline Sales Specialist, Vail Beaver Creek Reservations

EDUCATION

BA, Business Administration and Marketing
James Madison University, Harrisonburg, VA

AIRPLANNERS

© DUBOIS & KING 2023

RESUMES | KIX

MATT SKINNER

(970) 729-2199
matt@globalflightsolutions.com
PO Box 824 / Telluride, CO 81435

Executive Leadership / Economic Development & Sustainability / Air Development & Management
Public/Private Partnership / Strategic Planning / Cultural Sustainability / Sales & Marketing

PERSONAL PROFILE



Dynamic leader with extensive experience in public and private sectors. Global view and long-term vision with proven results. Popular and effective manager; partnership and consensus builder. Equal hand at policy, data and creativity, with broad skill blend yielding consistent success.

WORK EXPERIENCE

PRESENT
11 / 2012

PRINCIPAL
Global Flights/Airplanners

CEO
Colorado Flights Alliance / Western Colorado

Plan, execute and manage commercial air programs for communities, airports and stakeholders, including strategic development, partnerships, funding and marketing, leading efforts to create vital and sustainable economies.

- Economic development and sustainability for expansive and diverse regions
- Short and long-range planning, including airlines, airports,communities, amenities, assets and stakeholders
- Public/Private partnership with governing municipalities, counties, resorts and other private entities
- Public/Private funding, including short and long-termstrategies for sustainability and growth
- Domestic and International Marketing, Public Relations, Sales and Guest Services
- Record Setting Air Service
- Record Setting Tax Revenues
- Inaugural and Recovered Air Service
- Consistent Record of Success

AIRPLANNERS

VOLUNTEER EXPERIENCE

Governor's Emergency Economic Council
Tourism Committee
2020

Colorado Tourism Office
Board of Directors
2013 – 2019, Chair 2017 & 2018

Region 10 Comprehensive Economic Development Strategy (CEDS) Committee
2013 – present

Telluride Regional Airport
Board of Directors
2013 – present

Colorado Flights Alliance
Board of Directors
2007 – 2009, 2010 – 2012

Telluride Tourism Board
Board of Directors
2007 – 2009, 2010 – 2012

Durango Area Tourism Office
Board of Directors
2003 – 2006, Chairman 2006

Durango Air Task Force/Destination Durango
2004 – 2006

© DUBOIS & KING 2023

WORK EXPERIENCE

2012
2010

VICE PRESIDENT OF SALES & MARKETING

Telluride Ski & Golf / Telluride, CO

Responsible for resort brands and comprehensive resort revenues.

- Evolution, integration and continued establishment of resort brands, external and internal
- Revenue management, including gross revenues, product creation, pricing and yield management
- International and domestic sales, marketing, communications, CRM and partnerships
- Ski & Golf Club, Lodging (launched) and Retail divisions
- Set records for visits and revenue during tenure, showing 17% growth including recession
- Helped lead Telluride to #1 ranking in *Conde Nast* and #5 in *Ski* Magazine for North American Resorts
- Three-time winner Best Overall Marketing from National Ski Areas Association
- *Director of Marketing*, 2006–2007

2009
2006

2010
2009

DIRECTOR OF MARKETING

Bonnier Mountain Group / Boulder, CO

Managed and integrated brands across all programs and events for *Ski* Magazine, *Skiing* Magazine, Warren Miller and NASTAR.

- Marketing, sales and public relations campaigns, events and multi-media platforms
- New business development, solutions for advertisers and partners across multiple brands
- Redeveloped internal brand, including company advertising and marketing, circulation marketing, PR and digital
- Development, analysis and application of syndicated, primary and competitive research

2006
2002

DIRECTOR OF MARKETING

Purgatory Resort / Durango, CO

Managed resort brand and all marketing programs, including advertising, PR, digital, CRM, product creation and pricing, sponsorships, promotions and events.

- Campaign for passage of new resort Master Plan by public referendum, creating a long-term, sustainable future for the resort base area and mountain services.
- Growth of skier days by 13% and revenue by 20%
- *Communications Director*, 2002–2003

EXPERTISE+SKILLS

- Leadership
- Strategy
- Marketing
- Budgeting
- Policy
- Data
- Creativity

EDUCATION

Master of Fine Arts
Creative Writing
University of Montana

Bachelor of Arts
Philosophy & History
Santa Clara
University

REFERENCES

Bill Rock
SVP – Vail Resorts,
Mountain Division
P (530) 448-0837
E billrock65@yahoo.com

Kathy Hagan
CEO - Karsh Hagan
P (303) 503-8703
E khagan@karsh.com

Dave Riley
COO – Sunshine Village Resort, CA
P (403) 431-1292
E daveriley2050@gmail.com

AIRPLANNERS

© DUBOIS & KING 2023

Arlene M. Dodds

Director, Corporate Secretary

Executive Vice President, Business Development

arlene.dodds@immortaldata.net

301-802-3178



- Top Secret Clearance (Active) TS/PPR/SCI-eligible
- Certified capture manager (Shipley, Northrop Grumman) proposal manager (APMP) and competitive intelligence professional (SCIP); Certified Program Manager (AISE, NCR, Northrop Grumman) with systems engineering perspective (CMU, INCOSE)
- Proven success record in Federal, Defense, and Intelligence Markets, leading teams responsible for winning programs ranging from $37.5M to $2.5B.
- Proven Leader overseeing unit stand-up and expansion to meet large-scale program demands
- Proficient at leading geographically dispersed virtual teams. Creates methods of collaboration to bridge virtual office anomalies. Drives operational excellence.

Arlene Dodds is a strategist with 35 years of experience leading business development initiatives to construct solution-focused programs that serve customers and other stakeholders. She is a certified executive capture leader, corporate focus program manager, and competitive intelligence professional. Her approach involves building a cohesive solution that includes perspectives from engineering disciplines, operations, information technology, cyber security and functional areas such as strategic sourcing, contracts and pricing.

Her direct government contracting experience spans two decades with Tier 1 contractors including Northrop Grumman and Lockheed Martin.

Prior to supporting government programs, Ms. Dodds directed commercial programs, especially unit stand-up and expansion to meet performance demands for large-scale technical and industrial (steel/rail) modernization programs. Her professional history includes responsibility for automation program performance and budgets in the commercial transportation market where she oversaw multiple programs individually valued at 100M (light rail) and 60.4M (heavy rail), and ensured performance IAW US Federal and nation-specific technical and security regulations.

© DUBOIS & KING 2023

IMMORTAL DATA

SUNIL AHUJA

1668 W. Glendale Avenue, #523, Phoenix, AZ 85260. Phone: (480) 678-1296 E-mail: sunil.ahuja@immortaldata.net

SENIOR PROJECT and CLIENT RELATIONS MANAGER

- Accomplished project manager with strong record of successful ERP system implementations and turnarounds.
- Business experience includes management consulting, project and line management with multi-national corporations and technology venture companies, in the United States and India.

PROFESSIONAL EXPERIENCE

IMMORTAL DATA INC., Leesburg, VA 2010 – Present

Chief Operating Officer and Vice President, Operations

- IDI is startup venture developing data acquisition and black boxes for spacecraft.

INTEGRAL TRANSFORMATION SYSTEMS, Scottsdale, AZ 2001 to Present

Owner/President

Independent personal and leadership development consulting, training and coaching company

- As an Executive Leadership Development Coach, use Integral and development models to assess and develop client's leadership capacity in systemic thinking and emotional intelligence.

DELOITTE & TOUCHE, Phoenix, AZ *2000 to 2001*

Manager, Management Solutions and Services (J. D. Edwards Practice)

Project management and client relations for Deloitte's J.D, Edwards' ERP implementation practice.

Major Contributions

- Initiated expansion of practice into new Professional Services Automation sector, resulting in the Phoenix office's first successful implementation of a PSA software selection project.

J.D. EDWARDS WORLD SOLUTIONS CO., Denver, CO *1998 to 2000*

Client Manager/ Manufacturing Area Specialist

Project management/supervision for multiple EnterpriseOne ERP system implementations; business development.

EDUCATION

Master of Science in Industrial Administration, Carnegie-Mellon University, Pittsburgh, Pennsylvania

Post-Graduate Diploma in Management (MBA), Indian Institute of Management, Calcutta, India

Bachelor of Technology, with Honors, in Electrical Engineering, Indian Institute of Technology, Kharagpur, India

© DUBOIS & KING 2023

IMMORTAL DATA

Warren Scott Massey
Information Technology Professional
Phone: 571-274-0396
Warren.S.Massey@Gmail.Com

Biographical Summary

Warren Massey is responsible for Security and Safety at IDI.

Warren began his IT career in the mid 90's while in the Army. His talent with technology and his leadership ability was noticed by the Deputy Commanding General and he was specifically requested to be assigned to the US Army Special Operations Command. His assignment was to help establish then lead the IT department of a major subordinate command.

His next assignment was with the US Army Human Resources Command. While assigned there he held two different positions. The first was as the Technical Director of the Army's largest records and document management system. A major accomplishment of that position was the transition of tens of millions of records from optical storage to a Storage Area Network which increased transaction processing nearly 1000%. The second position was as the Information Assurance Officer for the command (cyber-security). Warren transformed that organization from one that "checked boxes" to one that actively managed and trained a campus of several thousand users on both classified and unclassified networks. He and his security team were recognized by the Army with an award for the best security team from within the active Army, Army Reserve and National Guard.

Warren continued to take the hardest IT assignments during his military career serving in a variety of positions to include Chief of Information Management, Chief of Information Security (twice), IT Contracting Officer Representative, and Technical Director of the world's largest ERP effort.

Upon retirement from military service Warren began worked for Triple Canopy as the Senior Director of IT. While at Triple Canopy, an international company with sites on four continents, he led the implementation of several major efforts to include infrastructure virtualization, private cloud, business continuity, home office joint venture support and software as a service. Warren supported operations in some of the most hostile, austere environments around the globe. His efforts at transforming Triple Canopy's IT directly, positively, impacted contract awards.

© DUBOIS & KING 2023

Chad T. Snoke, PS
Chief Aeronautical Surveyor
Geopro Consultants, LLC

Summary:
18 years of experience

Education:
Bachelor of Science
Geomatics Engineering, Ohio State University 2002

Professional Registration
Professional Surveyor
Licensed in Ohio and Pennsylvania

Certified by Federal Aviation Administration (FAA) to performed aeronautical surveys to Advisory Circular A Standards (IDLE)

Mr. Snoke is the Vice President of Geopro Consultants and is responsible for daily management and coordination of survey operations. He has extensive experience working on a wide variety of aeronautical geospatial projects including GIS asset inventories, geodetic control establishment including airport PACS & SACS, photogrammetric mapping, remote sensing, and LIDAR. He is a licensed land surveyor in both Ohio and Pennsylvania. Mr. Snoke also holds an FAA IDLE Certificate for his understanding of FAA Advisory Circular standards and FAA aeronautical surveying standards.

Mr. Snoke has overseen the completion of over 300 airport geospatial projects throughout the world. Mr. Snoke specializes in the performance of aeronautical surveys and has an expert understanding of the FAA Advisory Circulars 150/5300-16, 17 and 18 and ICAO Annex 14 and 15.

Representative Project Experience

Detroit Metro Airport (DTW): Airfield Lights and Sign Mapping at Night (2019): In 2018, Geopro performed an inventory of airfield lights and signs at Detroit Metro Airport (DTW), the nineteenth busiest airport in the United States. The project presented unique challenges, since DTW has six runways and thousands of lights, many of which are embedded in the airfield pavement, and difficult to see in traditional imagery. Geopro developed an innovative approach to mapping the features, using both traditional “day-light” imagery, as well as night-time “low-light imagery.” By coordinating closely with the air traffic control tower, Geopro scheduled nighttime acquisition with airfield lights turned to maximum brightness. The low-light imagery enabled detection of in pavement lights, and also a determination of light colors. Geopro photogrammetrists used this innovative approach to map the locations of over 10,000 airport lights and signs with a horizontal accuracy of 3 inches.

Detroit Metro Airport (DTW): FAA Airports GIS Obstruction Survey – Detroit, Michigan (2018): Requiring a multi-discipline approach including ground-based surveying, aerial photogrammetry, and GIS - this project was completed in early 2018 and required the GIS collection of more than 10,000 features at the 25th busiest airport in the nation. Necessitating elaborate safety procedures, difficult scheduling, and a demanding work environment, this project was completed successfully to the rigorous standards of the FAA and NGS and without a single safety incident. The final deliverables included an ESRI geodatabase of all features, orthophotography, and a final surveyors report. The aerial mapping was conducted in accordance with FAA Advisory circulars 150-5300-16A, 17C, and 18B. The deliverables were successfully submitted and approved through the FAA’ s AGIS website.

© DUBOIS & KING 2023

Chad T. Snoke, PS

Geodetic Control Establishment at Three Michigan Airports (2017): Geopro Consultants was selected to lead the simultaneous establishment of Primary and Secondary Airport control Stations (PACS & SACS) at three airports in central Michigan. Geopro crews utilized the standards of FAA Advisory Circular 150/5300-16A to develop a geodetic control plan, establish the physical monuments, process, and report the new control stations. The project data was uploaded to the FAA AGIS website, reviewed, and approved by the National Geodetic Survey, resulting in ten new high-accuracy monuments being published in the National Spatial Reference System (NSRS) database.

ICAO Annex 14 Obstruction Mapping of Eight Swedish Airports (2016-2017)
In 2016, Geopro was selected as part of an international team of airport geospatial experts to perform obstruction mapping and GIS data collection at multiple airports throughout Sweden. The data capture process began with photogrammetric mapping into a GIS database utilizing nationwide imagery captured by Lantmäteriet (National Land Survey of Sweden). The existing imagery allowed Geopro to cost-effectively perform a comprehensive collection of obstacle points, before a team member ever visited Sweden. Next, accompanied by French procedure designers, Geopro deployed an airport obstacle measurement specialists to inventory airside features and locate obstacles using ground-based laser measurement techniques.
In 2017 and 2018, Geopro mapped obstacles at eight different Swedish airports, including Stockholm-Arlanda Airport, Gothenburg-Landvetter Airport, Kiruna Airport, Malmö Sturup Airport, Östersund Airport, Umeå Airport, Stockholm-Bromma Airport, Visby Airport.

Kenai Municipal Airport (ENA): Airport GIS Layout Plan Mapping – Kenai, Alaska (2014)
Geopro Consultants was the project lead on this AGIS mapping project conducted in support of Master Plan update at ENA. The ALP project required ground-based surveying of high-accuracy features, such as navigational-aids and runway ends points, and imagery-based analysis of over 26,000 acres for obstruction identification. The project was completed through the FAA's AGIS website with all deliverables approved on first submission.

Los Angeles International Airport (LAX): Interior Space Survey – Los Angeles, California (2014).
Geopro Consultants provide geodetic control establishment services in support of a 3D mobile-mapping and interior space asset assessment. Geopro crews conducted a high-accuracy, closed-loop traverse to establish sixty-nine geodetic control points distributed throughout three levels of the Tom Bradley International Terminal and four levels of Terminal Three at the Los Angeles International Airport. Our high-accuracy data formed the basis of LAX's geographic information system at the second busiest airport in the United States.

City of Dayton Street Light GIS Inventory (2016):
Geopro Consultants was selected to complete a geospatial asset inventory of light poles within the City of Dayton, Ohio. During the six-month project, Geopro deployed GIS data collection crews to scour the fifty-six square miles within City limits to capture twenty-thousand features. Our crews located each pole using centimeter-level Global Navigation Satellite System (GNSS) measurements, tied directly to the National Spatial Reference System (NSRS) via Ohio's Virtual Refence Station (VRS) Network. All streetlights were measured in 3D, to obtain high accuracy XYZ spatial coordinates. Our staff also measured the height and arm length of each pole, and documented attributes including lens and bulb type, wattage, and applied or repaired unique identifier labels to each. Finally, Geopro developers implemented a unique "street view" module to assist in quality control, that allowed office personnel to visually inspect poles based on the captured latitude and longitude and executed through the Google Maps API.

© DUBOIS & KING 2023

NAME: **Randal Wiedemann**

POSITION AND FIRM: ***President,*** **R.A. Wiedemann & Associates, Inc.**

PROFESSIONAL REGISTRATION: N/A

YEARS WITH R.A. WIEDEMANN & ASSOCIATES: 33

TOTAL PROFESSIONAL EXPERIENCE (YEARS): 47



EDUCATION:

B.S. / University of Colorado / Marketing / 1975
M.B.A. / University of Cincinnati / Masters of Business Administration / 1979

PROJECT ROLE:

Principal Consultant

PUBLICATIONS & PROFESSIONAL AFFILIATIONS:

Member AAAE, AOPA

DIGEST SUMMARY OF EXPERIENCE:

As President of R.A. Wiedemann & Associates, Randal Wiedemann brings over 47 years of airport planning experience to the firm's profile. Mr. Wiedemann concentrates his efforts in physical and economic planning areas with emphasis on airport business plans, knowledge management software, economic impact analysis, feasibility studies, airport master planning, airline service and marketing programs, financial plans, military joint use and reuse studies, air cargo studies, airport management services, and environmental assessments.

Mr. Wiedemann is one of the most experienced airport business planners in the nation, participating in the development of more than 95 airport business and marketing plans since 2000. Both general aviation and air carrier airports have been included in the list of successful business planning projects. Examples include Lee's Summit (MO), Lakeland Linder Regional (FL), Redlands (CA), Treasure Coast International (FL), Westover Airport (MA), Denton (TX), Hondo (TX), South Texas International (Edinburg, TX), Civil Air Terminal (DE), Plattsburgh (NY), New Braunfels (TX), Fort Smith (AR), Rutland (VT), Adirondack (NY), New Castle (DE), Delaware Coastal Airport (DE), Morehead (KY), Genesee County (NY), Oswego County (NY), Montpelier (VT), Palo Alto (CA), East Hampton (NY), Mid-Ohio Valley Regional (WV), Brookhaven, (NY), Millington (TN), Denton (TX), Suffolk County (NY), Maury County (TN), Rogers (AR), Canandaigua (NY), Bennington (VT), Decatur (IL), Galveston (TX), Somerset (KY), and many others.

Mr. Wiedemann is also highly experienced in airport master planning, participating in more than 100 airport master plans since 1975. Mr. Wiedemann recently finished directing the Sugar Land Regional Airport Master Plan, and has had leading roles in master plans for Orlando-Sanford International (FL), South Texas International (TX), New Braunfels (TX), Lakeland (FL), and Treasure Coast (FL). He has participated in completed studies for Dickinson (ND), Cleveland (TN), Ashtabula County (OH), Buffalo International (NY), Farmingdale-Republic Airport (NY), Delaware Airpark (DE), Ft. Smith (AR), Charlottesville (VA), Manchester (NH), and many others. Seeing a deficiency in conventional airport master planning studies, Mr. Wiedemann developed a new strategic approach that combined his extensive airport business planning experience with airport master planning methods. The resulting plans include a strategic focus on facilities and services that can enhance revenues, including a market analysis for highest and best use of non-aviation airport real estate.

Mr. Wiedemann received his Bachelor of Science degree in Marketing from the University of Colorado (1975) and his Master of Business Administration (M.B.A.) degree from the University of Cincinnati (1979). In addition, Mr. Wiedemann served on the faculty at Northern Kentucky University where he taught evening classes relating to aviation. Mr. Wiedemann holds a Part 107 UAS Remote Pilots License issued by the FAA. He has also been a certified 5010 airport safety inspector since 2004.

© DUBOIS & KING 2023

CITY OF LAS CRUCES



Airport Engineering Services

Airport Consultant - Engineering, Architecture, and Construction Management Services

RFP No. 22-23-050

August 15, 2023

Submitted by DuBois & King, Inc.

COST PROPOSAL

DuBois & King inc.

329226X
August 15, 2023

City of Las Cruces
Andy Hume, Airport Administrator
bidclerk@las-cruces.org

Subject: Airport Consultant—Engineering, Architecture, and Construction Management Services, RFP No. 22-23-050 COST PROPOSAL

Dear Members of the Selection Advisory Committee:

Enclosed is D&K's cost proposal, including direct costs, indirect costs, labor (hours) by major tasks, materials, equipment, subcontractors, and other potential proposed costs incurred by the City.

Thank you for the opportunity to support the Las Cruces International Airport. If you have any questions, please do not hesitate to contact me at (802) 917-5598 or via email at grouelle@dubois-king.com.

Sincerely,
DuBois & King, Inc.



Guy Rouelle, CM
Principal-in-Charge

TASK	D&K LABOR HOURS	DIRECT LABOR FEES	OVERHEAD RATE (162.62%)	FIXED FEE (10%)	SUBCONSULTANT	MATERIALS/ EQUIPMENT	TOTAL FEE
1. Install AWOS	327	$15,550	$25,287	$4,084	$58,500	$-	$103,421
2. Rotating Beacon	208	$10,019	$16,293	$2,631	$17,000	$-	$45,943
3. Runway 4-22 Reconstruction	4,946	$244,070	$396,907	$64,098	$330,000	$-	$1,035,074
4. Extend Fiber Optics	181	$8,658	$14,080	$2,274	$-	$-	$25,011
5. Plan, Design, Construction Phase Services for Maintenance Facility	602	$29,236	$47,544	$7,678	$65,000	$-	$149,458
6. Resolve Lease	91	$5,218	$8,486	$1,370	$-	$-	$15,074
7. Relocate Fuel Farm	552	$25,095	$40,809	$6,590	$42,500	$-	$114,995
8. Pavement Management Plan	283	$13,826	$22,484	$3,631	$-	$-	$39,941
9. Extend Runway 12-30 Taxiway C	1,540	$75,400	$122,615	$19,802	$303,000	$-	$520,817
10. Realign Taxiway B	1,894	$95,972	$155,346	$25,087	$138,000	$-	$413,960
11. Transitional Terminal	4,550	$225,000	$365,895	$59,090	$500,000	$-	$1,149,985
12-16. As needed							
Total							**$3,613,679**
ASSUMPTIONS							
The fees presented are for planning purposes only and will be further refined based a scope of work that is defined by the Airport, FAA, and NMDOT and approved as reasonable and fair through the independent fee estimating process.							

24-068

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A**		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Virginia Barela	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title:	**A RESOLUTION AUTHORIZING AN ANNUAL AMOUNT OF $3,000,000.00 FOR GROUND AMBULANCE SERVICES TO AMERICAN MEDICAL RESPONSE AMBULANCE SERVICE, INC DBA AMERICAN MEDICAL RESPONSE (AMR), OF LAS CRUCES, NEW MEXICO FOR AN INITIAL PERIOD OF FIVE (5) YEARS WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO RENEWALS AND APPROVED BUDGET APPROPRIATIONS. (PROCUREMENT NO. 22-23-021).**

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

PURPOSE(S) OF ACTION:

To authorize a professional service agreement award.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On July 13, 2020, the City of Las Cruces Fire Department (LCFD), Doña Ana County, and American Medical Response (AMR) negotiated a settlement allowing the City to file a permit with the New Mexico Public Regulatory Commission to manage and provide ambulance services for the City of Las Cruces. The settlement stipulated that LCFD would transport all sick and injured persons located within an Exclusive Operating Area (EOA) and, through the Request for Proposal (RFP) process, select a contractor for ambulance services for a unified response system throughout Doña Ana County.

On November 10, 2022, the City of Las Cruces (City) advertised an RFP for Procurement No. 22-23-021. The Purchasing program received one (1) proposal that was evaluated and scored by the Selection Advisory Committee (SAC) on April 12, 2023. The committee's recommendation was to award to AMR.

These services will provide Advanced Life Support (ALS) services through ALS quick-response vehicles with Basic Life Support (BLS)/Intermediate Life Support (ILS) staffed-ambulances, within the established EOA (as detailed below), with the exception of Emergency Medical Services calls defined by the Mesilla Valley Regional Dispatch Authority to be high acuity within the city limits, which will be referred to LCFD for response and transport.

1. Response to 9-1-1/ Public Safety Answering Points (PSAP) requests
2. Response to requests for immediate emergency ambulance service transmitted through an authorized 9-1-1/Public Safety Answering Points (PSAP)
3. Response to requests for emergency ambulance service made directly to the ambulance provider from a seven-digit telephone call without going through an authorized 9-1-1/PSAP

4. Any request for Interfacility Transfers from a healthcare facility that requires an ambulance, except Hatch area
5. All “Special Events” requiring the presence of an ALS ambulance
6. All “Special Events” requiring ALS level of service, even if there is no ambulance required

The proposed services will be utilized as outlined in the Professional Services Agreement for a period of five (5) years with the option to extend for three (3) one-year terms.

SUPPORT INFORMATION:
Exhibit "A" - 23-24-021 Ambulance Services

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $0 **AVAILABLE AMOUNT:** $0 **EXPENDITURE AMOUNT:** $3,000,000.00

Funding Source(s):
Revenue and Expenditure accounts

Overall Budget Impact:
The expenditures for these services will be $1,500,000.00 for the remainder of fiscal year 2024. The total cost of services for the remaining years of the contract will be $3,000,000.00 annually. A budget adjustment will need to be taken before Council to increase revenue and expenditure amounts for $1,500,000.00. A Memorandum of Understanding will be created between the City of Las Cruces and Doña Ana County. Doña Ana County will offset all expenses for these services as part of this MOU. AMR will invoice the City on a quarterly basis. The budget adjustment will be taken to Council in February, prior to the first scheduled invoicing.

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 a contract to American Medical Response Ambulance Services, Inc. dba American Medical Response, of Las Cruces, New Mexico to provide ground ambulance services for the City of Las Cruces and Doña Ana County for a term of five (5) years with the option to extend for three (3) one-year terms.
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 based on City Council direction to staff.

4. Vote to "Table"; this could delay awarding a contract for ground ambulance services for the City of Las Cruces and Doña Ana County and may negatively impact public safety services.

REFERENCE INFORMATION:

Resolution 21-090; CL11; City Strategic Plan No. 6 - Public Safety

RESOLUTION 24-068

A RESOLUTION AUTHORIZING AN ANNUAL AMOUNT OF $3,000,000.00 FOR GROUND AMBULANCE SERVICES TO AMERICAN MEDICAL RESPONSE AMBULANCE SERVICE, INC DBA AMERICAN MEDICAL RESPONSE (AMR), OF LAS CRUCES, NEW MEXICO FOR AN INITIAL PERIOD OF FIVE (5) YEARS WITH THE OPTION TO EXTEND FOR THREE (3) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO RENEWALS AND APPROVED BUDGET APPROPRIATIONS. (PROCUREMENT NO. 22-23-021).

The City Council is informed that:

WHEREAS, on July 13, 2020, the City of Las Cruces (City), Doña Ana County, and American Medical Response Ambulance Services, Inc. dba American Medical Response (AMR) negotiated a settlement allowing the City to file a permit with the New Mexico Public Regulatory Commission to manage and provide ambulance services; and

WHEREAS, the settlement stipulated that LCFD would transport all sick and injured persons located within an Exclusive Operating Area (EOA) and, through the Request for Proposal (RFP) process, select a contractor for ambulance services for a unified response system throughout Doña Ana County; and

WHEREAS, these services are required to provide Advanced Life Support (ALS) services through ALS quick-response vehicles with Basic Life Support (BLS)/Intermediate Life Support (ILS) staffed-ambulances, within an established Exclusive Operating Area (EOA); and

WHEREAS, on November 10, 2022, the City issued a competitive Request for Proposal (“RFP”) to select a contractor or contractors for ambulance services for a unified response system throughout Doña Ana County, and both parties jointly developed the standards for ambulance services and for the RFP for such services; and

WHEREAS, the Purchasing program received one (1) proposal, which was evaluated and scored by the Selection Advisory Committee (SAC); and

WHEREAS, the SAC recommended awarding the Professional Service Agreement to AMR; and

WHEREAS, the agreement will be for a period of five (5) years with the option to extend for three (3) one-year terms.

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

(I)

THAT the the City is authorized to enter a Professional Service Agreement, as shown in Exhibit "A" attached hereto and made part of this resolution, in an annual amount of $3,000,000.00, subject to renewals and approved budget appropriations.

(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

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

CITY OF LAS CRUCES
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of December, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called “CITY” and American Medical Response Ambulance Service, Inc. dba American Medical Response, of 920 S. Valley Drive, Las Cruces, New Mexico 88005, hereinafter called “CONTRACTOR”.

1. PROJECT DESCRIPTION
Ground Ambulance Services for the City of Las Cruces and Doña Ana County

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. 22-23-021, 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 not to exceed $3,000,000.00, 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 quarterly. 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 January 1, 2024 for a term of five years through December 31, 2028 and, pending mutual written agreement, may be extended annually thereafter for up to three (3) 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.

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

Contract Administrator shall make any decision regarding renewal of this Agreement, or any extension thereof shall be made at least 18 months prior to the scheduled termination date so that if no extension is approved, a new proposal process can be conducted on a schedule that will identify the new Contractor at least four months prior to that scheduled termination date.

The purpose of this requirement is to allow reasonable time for both outgoing and incoming Contractors to plan and execute an orderly transition, to allow the City and its new Contractor to revise advertising, and to allow time for negotiation of new service contracts, mutual-aid agreements, and other contracts previously serviced by the outgoing Contractor. (Section 3.3 Period of Operation RFP 22-23-021)

CONTRACTOR and the CITY may terminate this Agreement without cause and no earlier than July 1, 2025, if the City denies a request by CONTRACTOR for a subsidy adjustment due to changed circumstances (e.g., unforeseen increase in costs, new regulatory requirements or new clinical standards). CONTRACTOR shall provide at least 120 days written notice to the City to exercise its termination right under this paragraph.

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.

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
   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 on an occurrence form.
   f. 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
Refer to section 7.2 in Exhibit A
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: Jason Smith, Fire Chief
With Copies to:	City Attorney Purchasing Manager
TO CONTRACTOR:	American Medical Response Ambulance Service, Inc. Address and Street City, State and Zip ATTENTION:

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.

AMERICAN MEDICAL RESPONSE AMBULANCE SERVICE, INC.

BY: _____
Name
Title

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

12/6/23
City Attorney

EXHIBIT A

4.1 Scope

Due to the current lack of paramedics available nationally, this scope includes the ability to provide Advanced Life Support (ALS) services through ALS quick-response vehicles with Basic Life Support (BLS)/Intermediate Life Support (ILS) staffed-ambulances. The paramedic can downgrade the transport to BLS or ILS as appropriate by policy. Further, certain dispatch call types no longer require an ALS response.

All the following transports originating in the Exclusive Operating Area (EOA) shall be referred to the exclusive Agreement holder, who shall be responsible for all responses and ground transports as follows:

1) Made in response to 9-1-1/PSAP requests
2) Made in response to requests for immediate emergency ambulance service transmitted through an authorized 9-1-1/Public Safety Answering Points (PSAP)
3) Made in response to requests for emergency ambulance service made directly to the ambulance provider from a seven-digit telephone call without going through an authorized 9-1-1/PSAP
4) Any request for IFT from a healthcare facility that requires an ambulance, except Hatch area
5) All “Special Events” requiring the presence of an ALS ambulance
6) All “Special Events” requiring ALS level of service, even if there is no ambulance required

The exception is Emergency Medical Services (EMS) calls defined by the dispatch center to be high acuity within the city limits, which will be referred to the Las Cruces Fire Department (LCFD) for response and transport.

The CONTRACTOR’s scope of work is summarized as follows:

When a request for service is received by the CONTRACTOR from Mesilla Valley Regional Dispatch Authority (MVRDA), ambulance service must meet the response-time and clinical standards set forth herein. Every ambulance unit provided by the CONTRACTOR for response must, always, except as authorized by the Agreement, be equipped and staffed to operate at the appropriate level on all ambulance responses, including emergency and non-emergency services. Clinical performance must be consistent with approved medical standards and protocols. The conduct and appearance of the CONTRACTOR’s personnel must always be professional and courteous. Patient transportation and disposition will be according to the CITY Policies and Procedures as established or approved in

the CONTRACTOR's proposal and as developed or promulgated as part of this RFP.

Services and care delivered must be evaluated by the CONTRACTOR's internal quality improvement program and as necessary, through the CITY's quality improvement program in order to improve and maintain effective clinical performance. The CONTRACTOR must make an unrelenting effort to detect and correct clinical and other performance deficiencies and to continuously upgrade the performance and reliability of the EMS system. Clinical and response-time performance must be extremely reliable, with equipment failure and human error held to an absolute minimum through constant attention to performance, protocol, procedure, performance auditing, and prompt and definitive corrective action. Agreement requires the highest levels of performance and reliability and mere demonstration of effort, even diligent and well-intentioned effort, shall not substitute for performance results. The Contractor that fails to perform shall be promptly replaced to protect the public health and safety.

4.2 Coordination within the Exclusive Operating Area

The local fire agencies currently provide first responder and backup transport EMS services in the EOA for 9-1-1 emergency and non-emergency requests for service. The CITY considers the fire agencies an essential partner in the provision of EMS within the EOA.

4.3 EMS Run Data

See Attachment 2 for summary EMS data. Computer-Aided Dispatch (CAD) data is available for 2018-2022 upon request. There has been no independent validation of this data. Contractor is encouraged to use their own means to analyze the information to determine response and transport volumes. The City does not guarantee any number of responses or transports.

Hatch Ambulance IFT data is not included as it will continue to manage these transports. While Hatch Ambulance has the legal authority to provide ambulance services throughout Doña Ana County, it has no intention of increasing its service area. Should that change, the City and Contractor would negotiate in good faith to mitigate any impact on the EOA.

4.4 Level of Care

The exclusive CONTRACTOR will provide ALS, ILS, & BLS level of care for all requests for ground 9-1-1 and IFT ambulance service and special event ALS stand-by originating within the EOA, except as noted above. Ambulance IFT are also included in the scope of this RFP. Air ambulance transports are excluded. Specialty care transports, such as neonatal and high-risk obstetrics, require a specialized team from out of the EOA and, as such, are outside the services to be provided.

The CONTRACTOR shall continually work with EMS stakeholders and AOC to refine the most appropriate service level and response time standard for each dispatch call type. This decision-making process will be data driven and may include using critical interventions per call type to determine the optimal response.

4.5 Response Time Zones and Standards

A. General

It is the CONTRACTOR's sole responsibility to be familiar with the geographic considerations and response-time. Response times shall be calculated from the moment the Contractor receives the call from MVRDA (“Agency Dispatch Date/Time”), until the time the CONTRACTOR arrives on the scene with a fully functional and appropriately staffed/equipped unit(s). All response times are measured in seconds, not whole minutes. All 9-1-1 ambulance dispatch services and times will be documented under strict procedures set by the CITY.

The CITY is interested in providing prompt, effective 9-1-1 and IFT ambulance services at a reasonable cost to the consumer and the county. Any enhanced services above the standard of this Agreement must include a separate cost estimate. However, clinical performance will not be sacrificed for economy.

Service to the EOA must be at or above the level of service as defined in this Agreement. Service must include primary response, backup, and move-up-and-cover plans that clearly define timely emergency ambulance coverage. Monitoring of this requirement will include CAD data supplied by MVRDA and oversight will be provided by the AOC with technical expertise from fire, dispatch, hospitals, and other EMS stakeholders.

B. Response-Time Zones

Response time requirements vary depending upon the emergency response zone (ERZ) to which the CONTRACTOR must respond.

Dona Ana County will be identified in three (3) distinct ambulance response zones (geographic definitions below in the Posting and Response Plan section);

North- Zone C

- ALS/ILS coverage will be 24 hours a day, 7 days a week with an (1) ambulance stationed in Hatch, NM.
  - This response area will be a level of effort zone with no response time requirements. Response times and outcomes will be monitored and reviewed.
  - Dona Ana County Fire will provide backup ambulance services for this zone as needed.
  - LOE must be met 90% of the time. Failure to meet this requirement for three months out of a rolling 12-month period will require a remediation plan to be submitted to the AOC.
    - Failure to meet the 90% LOE for six months of a rolling 12-month period will result in beginning emergency takeover steps as outlined in the RFP.

Central- Zone A/B

- A total of four (4) units staffed 24/7 with a mix of ALS/ILS (3/4) and BLS (1/4) coverage in this zone.
  - An additional (1) BLS unit will be scheduled 12 hours a day, 7 days a week during peak hours.
  - An additional (1) dedicated BLS inter-facility transfer (IFT) truck will be scheduled 12 hours a day, 7 days a week during peak hours.
- The Central Zone consists of two (2) distinct areas as defined by the AOC For a map of the ERZs, please see attached map);
  - Zone A – Urban, which includes the City of Las Cruces and contiguous census tracts with population density greater than 500 people/sq mile, as shown in the RFP.
    - Response time requirements will be 10:59 for critical emergent call types as identified and 12:59 for non-critical emergent call types, with 85% compliance.
    - Calls exceeding 21:59 minutes will be subject to liquidated damages
  - Zone B – Suburban, which is any area outside of the above but still located in the Central Zone.
    - A radius built around an 18:59 drive time from City center will have a corresponding response time requirement with 85% compliance
      - Calls exceeding 37.59 minutes will be subject to liquidated damages
    - Anything outside of this radius will be a level of effort with no response time requirements

South Zone

- ALS/ILS coverage will be 24 hours a day, 7 days a week with ambulances stationed in Sunland Park, Anthony, and Chaparral.

        - This response area will be a level of effort zone with no response time requirements. Response times and outcomes will be monitored and reviewed.
        - Dona Ana County Fire will provide backup ambulance services for this zone as needed.
    - LOE must be met 90% of the time. Failure to meet this requirement for three months out of a rolling 12-month period will require a remediation plan to be submitted to the AOC.
        - Failure to meet the 90% LOE for six months of a rolling 12-month period will result in beginning emergency takeover steps as outlined in the RFP.

Posting & Response Plan

In order to define the response zones, we will use the following delineation lines for North and South Zones.

- Running east and west from mile marker 19 (Radium Springs) on Interstate 25, anything North of that line is considered the North Zone.
- Running east and west from mile marker 151 (Mesquite) on Interstate 10, anything South of that line is considered the South Zone.
- All of Dona Ana County located between those lines will be considered the Central Zone.

In conjunction with Mesilla Valley Regional Dispatch Authority (MVRDA) we will build a posting plan that allows for unit management and response to remain in their prospective zones under normal operating conditions. This will maximize unit availability by restricting the North and South units posting into the Central Zone or from being used for non-911 work such as IFTs or special event standbys. Additionally, units assigned to the Central Zone will also not generally be used for responses outside of the Central Zone.

These zones are based on ambulance industry standards for defining such service areas and may be changed by the City and County from time to time as population, call density, road access, effective Agreement monitoring, and other relevant conditions change. No response-time amendments will be made without giving notice to, and opportunity for, consultation with the CONTRACTOR, fire departments/districts, cities, and other interested parties and organizations in the affected area of the exclusive zone. The CITY will establish a procedure for making such changes that provides for such notice, comment, and input to be achieved.

In addition to the ERZ evaluation, the CITY and County will periodically review population densities, call distribution, single communities, and response times in areas within the compliance zones and may request the CONTRACTOR alter its system status plan (SSP) to respond to needs of improved performance and adaptation to population trends. This alteration

may also include adjusting the SSP to improve backup and move-up-and-cover ambulance coverage. CONTRACTOR shall agree to negotiate in good faith with the CITY and revise the SSP as needed to improve performance to these communities, as determined by the CITY, in consultation with the Contract Administrator.

Emergency Response Time Requirements Summary (in minutes)

Zone		Response Type	Ambulance	
			Standard	Maximum
North Zone		All Response Types	Level of Effort	
Central Zone	Urban	Critical Emergent	10:59	21:59
		Non-Critical Emergent	12:59	21:59
		No Lights & Sirens	Level of Effort	
	Rural	Critical & Non-Critical Emergent	18:59	37:59
	Outside Rural	All Response Types	Level of Effort	
South Zone		All Response Types	Level of Effort	

Table 1

C. Non-Emergency Calls

Contractor must provide 24-hour, 365 days per year coverage for all non-emergency requests, as defined by medical dispatch protocols. For purposes of this Agreement, non-emergency is defined as any call that does not require lights and siren but must have a response due to a presumption of an urgent, but non-life-threatening, medical condition. The response may be at the BLS or ALS level, depending on call type and EMS Medical Director policy. While there is no response time standard for non-emergency calls, it is expected that the CONTRACTOR will respond promptly to these requests to 1) minimize first responder at scene time and 2) meet patient's expectation for prompt service.

D. Interfacility Transports (IFT)

Except for the Hatch area, CONTRACTOR shall respond to hospital and healthcare facility requests for ambulance IFTs in the following manner and using the following definitions. Any removal of 9-1-1 resources to perform transports outside of this Agreement are at the risk of the associated response time compliance impact.

Inter-facility transfers and air transports, will be primarily handled by dedicated IFT units but in the instance that a 911 truck is needed for an IFT, the Central Zone system shall not have less than three (3) units available before a 911 truck can be placed on a transfer. This three-unit minimum for IFTs does not apply for emergent transfers where a request

is made to a higher level of care when any delay could result in placing the patient's health in immediate jeopardy (RFP 22-23-021).

Non-Emergency inter-facility Plan

In addition to the single dedicated IFT unit that is a part of the System depicted above, AMR currently also deploys one (1) BLS unit that services a local hospital in Las Cruces 24/7. With assistance of the AOC, AMR commits to developing an IFT planning committee whose goal it will be to build out planning and pricing for additional hospital funded dedicated ambulances for inter-facility transportation supported by either contractual agreements or direct facility financial support.

Staffing Model

Using the staffing model detailed below, AMR can provide the services described in the above system proposal with a total of 64 Full-Time employees (FTEs).

North Zone & South Zone

24-hour assignments broken into three (3) shifts with two (2) employees per ambulance, per shift for a total of 24 FTEs.

- For example, Anthony will have 1 lead (Paramedic or EMT – I) and 1 EMT per shift.

Central Zone

12-hour assignments divided in two (2) shifts, day and night, with two (2) employees per ambulance per shift for a total of 32 FTEs.

- Additional 12-hour peak demand unit will have four (4) FTEs.
- IFT truck will have four (4) FTEs.

1) Emergency Transfer – Immediate ambulance transport is requested to a higher level of care when any delay could result in placing the patient's health in immediate jeopardy. The transport provider retains a response-time requirement for these transfers just as they would for any emergency 9-1-1 request to the facility's location. As these transfers may immediately remove an ambulance unit from the 9-1-1 system, facilities are expected to only request an emergency transfer when the patient's condition warrants such a response. It is understood that the requesting agency shall only request the emergency transfer when the patient is prepared for transfer with all available transfer papers upon the arrival of the transfer unit. The EMS Medical Director may audit patient urgency or establish a policy to ensure the proper use of 9-1-1 resources.

2) Non-emergency Transfer – This should be requested when the patient's medical condition requires ambulance transport to another healthcare facility and is not considered to be in immediate

jeopardy. The response time standard will be 120 minutes from request.

3) Pre-arranged Transfer – shall be a pre-arranged ambulance transfer for a medically stable patient scheduled six (6) or more hours in advance. The timeliness of this type of transfer would have no foreseeable bearing on the patient's medical condition. The CONTRACTOR shall arrive within 15 minutes of the scheduled time.

E. Pended Responses

EMS Medical Director policy allows non-emergency calls, both 9-1-1 and IFT, to be held (i.e., "pended") when there are three (3) or fewer available urban/suburban ambulances in the system during the day (0600-2200) and two (2) or fewer at night (2200-0600). For 9-1-1 non-emergency calls, MVRDA will contact the patient every 15 minutes to ensure no change in condition until an ambulance arrives at the scene. If first responders are on-scene and identify a life-threatening emergency, they will notify dispatch to upgrade the call to emergency. After 45 minutes, any 9-1-1 non-emergency call should not be held any longer.

4.6 Dispatch Services

MVRDA will provide all 9-1-1 dispatch services. CONTRACTOR shall work professionally and effectively with MVRDA staff to ensure the optimal EMS delivery to benefit the patient. IFT will be dispatched by the CONTRACTOR.

4.7 Performance Standards – Response Times

A. Liquidated Damages:

CONTRACTOR shall not refer exclusive Agreement calls to another agency unless it is part of an approved mutual aid plan submitted by the CONTRACTOR and approved by the AOC with its proposal or subsequently offered and approved. Appropriate referral to air medical services is exempted from such requirement. Use of mutual aid from any source during disaster responses is also exempted from this requirement.

Each emergency call in Zones A and B have two response time standards – ambulance and ALS resource. A call is considered late when either response time standard is missed. The call is considered an outlier if either resource exceeds the maximum time allotted.

Each quarter in which the CONTRACTOR fails to meet the 85.00 percent standard, within any compliance zone the CONTRACTOR shall pay to the County $500 in liquidated damages for each one-tenth (1/10) of a percentage point by which the CONTRACTOR's performance falls short of

the 85.00 percent standard. Each period in which the CONTRACTOR fails to meet the applicable response-time requirements, the AOC will review the CONTRACTOR's SSP, unit-hour of production capacities, and/or other factors to determine the causes of non-compliance. The CONTRACTOR shall develop a corrective action plan for remediating the below standard performance.

All areas have a maximum specified response time (i.e., outlier). For every call where the ambulance or ALS resource fails to arrive within the maximum specified time, the liquidated damages will be $250 per occurrence.

Exclusive Operating Area (EOA) calls referred to another agency (i.e., not an approved Subcontractor) will be considered an outlier for calculating compliance. Two consecutive failures to meet the standards (i.e., not achieving 85.00 percent) in Zone A or B or four failures across Zones A & B during any 12-month period may result in breach of Contract. Inability to maintain 100% level of monthly staffing coverage in Zone C will be considered a failure. Two consecutive Zone C failures or four failures within any 12-month period may result in breach of Contract.

B. Upgrades, Downgrades, Canceled, and Incorrect Addresses

From time to time, special circumstances may cause changes in call-priority classification. Response-time calculations for determination of compliance will be as follows:

1) Upgrades

If an assignment is upgraded prior to arrival of a unit at the scene (e.g., from non-emergency to emergency response), the CONTRACTOR's response time compliance and liquidated damages will be calculated based upon the emergency response time standard from the time the call was upgraded by MVRDA staff in compliance with EMS Medical Director policy.

Example: While enroute to a non-emergency call in a Zone A at 13:25:00, new information is received, and the call is upgraded to emergency at 13:30:00. CONTRACTOR ambulance will have until 13:40:59 to arrive on scene (i.e., when the ambulance stops moving and is placed in park).

2) Downgrades

If, prior to a unit's arrival at scene, a call is downgraded; 1) by MVRDA or 2) by any other person authorized by policy, compliance and liquidated damages will be determined as follows:

(a) If the time of downgrade occurs after the unit has exceeded the response time standard or maximum response time for the zone involved, the response time standard or maximum will apply; or,

(b) If the time of downgrade occurs before the unit has exceeded the response time standard or maximum response time for the zone involved, the call will be treated as non-emergency.

Example: While enroute to an emergency call in a Zone B, first responders on scene reduce the ambulance to no lights and siren (i.e., non-emergency call); if the response time has not exceeded 18:59 at time of downgrade, there would be no liquidated damages.

3) Canceled Responses
If a call is canceled prior to the unit arrival at the scene, the Contractor's compliance and liquidated damages will be calculated based on the elapsed time from “Agency Dispatch Date/Time” to the time the call was canceled. However, if CONTRACTOR makes a request for mutual aid response as stipulated in this RFP, the CONTRACTOR may not cancel the mutual aid responder if that unit is closer to the call.

4) Incorrect Addresses
When the address (or approximate location for calls on a roadway) provided is incorrect through no fault of the CONTRACTOR, the response start time for compliance measurement will be the time when the correct address is given to the responding resources.

C. Interfacility Transports (IFT)

When there is a life-threatening need for an ambulance to transfer a patient to a higher level of care (as defined by the EMS Medical Director), it will be treated as an emergency call and treated like any 9-1-1 request for service. Routine IFT shall be handled by the contracted provider in a timely manner as this will facilitate opening hospital and emergency department beds for incoming 9-1-1 transports.

D. Exemption Requests

The CONTRACTOR Administrator, in its sole discretion, may grant exemptions to response-time performance requirements stated herein for declared multi-casualty incidents, disaster events, or other situations. Such calls will be excluded when calculating performance compliance. In order to be eligible for such exemption, the CONTRACTOR shall notify the Contract Administrator within a reasonable amount of time of the occurrence.

The CONTRACTOR may apply to the Contract Administrator for an exemption to response-time compliance calculations in the following situations:

1. Automatic Appeals
   (a) Upgrades and downgrades that are compliant are eligible for exemption.

   (b) Response canceled prior to the unit's arrival at scene (must provide evidence that call was canceled within required response time).

   (c) MVRDA error or inaccurate address by reporting party.

   (d) Additional units responding to the same incident, e.g., traffic collision (first unit must meet response time standard).

   (d) Multi-Casualty Incident (MCI) or locally declared disaster – The CONTRACTOR may apply for an exemption to response-time standards during MCIs or times of declared emergencies, locally or in a neighboring county, as defined by the emergency operations procedures of the jurisdictions involved (e.g., City or County).

2. Case-by-Case Appeals
   (a) Traffic related to incident (e.g., traffic collision). At scene determined when unit reaches related traffic.

   (b) Lack of documented on-scene time; CONTRACTOR may submit global positioning system (GPS) data to confirm on-scene time – otherwise next radio transmission is used.

   (c) Weather (e.g., heavy fog, ice, heavy rain) that impairs visibility, requires slower speeds, or creates other unsafe driving conditions.

   (d) Road closures/construction for areas with limited access.

E. Other Response Time Issues

Where response-time areas are divided along the center line of a road, the shorter response time shall apply to both sides of the road.

The CONTRACTOR will not be held responsible for response-time performance on an emergency response to a location outside the EOA.

However, CONTRACTOR shall use its best efforts in responding to mutual aid calls. Responses to emergencies located outside the EOA will not be counted in the number of total calls used to determine monthly Agreement compliance.

For each response in which the CONTRACTOR's management or field staff fails to report the at-scene time, the next radio or electronic transmission will determine on-scene time.

North & South Zones – Level of Effort

Mechanical issues/breakdowns

- A two (2) hour grace period for the unit to return to service, this applies to each unit each day.

Staffing

- A two (2) hour grace period for staffing issues that are no fault of AMR, such as; employee illnesses (call offs), tardiness, and/or "no call no show" absences.
- After the allotted grace period there will be a liquidated damage charge of $130.00 for each hour or fraction thereof until the LOE minimums are reached.

Table 2 summarizes categories and liquidated damages listed in this RFP.

Summary of Liquidated Damages	
Category	**Liquidated Damage**
1. Compliance evaluation below standard	$500/tenth of percentage point
2. Extended response time (i.e., outlier)	$250/call

Table 2

F. Liquidated Damage Fund

The funds generated through liquidated damages shall revert back to Dona Ana County. The AOC will make a recommendation on the use of funds for EMS system enhancement. The reversion of funds will take place at the end of each fiscal year.

G. Online Compliance Utility

For the purposes of automated and objective performance tracking, the CONTRACTOR will use an online compliance utility (OCU), such as FirstWatch. The cost of the OCU will be the responsibility of the CONTRACTOR through a three-way agreement allowing AOC the necessary rights and access to ensure system performance and monitoring, such response time reporting, exemption process, etc.

4.8 Performance Standards - Clinical

The City, County, and EMS stakeholders are strong proponents of the Institute for Health Improvement (IHI) focus on the “Triple Aim” – 1) improving the patient experience of care (including quality and satisfaction); 2) improving the health of populations; and 3) reducing the per capita cost of health care. As such, there is significant importance on providing a high level of patient care beyond arriving at the patient’s side in a timely manner. Clinical research indicates this may be more important than the speed of the response. Therefore, the City and County EMS Medical Director has identified certain criteria that impact the patient’s probability of a positive outcome. The Contract Administrator has identified benchmarks that indicate a well-functioning, EMS transport provider. These criteria and benchmarks are based on standards set by data-driven research and/or respected EMS organizations. Each criterion must meet three factors to be included; it shall be 1) measurable by the system, 2) manageable by the provider, and 3) meaningful to the patient.

3 contains the proposed Contractor report card criteria and expected target benchmarks. The EMS Medical Director and Contract Administrator may revise the included criteria and related target benchmarks as clinical research and other factors determine the optimal care path and customer-service experience for EMS patients.

Comprehensive ePCR review is expected to identify individual and overall opportunities for clinical treatment improvement. All high acuity calls (e.g., heart attack, ST-elevation myocardial infarction [STEMI], stroke, trauma) shall have 20-30 percent random chart review. Similarly, 20-30 percent of non-transports resulting against medical advice (AMA) or RAS, shall be reviewed. Five percent (5%) of remaining charts shall be randomly audited. The expected number of ePCRs to be reviewed by the Contractor staff shall be between 80-100 per month; this number may be adjusted if the review process can be more automated. The results of the audit will be summarized monthly and shared with the Contract Administrator and AOC in a pre-approved format. Between ePCR review and related training/education opportunities identified, it is anticipated this requires one, full-time employee. This level of care review is expected to drive training and education and improve overall patient care. All the clinical performance standards should be overseen by a medical director, preferably with experience working with EMS crews such as a local ED physician.

4.9 Performance Standards – Customer Service & Safety

The AOC desires a mechanism to track customer complaints, major issues, and identify trends. Provider will be responsible for sharing a quarterly summary report of sentinel events related to the care and safety of the ambulance service delivery. Events include, but not limited to, the following examples:

- Customer complaint (e.g., missing belongings)

- Medication errors
- Ambulance breakdowns with patient on-board

In addition to patient experience, the AOC wishes to ensure the employees have a good and safe working environment. This is measured by employee turnover and workplace injuries. Employee turnover shall be defined as the number of full-time employees that resign, retire, transfer, are laid off, or change to part-time status divided by the average number of full-time employees over the same period. Involuntary separations, part-time employees, or job changes (e.g., EMT to paramedic, paramedic to supervisor) shall not be included in employee turnover. Bidders are encouraged to share strategies for positive working environment and reduction of workplace injuries. The survey topic and employee safety standards are both included in Attachment 5.

4.10 Performance Standards – Liquidated Damage Relief

If the CONTRACTOR provides high levels of clinical, customer service, and safety excellence, a credit is available towards response time liquidated damages described within this section. The proposed report cards are available in Attachment 5. These may be adjusted based on clinical research, contemporary EMS benchmarking standards, and other factors. The liquidated damage relief is based on a sliding scale to reward positive movement. Table 3 summarizes the credit available.

Liquidated damage relief does not apply to Level of Effort (LOE) response zones (North and South) or to extended response time calls (outliers) within the central zone.

Response Time Liquidated Damage Relief	
Report Card Score	**Relief**
95-100	100%
90-94.99	75%
85-89.99	50%
80-84.99	25%

Table 3

4.11 System Status Plan

A SSP, posting plan, and the proposed maximum response UHU by unit shall be developed by CONTRACTOR, submitted to the Contract Administrator for approval at least 21 days prior to implementation for approval (within no more than seven [7] days), and adhered to by the CONTRACTOR. Changes to the SSP and posting plan shall be forwarded to the Contract Administrator for review. All resources to be used in this Agreement for 9-1-1 ambulance service shall be included in this SSP. The SSP must have clearly identified backup ambulance

plans including move-up-and-cover arrangements in enough detail to convince the AOC that backup ambulance coverage in a timely manner will be consistently available across Zones A & B.

The City of Las Cruces and Dona Ana County AMR Ambulance System established during negotiations for the 2024 ambulance service contract is made up of:

- 216-unit hours (UH) a day for a total of 1,512 per week.
- This system is managed by one (1) 24/7 Paramedic Supervisor equipped with a Quick Response Vehicle (QRV).
- AMR has proposed the following SSP to meet the requirements within the RFP
  - Zone A Urban, Zone B Suburban
    - Four (4) 24 hour/ 7 day a week ambulances, with a twelve (12) hour BLS or higher peak demand time ambulance
  - Zone C North- One (1) 24/7 ambulance
  - Zone D South- Three (3) 24/7 ambulances
- Each Zone is proposed to operate independently outside of a MCI or large scale incident

4.12 Mutual Aid/Standbys

Within six (6) months of executing this Agreement, the CONTRACTOR will develop and execute mutual aid agreements with neighboring ambulance services. The CONTRACTOR agrees to respond to all requests for mutual aid services as part of those individual agreements. Should the delivery of mutual aid services to a neighboring jurisdiction become excessive (e.g., projected to exceed one percent of the annual call volume absent a written agreement for that level of mutual aid), indicating a routine heavy reliance on the CONTRACTOR's resources for emergency calls, the CONTRACTOR shall inform the AOC. The AOC will then assess the situation and take appropriate steps as necessary to rectify the inequity.

CONTRACTOR agrees to provide standby services for working fires, hazardous materials incidents, law enforcement incidents, and other allied agency events with a high potential for injury. CONTRACTOR shall also participate in prevention events, emergency preparedness planning and development, disaster exercises, and other training to educate the public and prepare for multi-casualty incidents. There will be no charge for these services for the first twenty-four (24) hours unless there is a third-party payor source (e.g., federally declared disaster); however, the COTNRACTOR may charge for standby services at private events. The standby services shall be based on a CONTRACTOR’s written policy that is subject to the Contract Administrator’s approval and included in the response to this RFP.

In the event that AMR is unable to provide a dedicated ambulance to a City or County sanctioned event such as a football game, AMR will follow the guidelines set out below.

1. Advise the customer that we are unable to meet their request and suggest that they follow up with the City and/or County Fire Departments.
2. In the event that neither the City nor the County Fire Departments can staff an ambulance for the event,
    a. Additional ambulance providers may be contacted to provide the EMS standby.
    b. AMR can request to use an on-duty ambulance with permission from the designated City representative.

4.13 Radio Equipment

CONTRACTOR will be responsible to install and maintain all radio equipment on the appropriate frequencies necessary to complete the Agreement scope of work (e.g., field communications to/from MVRDA, first responder agencies, contiguous mutual aid agencies, and hospitals). There shall be at least one portable and one mobile radio on every on-duty ambulance, supervisor vehicle, or other CONTRACTOR EMS vehicle. The CITY and County hold and maintain the license for these frequencies.

4.14 Vehicle and Equipment Requirements

All ambulances utilized by the CONTRACTOR shall meet the current safety standards of the Commission on the Accreditation of Ambulance Services (CAAS), National Fire Protection Association (NFPA), Federal “KKK-A-1822,” or similar standards organization. At a minimum, all vehicles shall meet any New Mexico Regulations Public Regulation Commission (PRC) NMAC 18.3.14 policies in effect at the time of original manufacture.

Equipment shall meet the minimum standards set forth by EMS policy and be generally consistent with equipment utilized by field crews today (e.g., powered gurneys and Zoll heart monitors are required). To simplify restocking of first responders, the provider is encouraged to work with the fire departments to develop a standardized equipment list.

Bidders shall state and justify the minimum number of ambulance (both primary and reserve) vehicles believed to be necessary to fulfill this contract. The fleet minimum shall be 140 percent of the peak staffing level. Further, no less than 50 percent of the reserve fleet may be unavailable in the County at any point during the Agreement term. Bidders shall describe its vehicle maintenance and replacement programs to ensure the highest level of operational readiness and mitigate unplanned maintenance issues. Ambulances will have a mileage cap of 250,000 for primary and 300,000 for backup units, unless a waiver is approved

by AOC based on objective criteria (e.g., service history, life expectancy, engine fluid analysis). Proposed subcontractors may use different style ambulances; however, they must comply with safety standards stated above.

All vehicles used in the SSP for the EOA shall display an approved design in a manner and format defined by the AOC that also meet applicable standards for identifying the service provider. Proposed subcontractors may use a different logo, text, and color; however, it shall be approved by the AOC and meet state civil code requirements. Each vehicle shall have markings approved or designed by the AOC to include 9-1-1 emergency number advertising.

CONTRACTOR shall maintain preventative fleet maintenance records and adhere to an approved preventative fleet maintenance program for each vehicle. The maintenance program shall be submitted with the RFP response. Each vehicle shall meet ambulance equipment standards of the State of New Mexico and EMS Region II. For a list of required equipment and supplies, please see NMAC 18.3.14.

All current stock ALS equipment (i.e., drug boxes, defibrillators, radios) shall be supplied at 110 percent of peak-load requests. As the current EOA has a formal STEMI program and protocol, all Bidders shall include Zoll cardiac monitor/defibrillators with 12-lead interpretation capability. All monitor/defibrillators must have end-tidal CO_2 monitoring capability.

These requirements shall be met by the end of the 1st quarter or April 1, 2024.

4.15 Data Collection and Evaluation Requirements

The EOA first responders utilize ImageTrend and FirstDue for ePCR solutions. The Contractor may use any ePCR software; however, to the extent technically possible, it should accept first responder data in the field to simplify the turnover process. The CONTRACTOR shall complete all forms and data reports required by the AOC, including field-assessment forms and standardized data requests and shall cooperate and participate in field research as requested including special medical and trauma studies. The ePCR with at least the critical elements completed shall be printed or delivered electronically to the emergency department (ED) at the time of patient delivery at least 90 percent of the time. For high-acuity calls (e.g., cardiac arrest, heart attack, stroke, trauma) critical elements shall be completed 100 percent of the time prior to leaving the ED. ePCRs shall be 100 percent completed and the data available for review by the receiving hospital and Contract Administrator within 24 hours. All ePCR submission standards may be audited over any three-month period.

The CONTRACTOR will provide regular operational dashboard reports. These reports, in a format and period approved by the AOC, will include quality improvement (monthly), incidents of unit breakdowns, ePCR compliance

(quarterly), volume of out of county mutual aid calls completed and received per month (quarterly), and other key performance indicators used to determine compliance. The CONTRACTOR shall provide financials specific to this EOA at least annually, preferably independent audited with 120 days of fiscal year end. Additionally, the CONTRACTOR may be required to produce additional reports to the Contract Administrator. These reports may vary depending on specific issues that need to be addressed.

All parties involved agree to use available analytics to evaluate the first quarter performance. Upon implementation of FirstWatch, parties may retro-actively review prior quarterly performance.

Emergency Medical Dispatch Capabilities (EMD)
Upon implementation of an EMD system at MVRDA, all parties involved will review call priorities and time standards to develop a response matric that enhances the EMS system.

4.16 Financial Requirements

CONTRACTOR is expected to establish, in their responses to the RFP, that CONTRACTOR has a firm commitment to maintain:

- sufficient financial capacity to commence all services listed in the RFP on or before the implementation date; and

- sufficient financial resources to maintain all services for at least the primary Agreement period of five (5) years.

It is incumbent upon the CONTRACTOR to include sufficient information within the proposal package to allow independent reviewers and City Purchasing staff to determine that the CONTRACOTR:

- Understands and documents all costs associated with the Agreement;

- Has documented all revenue sources; and

- Has fully described and documented all sponsoring agency's commitments to maintain financial support (if any) for the term of the Agreement.

All CONTRACTOR costs shall be clearly defined and justified. Failure to justify these costs, in detail, and to meet the levels of independent verification of financial information requested, will reduce the credibility of the CONTRACTOR's proposal, and may result in disqualification or non-selection.

In addition to the financial documentation discussed, the CITY is requiring the submission of financial surety instruments (e.g., bonds, letters of credit) to act as

non-liquidated damages for non-performance and assist the City with the costs of the selection of a temporary or new permanent contractor. Any legal limitation or inability to fully meet this standard must be explored by potential bidders and disclosed in the bidder's proposal.

4.17 Fees for Service

The revenue premise for this RFP is a traditional fee-for-service system for ambulance calls with a subsidy available from the County as part of this procurement.

- The CONTRACTOR will be scored on the subsidy requested based on the existing rates approved by the State.

It is also recognized that it may be in the best interest of the community to encourage other types of “at-risk” payment systems with local managed care programs and systems. Any existing contractual agreements or immediately anticipated arrangements, including membership programs, must be stipulated by the CONTRACTOR. As future opportunities develop, CONTRACTOR must assure that all such arrangements will be forwarded to the AOC to be evaluated prior to implementation. The goal is to assure that the other ambulance call sources, which are not part of the Agreement arrangement, are not subsidizing the benefiting managed care payer. These arrangements may be adjusted on a regular basis if the local population moves into managed care plans.

Upon award of a contract, the CONTRACTOR shall charge only the charges authorized under Agreement and the State of New Mexico. Any adjustment to the charges can be authorized by the State only. Before submitting such an increase, the CONTRACTOR shall submit to the AOC the substantial need and rationale for the request. Factors should include changes in the Consumer Price Index, uncontrollable expenses (e.g., fuel), and other relevant factors. No rate adjustment will be considered for the first 12 months, except if additional services are required. All documentation shall be provided based on a format required by the AOC.

CONTRACTOR may be allowed alternatives to traditional fee-for-service arrangements on a case-by-case basis if the CONTRACTOR is not shifting additional costs to other EOA patients or their payers. Any form of capitation agreement with managed care organizations must demonstrate to the AOC’s satisfaction that the rates are calculated on a basis that is consistent with reimbursement from other third-party payers in the area.

The current provider serving the EOA shared payer mix information, which is available in Attachment 2. Like call volume, the payer mix data has not independently validated the information and does not warrant any specific payer mix.

A. Public Funding Opportunities

There are new funding opportunities available to public agencies operating ambulance services – ground emergency medical transportation (GEMT) and inter-governmental transfer (IGT) funds related to Medicaid transports in some states. The CONTRACTOR will be willing to partner and contract as necessary to take advantage of these funding opportunities in order to benefit EMS system revenue. Any innovative approaches that CONTRACTOR have utilized in other markets to reach these funding streams should be described as well as any recommended approaches to benefit this EOA.

4.18 First Responder/PSAP Training and Coordination

All first response agencies are fire-based, BLS systems with AED enhancement. The LCFD has ALS first responders. First responder agencies are an integral part of a quality EMS system, and the CONTRACTOR will be expected to document its experience and future efforts to coordinate with first responder agencies. The CONTRACTOR must demonstrate its ability to integrate its service including educational support with existing first responder, PSAP, and allied agencies. Regular training programs provided by the CONTRACTOR and scheduled coordination meetings with these agencies are expected. The EOA is interested in the CONTRACTOR's experience with joint training and colocation of training/education with first responder agencies and what may be proposed for this RFP. CONTRACTOR shall participate in critical incident stress management (CISM) and peer support programs along with first responders and other agencies to support the mental wellness of EMS staff.

CONTRACTOR must also agree to participate in training on Incident Command System (ICS) procedures related to multi-casualty incidents including, at a minimum, IS-100 (i.e., independent study program covering introduction to ICS). Field supervisors and managers will be expected to complete additional ICS training commensurate with their positions and possible role during a major incident. As an example, field supervisors and operational/clinical managers must complete ICS-300 and ICS-400 be capable of roles such as medical group supervisor, triage/treatment unit leader, patient transportation unit leader, etc. Managers should be prepared to function in a leadership and unified command role for larger incidents. All training shall be consistent with the local medical control policies, National Incident Management System (NIMS), and Standardized Emergency Management System (SEMS) requirements. Specific commitments regarding this coordination and training must be provided in the response to the RFP.

The CONTRACTOR shall re-supply first responders with disposable supplies on a one-for-one basis for supplies used by the first response agency in the response at no charge. In the future, the EMS stakeholders may develop a standardized disposable supply list to simplify restocking. The CONTRACTOR

agrees to coordinate with the first response providers to create this standard and stock identical items. This standardization should not have a negative financial impact on the CONTRACTOR.

ALS First Responder Fees

CONTRACTOR shall agree to provide an ALS first responder fee when it utilizes a first response agency's paramedic on its ambulance. The fee will be $50.00 per transport and paid quarterly to the respective agency. The CONTRACTOR will use prudent and normal industry billing standards to meet applicable laws and regulations. In exchange, the Contractor shall have the ability to bill at the ALS transport rate when ALS care was appropriate.

4.19 Implementation Schedule and Requirements

The CONTRACTOR must be able to meet all minimum requirements of this RFP and do so within established deadlines.

4.20 Safety and Risk Program

Bidders shall provide a safety and risk management program which shall include, at a minimum:

A. A safety manual that ensures compliance with New Mexico Occupational Safety and Health Bureau (OSHB) requirements.

B. An orientation program that instructs all new employees in safety practices and will prepare the employees to avoid risk, protect them from danger, and preserve them from loss.

C. A training program for all managers and supervisors to ensure that they can properly instruct the employees in safety programs and to properly investigate all safety incidents.

D. A person must be responsible for the safety and risk program and he/she must have received formal training on risk and loss issues.

E. The safety and risk program starts in the employment application phase and must include the following:

(1) an employment physical exam; and

(2) physical capacity evaluation that is fair, nondiscriminatory, and commensurate with job requirements.

F. An emergency vehicle operator-safety program that meets or exceeds any state or local requirements.

G. A continuing education program for all employees on safety and health issues that is scheduled no less than annually.

H. Ongoing monitoring of driver license status on all personnel.

I. Ongoing monitoring of clinical certifications, e.g., CPR, EMT, ACLS

4.21 Legal Entity

The CPMTRACTOR must be a single legal entity properly licensed to do business in the State of New Mexico. This shall include all business or professional licenses or certificates required by the nature of the Agreement work to be performed and held by the CONTRACTOR.

7.1 Performance Security Provisions

1. Contractor shall furnish, within 14 days of Agreement execution, performance security in an amount of one million dollars ($1,000,000) in any of the following forms. The performance bond shall be considered liquidated damages in the event of Agreement default. Performance security options are:

    1. Performance Bond: A performance bond issued by a bonding company, appropriately licensed and acceptable to the City, provided that the language of such performance bond shall recognize and accept the requirement of immediate release of funds to the City upon determination by the City that Contractor's performance is dangerous to public health or safety, and recognizing that any legal dispute by the Contractor or the bonding company shall be initiated and resolved only after release of funds to the City.

    2. Irrevocable Letter of Credit: An irrevocable letter of credit issued pursuant to this provision in a form acceptable to the City and from a bank or other financial institution acceptable to the City.

    3. Cash Deposit: Cash which must be deposited with an escrow holder acceptable to the City and subject to an escrow agreement approved by the City. Any interest earned on the cash deposited as the performance security shall accrue to the benefit of the Contractor.

    4. Combination: Any combination of the above must be acceptable to the City.

2. Whatever form of performance security is chosen by the Bidder, the proposal shall indicate the form selected, and shall include full and detailed documentation of Bidder's ability to provide such security.

Any performance bond furnished by Contractor in fulfillment of the requirements of this Agreement for performance security shall provide that said bond shall not be canceled by the bonding company for any reason except upon thirty (30) days advance written notice to the City. Not later than twenty (20) days following the commencement of the thirty (30)-day notice period, Contractor shall provide to the City replacement security acceptable to the City in the form of a performance bond, or in one of the other forms, or combination thereof, herein provided for. Failure to meet the bonding requirements after cancellation of a bond shall constitute a material breach of contract. Failure of the successful Bidder to meet these performance security requirements after selection, and prior to Agreement start date, shall result in forfeiture of the award.

7.2 Emergency Takeover
In the event Contract Administrator determines that a material breach, actual or threatened, has or will occur or that a labor dispute has prevented performance, and if the nature of the breach is, in the Contract Administrator's opinion, such that public health and safety are endangered, and after Contractor has been given notice and reasonable opportunity to correct deficiency, the matter shall be presented to the AOC.

City of Las Cruces RFP# 22-23-021 County of Doña Ana County
If the AOC concurs that a material breach has occurred or may occur and that public health and safety would be endangered by allowing the Contractor to continue its operations, the Contractor shall cooperate fully with the City to affect an immediate takeover by the City of Contractor's ambulances and crew stations. Such takeover shall be affected within not more than seventy-two (72) hours after AOC’s decision to execute the emergency takeover.

In the event of an emergency takeover, the Contractor shall deliver to the City ambulances and associated equipment used in performance of the Agreement, including supervisor vehicles. Each ambulance shall be equipped, at a minimum, with the equipment and supplies necessary for the operation of BLS and ALS ambulances in accordance with minimum equipment and supplies.

Contractor shall deliver ambulances, facilities, and crew stations to the City in mitigation of any damages to the EMS system resulting from the Contractor's breach. However, during the City's takeover of the ambulances and equipment, City and Contractor shall be considered Lessee and Lessor, respectively. Monthly rent payable to the Contractor shall be equal to the aggregate monthly amount of the Contractor's debt service on facilities, vehicles and equipment as documented by the Contractor at Contract Administrator's request and verified by the City Auditor (provided that the cost of Contractor debt service does not exceed the fair market value of the rent for the facilities, vehicles and equipment). The City Auditor shall cause the disbursement of these payments directly to the Contractor's obligee. In the event an ambulance is unencumbered, or a crew station is not being rented, City shall pay the Contractor fair market rental based upon an independent valuation.

Nothing herein shall preclude City from seeking to recover from the Contractor such rental and debt service payments as elements of damage from a breach of the Agreement. However, the Contractor shall not be precluded from disputing AOC's findings or the nature and amount of the City's damages, if any, through litigation. Failure on the Contractor' part to cooperate fully with the City to affect a safe/smooth operations takeover shall itself constitute a breach of contract, even if it is later determined that the original AOC declaration of breach was made in error.

City shall have the right to authorize the use of vehicles and equipment by another company. Should the City require a substitute contractor to obtain insurance on equipment, or should the City choose to obtain insurance on vehicles, the Contractor shall be "Named Additional Insured" on the policy, along with the appropriate endorsements and cancellation notice.

City agrees to return the Contractor's vehicles and equipment to the Contractor in good working order, normal wear and tear excepted, at the end of takeover period. For any of the Contractor's equipment not so returned, the City shall pay the Contractor fair market value of vehicle and equipment at time of takeover, less normal wear and tear or shall pay the Contractor reasonable costs of repair or shall repair and return vehicles and equipment.

City may unilaterally terminate a takeover period at any time and return facilities and equipment to the Contractor. The takeover period shall last no longer than six months.

All of the Contractor's vehicles and related equipment necessary for provision of ALS services pursuant to this Contract are hereby leased to the City during an emergency takeover period. Contractor shall maintain and provide to the City a listing of all vehicles used in the performance of this Contract, including reserve vehicles, their license numbers and name and address of lien holder, if any. Changes in lien holder, as well as the transfer, sale, or purchase of vehicles used to provide ambulance services hereunder shall be reported to the City within 30 days of said change, sale, transfer, or purchase. Contractor shall inform and provide a copy of takeover provisions contained herein to lien holder(s) within five (5) days of emergency takeover.

Attachment 1: Overview of City of Las Cruces and Doña Ana County

Geographic Profile

Doña Ana County, in terms of population, is the second largest county in New Mexico. The County comprises 3,808 square miles with 219,561 residents. The County seat, Las Cruces, has a population of 111,385, making it the second largest city in the state (Figure 1).

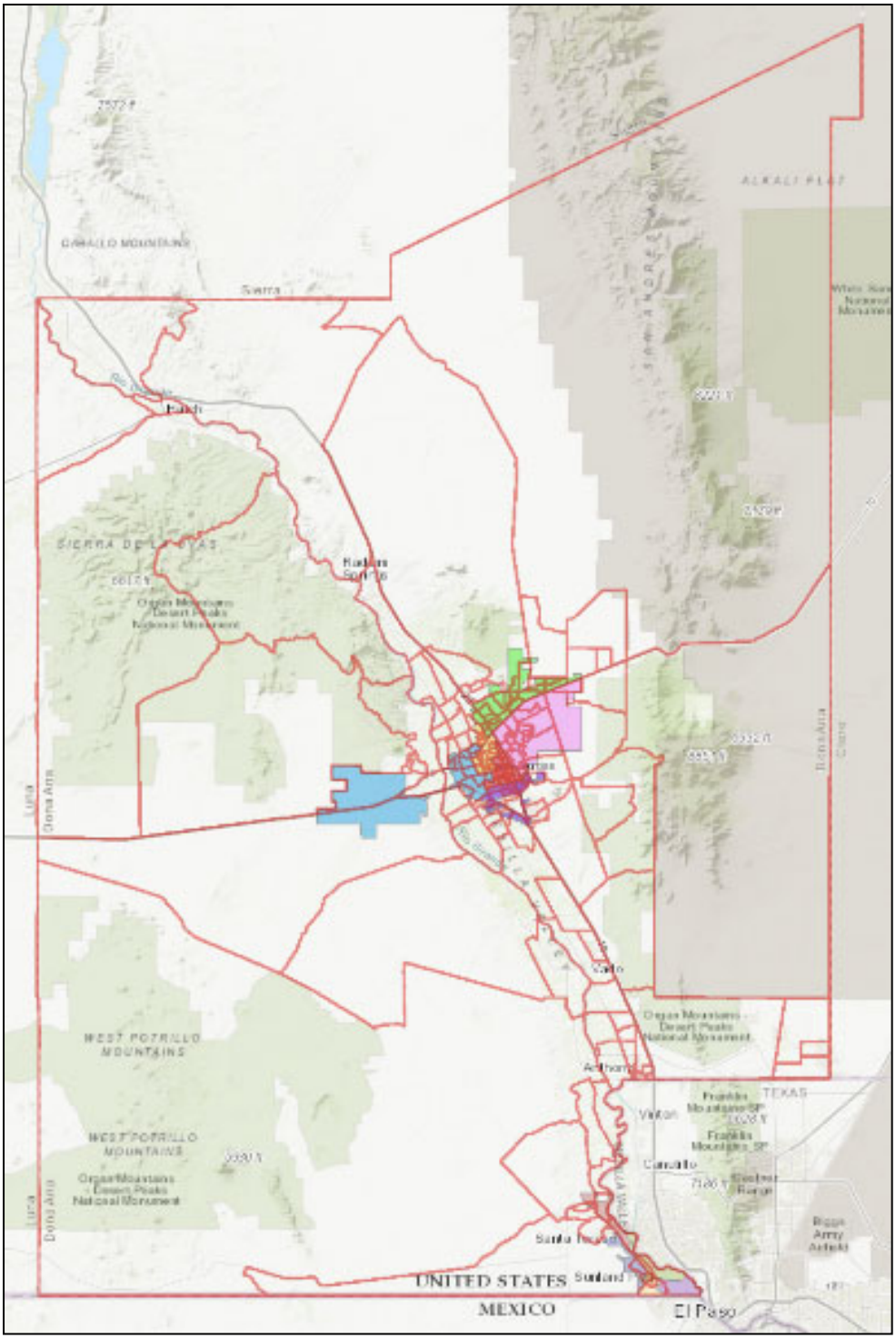


Figure 1

Attachment 2: EMS Zone Maps and Data

EOA Response Zones

There are currently two response zones – 1) within the City of Las Cruces and 2) the remainder of Doña Ana County. The proposed EOA response zones include three regions – A) urban: within and around the City of Las Cruces, B) suburban, and C) north: Hatch, Garfield, and Rincon (**Error! Reference source not found.**). Zones A and B have a level of performance (i.e., response time) standard (Figure 2). Zone C has a level of effort (i.e., staffing) standard.

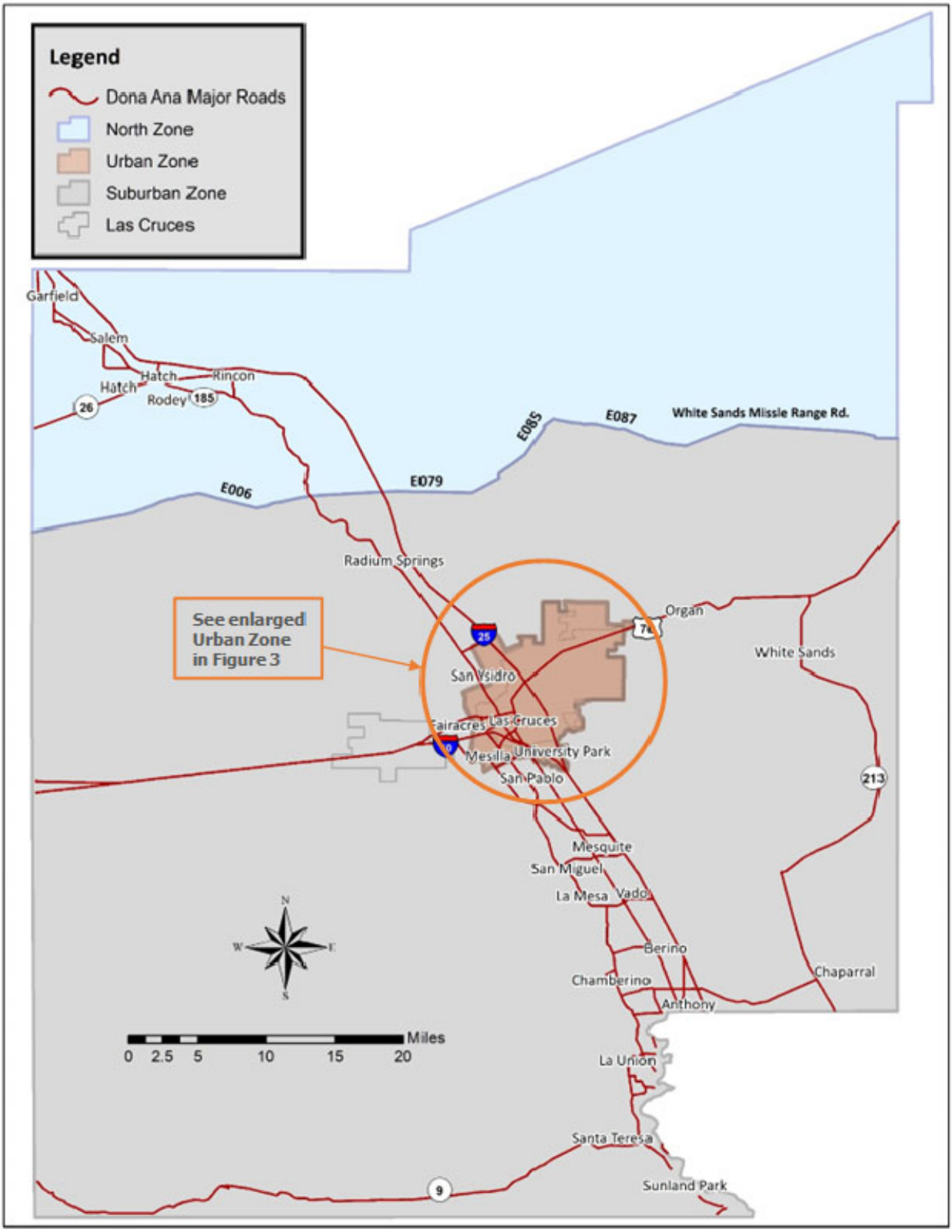

Legend
Dona Ana Major Roads
North Zone
Urban Zone
Suburban Zone
Las Cruces
Garfield
Salem
Hatch
Rincon
Rodey
26
185
E085
E087
White Sands Missle Range Rd.
E006
E079
Radium Springs
See enlarged Urban Zone in Figure 3
25
70
Organ
White Sands
San Ysidro
Las Cruces
Mesilla
University Park
San Pablo
213
Mesquite
San Miguel
La Mesa
Vado
Berino
Chamberino
Chaparral
Anthony
La Union
Santa Teresa
Sunland Park
9
N
W
E
S
Miles
0 2.5 5 10 15 20

Figure 1

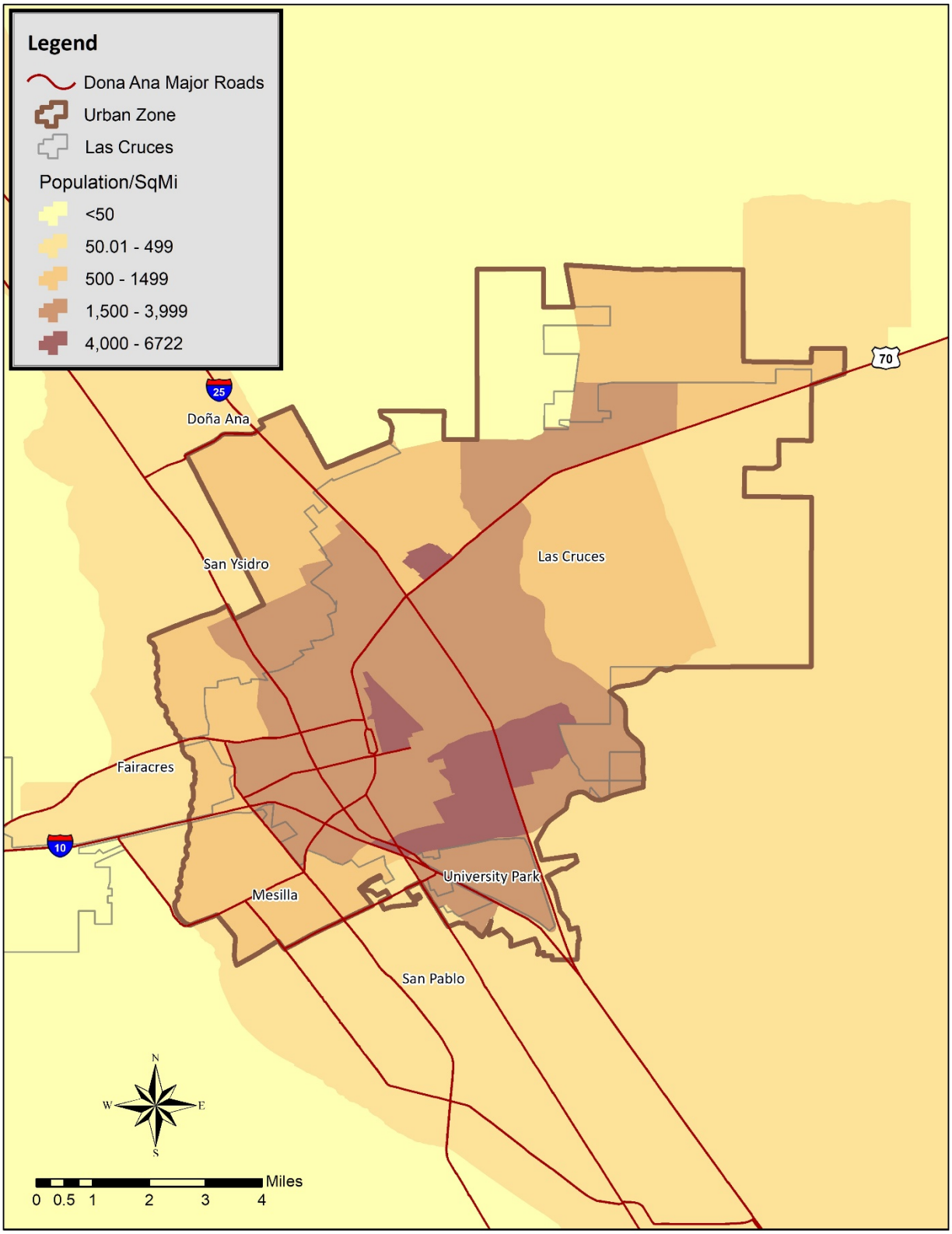
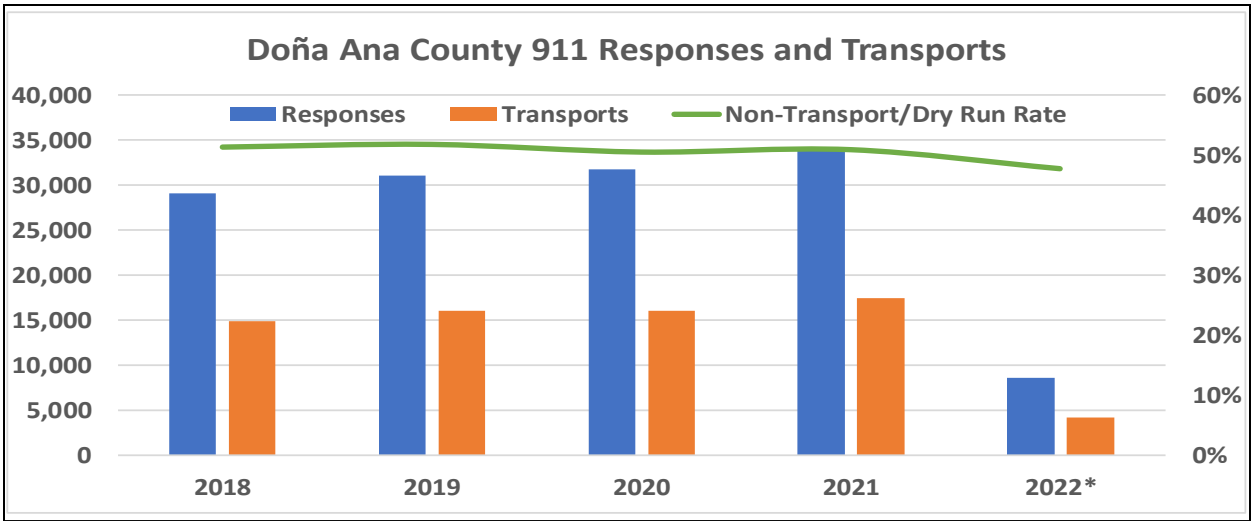

Legend
Dona Ana Major Roads
Urban Zone
Las Cruces
Population/SqMi
<50
50.01 - 499
500 - 1499
1,500 - 3,999
4,000 - 6722
25
70
10
Doña Ana
San Ysidro
Las Cruces
Fairacres
University Park
Mesilla
San Pablo
N
W
E
S
Miles
0 0.5 1 2 3 4

Figure 2

9-1-1 Responses and Transports

All 9-1-1 transports are currently performed by the contracted EOA provider and backup transports provided by LCFD (Figure 3).



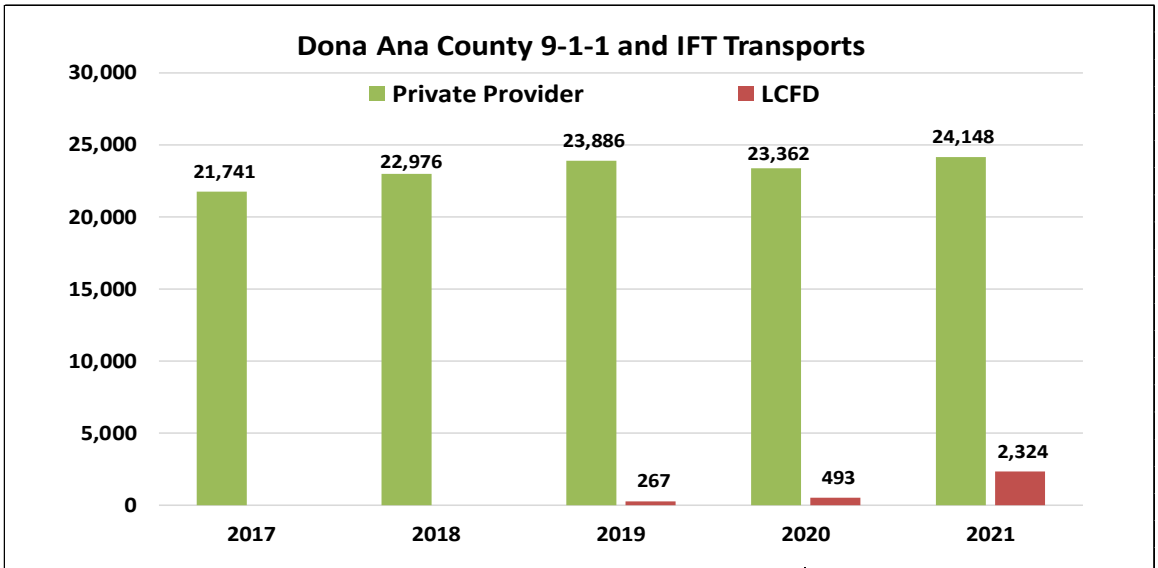
	2018	2019	2020	2021	2022*	Total
Responses	29,027	31,077	31,756	34,151	8,613	**134,624**
Transports	14,897	16,082	16,040	17,377	4,114	**68,510**
Non-Transport/Dry Run Rate	51%	52%	51%	51%	48%	51%

*Source: MVRDA (*2022 is Q1)*

Figure 3

EMS Transports

9-1-1 and IFT Transports completed by current provider or LCFD (**Error! Reference source not found.**).



	2017	2018	2019	2020	2021
Private Provider	21,741	22,976	23,886	23,362	24,148
LCFD	n/a	n/a	267	493	2,324
Average Mileage (private)	11.5	11.6	11.8	12.5	12.0

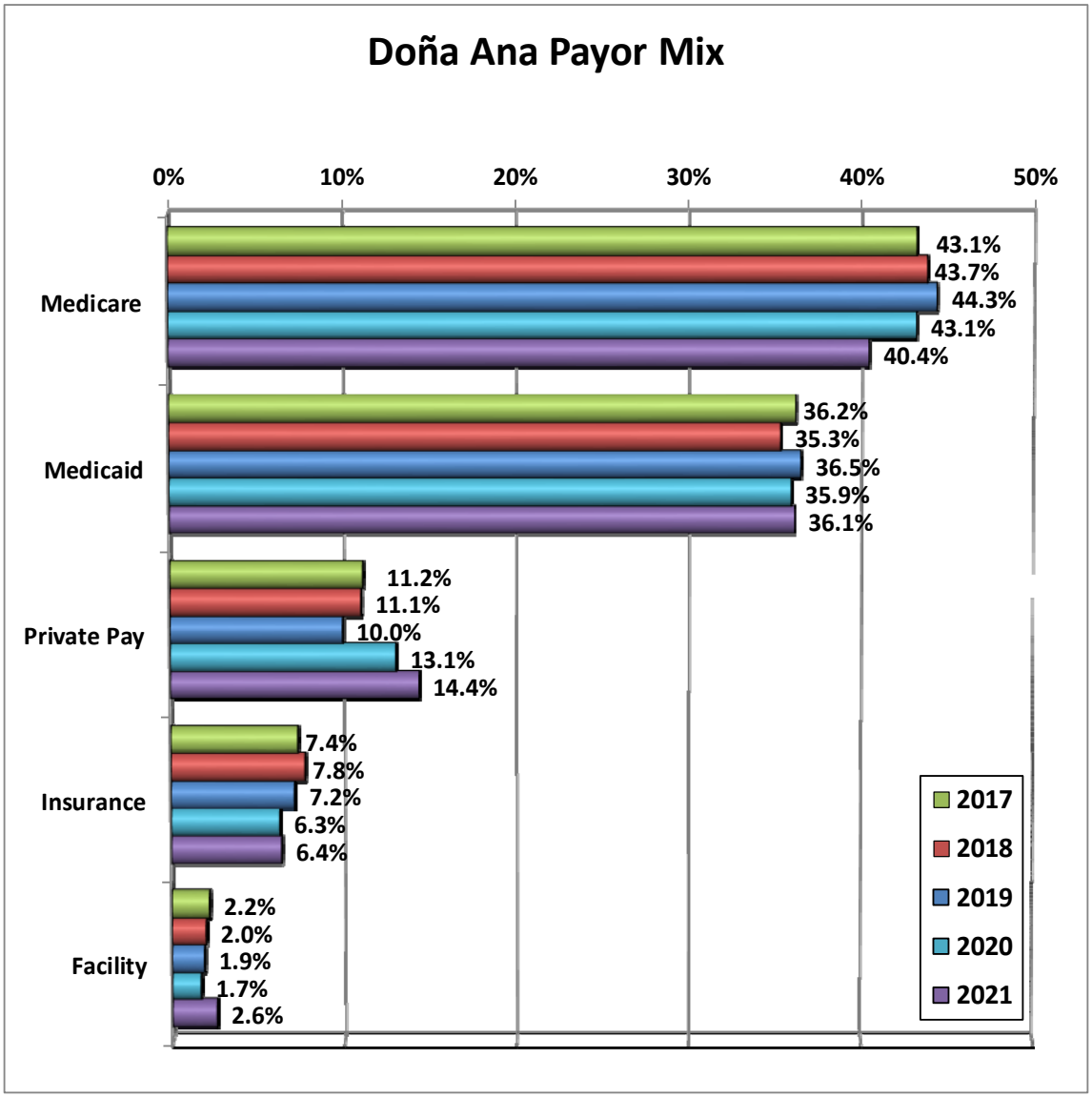
Source: Current Private Provider and LCFD Ambulances

Figure 4

Figure 5 reflects the 9-1-1 payor mix for the current provider, who serves the entire

Payor Mix					
Payor Type	**2017**	**2018**	**2019**	**2020**	**2021**
Medicare	43.1%	43.7%	44.3%	43.1%	40.4%
Medicaid	36.2%	35.3%	36.5%	35.9%	36.1%
Private Pay	11.2%	11.1%	10.0%	13.1%	14.4%
Insurance	7.4%	7.8%	7.2%	6.3%	6.4%
Facility	2.2%	2.0%	1.9%	1.7%	2.6%
Total	**100%**	**100%**	**100%**	**100%**	**100%**

Source: Existing provider
Note: Includes IFT and 9-1-1 transports by private provider, does not include LCFD transports



Source: Existing private transport provider (includes IFT and 9-1-1 transports)

Figure 5

EOA/County.

Call Type Breakdown

2021 Call Breakdown

Call priority	Percentage
Emergency	65%
Non-emergency	35%

Source: MVRDA, 2021 data

Call response type	Percentage
ALS	100%
BLS	0%

Note: current agreement requires 100% ALS response with the ability to downgrade on scene

Projected Call Breakdown (using 2021 data)

Call priority	Percentage
Emergency	63%
Non-emergency	37%

Call response type	Percentage
ALS	76%
BLS	24%

Listed below are the MVRDA call types and whether they are ALS or BLS, and if an emergency response (and applicable to the response time standard) starting with this agreement (Figure 6).

Call Type		
ALS	**BLS**	
Emergency	**Emergency**	**Non-emergency (cont'd)**
Abdominal Pain	Amputation	Fall
Animal Bite EMS	Auto vs Pedestrian	Fever
Animal Bite/Animal Attacks	Chest Injury	Fire Standby
Animal bite/attack	Choking	Fire Structure
Animal Snake	Electrocution	Flu/flu symptoms
Bleeding	Laceration	Hazmat
Breathing Problem	MVA Injury	Hazmat Investigation
Breathing Problems	OB/GYN	Information Report
Cardiac arrest	Suicide Attempt	Ingestion/poisoning
Chest Pain	Syncope	Interfacility/transfer
Childbirth-Obstetrics	**Non-emergency**	Invalid Assist/Lifting Assist
CPR Adult	911 Hang Up	Lift Assist
CPR Child	Agency Assist	Medical - Alarm
CPR Infant	Aircraft Crash	Medical Alarm
Diabetic problem	Allergies	Medical Transport
Diabetic Problems	Allergies/Stings	MVA-Non Injury
Drowning	Altered LOC	Narcotics/Illegal Drugs
Gunshot Victim	Assault	Nausea/Vomiting
Headache	Back pain	Other
Heat Exposure	Back/Neck Pain	Pain
Machine/Equipment Injury	Behavioral Issues	Phone Call
Machinery-Industrial Accident	Brush/Wildland Fire	Psychiatric problem
MVA Injury Extra Response	Burglary Alarm	Public Assist
Overdose	Burns	Search and Rescue
Poisoning-Ingestion	Carbon Monoxide Inhalation	Standby
Pregnancy/Childbirth	Carbon monoxide poisoning	Suicidal Subject
Seizures/Convulsions	Civil Dispute/Standby	Technical Rescue
Sick person	Codes Enforcement	Test Page Fire
Stabbing	Cold Exposure	Traffic Accident
Stroke/CVA	Death	Traumatic Injury
Stroke/CVA/TIA	Disturbance Domestic	Unknown problem
Train Accident	Drunk/Intoxicated Subj	Vehicle Fire
Trauma	Explosion	Weakness
Unconscious/Fainting	Eye problem/injury	Welfare Check
Unconscious/unresponsive	Eye Problems/Injury	
Non-emergency		
Minor Medical		

Figure 6

Attachment 3: EMS Definitions

The following terms and abbreviations are utilized throughout the RFP.

Advanced Life Support (ALS) – Special services designed to provide definitive pre-hospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, cardiac monitoring, cardiac defibrillation, advanced airway management, intravenous therapy, administration of specified drugs and other medicinal preparations, and other specified techniques and procedures administered by authorized personnel under the direct supervision of a base hospital.

Against Medical Advice (AMA) – Patients refusing treatment and/or transport even when the EMT or paramedic is recommending there is a need for care.

Agency Dispatch Date/Time – The date and time an ambulance is notified that it has a call for service. This starts the response time calculation for compliance.

ALS Unit – An ambulance especially equipped to provide advanced life support services, staffed by at least one EMT and one EMT-P.

Ambulance – Any vehicle specially constructed, modified or equipped and used for transporting sick, injured, infirmed or otherwise incapacitated person and capable of supporting BLS or a higher level of care.

Ambulance Oversight Committee (AOC) – This committee comprised of City and County staff oversees the performance of the provider, including clinical and response time performance.

Ambulance Unit – An ambulance staffed with qualified personnel and equipped with appropriate medical equipment and supplies.

Automated External Defibrillation (AED) – A procedure to delivery electrical shock and convert specific heart rhythms back to normal; used by the public, public safety, and BLS providers.

Average Response Time – A response time calculation method in which all cumulative elapsed times are divided by the number of incidents to determine an average.

Ambulance Service – The furnishing, operating, conducting, maintaining, advertising, or otherwise engaging in or professing to be engaged in the transportation of patients by ambulance. Taken in context, it also means the person so engaged or professing to be so engaged.

At Scene – The time when a unit communicates to dispatch that it has arrived at the address of the call. Normally, this is when the vehicle is put into park. If staging

is required for crew safety, at scene is determined when the unit reaches a safe distance from the call and waits for law to determine it is safe to enter. If off-road location, such as a park or private road with gated access, at scene is determined by reaching the end of paved roadway or closed gate. This ends the response time calculation for compliance.

Basic Life Support (BLS) – Special services designed to provide definitive pre-hospital emergency medical care, including, but not limited to, cardiopulmonary resuscitation, continuous positive airway pressure, naloxone, albuterol, glucometer, bandaging, airway management, oxygen, and other specified techniques and procedures as defined by state law, local medical director, and administered by authorized personnel under the direct supervision of a base hospital.

BLS Unit – A properly staffed ambulance to perform emergency first aid and cardiopulmonary resuscitation procedures which, as a minimum, include recognizing respiratory and cardiac arrest and starting the proper application of cardiopulmonary resuscitation to maintain life without invasive techniques until the patient may be transported or until advanced life support is available.

New Mexico Occupational Safety and Health Bureau (OSHB) – State agency that protects and improves the health and safety of working men and women in New Mexico.

Call Queuing – Stacking of calls waiting to be processed.

Call Reception – The process of answering the telephone and processing information for the caller in an emergency dispatch center.

Call Prioritization – A process in which requests for service are prioritized based on predefined and audited criteria.

Cardiopulmonary Resuscitation (CPR) – An emergency procedure that combines chest compressions often with artificial ventilation to manually preserve intact brain function.

Chronic Referrals – Chronic referrals for mutual response in rural areas of the County are defined as any three (3) consecutive months where five (5) or more requests are referred to an outside agency.

CMS – Centers for Medicare and Medicaid Services

Commission on the Accreditation of Ambulance Services (CAAS) – A group that encourages and promotes quality patient care in medical transportation systems. CAAS is an independent commission that established a comprehensive series of standards for the ambulance service industry.

Computer-Aided Dispatch (CAD) – A system consisting of associated hardware and software to facilitate call taking, system status management, unit selection,

ambulance coordination, resource dispatch and deployment, event time stamping, creation and real time maintenance of incident database, and providing management information.

Continuous Quality Improvement (CQI) – Approach to quality management that builds upon traditional quality assurance methods by emphasizing the organization and systems.

Critical Incident Stress Management (CISM) – Adaptive, short-term psychological helping-process that focuses solely on an immediate and identifiable problem.

Demand Analysis – The deployment of ambulances in a specific service area based on experience and the predicted likelihood of requests for service in that area at the time deployed.

Deployment – The procedures by which ambulances are distributed throughout the service area. Deployment includes the locations at which the ambulances are placed (or posted) and the number of ambulances placed in service for the time period.

Diagnostic Related Group (DRG) – A bundled collection of billing codes that represents a specific injury or illness.

Dispatch Time – Common unit of measurement from receipt of a call until a unit has been selected and notified it has an assignment.

Electronic Patient Care Report (ePCR) – A document that records patient information, assessment, care, treatment, and disposition by prehospital personnel.

Emergency – Any real or self-perceived event which threatens life, limb or well-being of an individual in such a manner that a need for immediate medical care is created.

Emergency Air Ambulance – An aircraft with emergency medical transport capabilities.

Emergency Ambulance – Any vehicle meeting state regulatory standards that is equipped or staffed for emergency transportation.

Emergency Call – A real or self-perceived event where the EMS system is accessed by the 9-1-1 emergency access number, or an IFT where the patient's health or well-being could be compromised if the patient is held at the originating facility.

Emergency Department (ED) – An approved receiving department within a licensed hospital.

Emergency Medical Dispatch (EMD) – Personnel trained to state and national standards on emergency medical dispatch techniques including call screening, call and resource priority and pre-arrival instruction.

Emergency Medical Services (EMS) – This refers to the full spectrum of pre-hospital care and transportation (including IFT), encompassing bystander action (e.g. CPR), priority dispatch and pre-arrival instructions, first response and rescue service, ambulance services, and on-line medical control.

EMS System – The EMS System consists of those organizations, resources and individuals from whom some action is required to ensure timely and medically appropriate response to medical emergencies.

Emergency Medical Technician (EMT) – An individual trained in all facets of basic life support according to standards prescribed by the state and who has a valid certificate issued pursuant to that code.

Emergency Medical Technician-Paramedic (EMT-P) – Individual whose scope of practice to provide advanced life support is according to the state and whom has a valid license.

Enroute Time (Out of Chute) – The elapsed time from unit alert to unit enroute. For emergency requests, an out-of-chute standard of 60 seconds maximum is not uncommon.

ET3 – Emergency Triage, Treat, and Transport; a reimbursement model offered by CMS

First Responder – An agency with equipment and staff (e.g., fire engine, police car, or non-transporting unit) with personnel capable of providing appropriate first responder pre-hospital care.

First Responder ALS (FRALS) – Non-transport units that provide ALS level of service staffed by at least one paramedic.

Fractile Response – A method of measuring ambulance response times in which all-applicable response times are stacked in ascending length. Then, the total number of calls generating response within eight minutes (for example) is calculated as a percent of the total number of calls. A 90^{th} percentile, or 90 percent, standard is most commonly used. When a 90^{th} percentile response time standard is employed, 90 percent of the applicable calls are answered in less than eight minutes, while only 10 percent take longer than eight minutes.

Full Costs – The total costs including baseline plus marginal costs to achieve a new program.

Ground Emergency Medical Transportation (GEMT) – A cost-reimbursement opportunity for public agencies involved in ground ambulance transportation of Medicaid members.

Global Positioning System (GPS) – A system that utilizes satellite data to determine location.

Health Insurance Portability and Accountability Act (HIPAA) – legislation that provides data privacy and security provisions for safeguarding medical information.

Incident Command System (ICS) – Standardized approach to the command, control, and coordination of emergency response providing a common hierarchy within which responders from multiple agencies can be effective.

Institute for Health Improvement (IHI) – Organization known for healthcare expertise, help, and encouragement for change in health care, including the creation of the Triple Aim objective.

Interfacility Transports (IFT) – Ambulance transports between healthcare facilities, typically non-emergency.

Inter-Governmental Transfer (IGT) – A cost-reimbursement opportunity for public agencies involved in ground ambulance transportation of managed care Medicaid members.

Intermediate Life Support (ILS) – Care provided by Advanced EMTs. Sometimes referred to as Limited ALS care or EMT-Intermediates. Within the County, ILS ambulances are called "STAR" units.

Intervention Time – The actual time spent by field personnel directly with the patient, including treatment at the scene and transport to the destination.

Las Cruces Fire Department (LCFD) – An all-hazards fire department providing medical first response and ambulance services to the residents of the City.

Marginal Costs – the difference between the existing or baseline cost and the new cost necessary for an existing entity to achieve a new program.

Medical Priority Dispatch System (MPDS) – A set of established protocols utilized by dispatchers to determine the level of response necessary.

Multi-Casualty Incident (MCI) – An event has taken place that results in more victims than are normally handled by the system. The event takes place within a discrete location and does not involve the entire community. It is expected that the number of victims would range from 6 to 50 and that the system would be stressed, including delays in treatment of patients with relatively minor injuries or illnesses.

Medical Base Hospital – The source of direct medical communications with and supervision of the immediate field emergency care performance by EMTs or EMT-Paramedics.

Medical Director – shall mean the City of Las Cruces EMS Agency Medical Director, contracted to oversee the medical control and quality assurance programs of the EMS System.

Medical Protocol – Written standards for patient medical assessment and management.

Mutual Aid – shall refer to: 1) responses into the City of Las Cruces EOA from a ground transport provider outside the EOA for the purpose of assisting the Contractor with emergency and/or non-emergency requests for service; 2) responses by the Contractor to service areas outside the City of Las Cruces EOA for the purpose of assisting the ground transport provider in an adjacent service area.

MVRDA – Mesilla Valley Regional Dispatch Authority.

National Fire Protection Association (NFPA) – A trade association that creates and maintains private, copyrighted standards and codes for usage and adoption by local governments, including ambulance design and safety.

National Incident Management System (NIMS) – A systematic, proactive approach to guide departments and agencies at all levels of government, nongovernmental organizations, and the private sector to work together seamlessly.

Occupational Safety and Health Agency (OSHA) – Federal agency that protects and improves the health and safety of working men and women.

Online Compliance Utility (OCU) – Software that interprets real-time CAD and ePCR data in order to produce reports and online tools to track EMS system effectiveness and compliance.

Paramedic – An individual trained and licensed to perform advanced life support procedures under the direction of a physician. Also known as an EMT-P.

Paramedic Unit – See ALS Unit.

Peak-Load Staffing – The design of shift schedules and staffing plans so that coverage by crews matches the System Status Plan's requirements. (NOTE: peak-load demand will trigger peak-load staffing coverage.)

Post-to-Post Move – Movement of an ambulance from one designated posting (positioning) location to another designated post.

Post – A designated location for ambulance placement within the System Status Plan (SSP). Depending upon its frequency and type of use, a "post" may be a facility with sleeping quarters or day rooms for crews, or simply a street-corner or parking lot location to which units are sometimes deployed.

Emergency Call – Any request for service for a perceived or actual life-threatening condition, as determined by dispatch personnel, in accordance with MVRDA policy and pre-established dispatch protocols, requiring immediate dispatch with the use of lights and sirens.

Non-Emergency Call – Any request for service designated as non-life threatening by dispatch personnel in accordance with MVRDA policy and pre-established dispatch protocols, requiring the immediate dispatch of an ambulance without the use of lights and sirens.

Priority Dispatching – A structured method of prioritizing requests for ambulance and first responder services, based upon highly structure telephone protocols and dispatch algorithms. Its primary purpose is to safely allocate available resources among competing demands for service.

Productivity – The measures of work used in the ambulance industry that compare the used resources (i.e., unit hours) with the production of the work product (patient transports). Productivity is expressed and calculated by determining the number of transports per unit hours.

Public Access Defibrillation (PAD) – A program that place automatic external defibrillators throughout communities.

Public Safety Answering Point (PSAP) – A government operated facility that receives emergency calls for assistance through the 9-1-1 system or over private telephone lines.

Quick Response Vehicle (QRV) – A vehicle equipped per Medical Director protocols, but does not transport patients; often used as a FRALS unit.

Release at Scene (RAS) – Patients refusing treatment and/or transport when the EMT or paramedic agrees there is no need for care.

Response Time – The actual elapsed time between receipt by the Contractor of a call that an ambulance is needed and the arrival of the ambulance at the requested location.

Return of spontaneous circulation (ROSC) – Resumption of sustained perfusing cardiac activity associated with significant respiratory effort after cardiac arrest.

Revenue – Increases to equity from any source. Ambulance sales are usually reported as gross (billed) revenue amounts or in net terms that reflect adjustments for write-offs.

City of Las Cruces – The entity empowered by the City Council to contract for ambulance service that will provide coverage within the EOA.

ST-Elevation Myocardial Infarction (STEMI) – A heart attack caused by the complete blockage of a heart artery.

Standardized Emergency. Management System (SEMS) – A structure for coordination between the government and local emergency response organizations.

Standby Service – The dispatch of an emergency ambulance unit(s) by MVRDA authorized by the County at the specific request of a public safety agency to a position of immediate availability.

System Standard of Care – The combined compilation of all priority-dispatching protocols, pre-arrival instruction protocols, medical protocols, protocols for selecting destination hospitals, standards for certification of pre-hospital personnel, as well as standards governing requirements for on-board medical equipment and supplies, and licensing of ambulance services and first responder agencies. The System Standard of Care simultaneously serves as both a regulatory and contractual standard.

System Status Management - A management tool to define the "unit hours" of production time, their positioning and allocation, by hour and day of week to best meet demand patterns.

System Status Plan (SSP) – A planned protocol or algorithm governing the deployment and event-driven redeployment of system resources, both geographically and by time of day/day of week. Every system has a system status plan. The plan may or may not be written, elaborate or simple, efficient or wasteful, effective or dangerous. The EOA shall have a written, efficient, and effective SSP that clearly sets the expectations for dispatchers and field crews.

Transport Volume – The actual number of requests for service that result in patient transport.

Unit Activation Time – The time interval on an ambulance call measured from the time the ambulance crew is first notified to respond until it is actually enroute to the scene.

Unit Hour – One hour of service by fully equipped and staffed ambulance assigned to a call or available for dispatch.

Unit Hour Utilization (UHU) Ratio – A measurement of how hard and how effectively the system is working. It is calculated by dividing the number of responses initiated during a given period, by the number of unit hours (hours of service) produced during the same period. Special event coverage and certain other classes of activity are excluded from these calculations.

Utilization – A measure of work that compares the available resources (i.e., unit hours) with actual time that those unit hours are being consumed by productive activity. The measure is calculated to determine the percentage of unit hours consumed in productivity with the total available unit hours.

WSHD – West Side Healthcare District

Workload – measure of work performed by on-duty units during any given period.

Attachment 4: Current Rates

The following ambulance tariff is approved for the current Doña Ana County private provider and what is currently pending with the State of New Mexico PRC:

Level of Service	Current Rate
ALS2 – EMERGENCY BASE RATE	$750.00
ALS1 – EMERGENCY BASE RATE	$607.00
ALS1 – NON-EMERGENCY BASE RATE	$437.50
BLS – EMERGENCY BASE RATE	$625.25
BLS – NON-EMERGENCY BASE RATE	$393.75
SCT – SPECIALTY CARE BASE RATE	$846.00
MILEAGE (per loaded mile) RATE	$12.81
PATIENT EVALUATION	$100.00

Attachment 5: Report Card

Dona Ana County Transport Report Card				
Criterion	**Actual**	**Goal**	**Weighted Value**	**Score**
Chest Pain				
12 Lead aquired		90.0%	4.0%	0.00
STEMI recognition		90.0%	4.0%	0.00
Scene time less than 15 minutes		80.0%	4.0%	0.00
ASA administered		90.0%	3.0%	0.00
Appropriate NTG administration		90.0%	3.0%	0.00
Cardiac Arrest				
Chest compression fraction (CCF) greater than 60%		90.0%	4.0%	0.00
Advanced Airway placed per protocol (ET, LMA, Combi, etc.)		90.0%	4.0%	0.00
End-Tidal CO2 Monitored (Waveform)		90.0%	3.0%	0.00
Hypoglycemia				
BGL obtained before and after treatment		90.0%	4.0%	0.00
Corrected through treatment		95.0%	4.0%	0.00
Respiratory Distress				
O2 saturation and skin tones noted before/after oxygen administration		85.0%	3.0%	0.00
bronchodilator administration for wheezing		85.0%	4.0%	0.00
End-tidal CO2 tracked		90.0%	3.0%	0.00
Pain Management				
Pain score decreased after medication administration		90.0%	3.0%	0.00
Stroke				
Time last seen normal		90.0%	3.0%	0.00
Use of a prehospital Cincinnati stroke scale		90.0%	3.0%	0.00
BGL and Blood Pressure documented		90.0%	3.0%	0.00
Scene time less than 15 minutes		80.0%	4.0%	0.00
Transport to stroke capable facility with notification		90.0%	3.0%	0.00
Trauma				
Transport to appropriate trauma facility per local guidelines		90.0%	4.0%	0.00
Scene time less than 15 minutes		50.0%	4.0%	0.00
Sepsis				
Pulse, BP, Resp, Temp, and End-tidal CO2 documented		90.0%	3.0%	0.00
Fluid initiation		90.0%	3.0%	0.00
Oxygen Administered		90.0%	3.0%	0.00
Skills				
IV Success		75.0%	10.0%	0.00
End-tidal CO2 monitored after any successful ET intubation		90.0%	4.0%	0.00
QA/QI				
Reports QA/QI		80.0%	3.0%	0.00
Total Standards			**100.0%**	-

Green: Meet/Exceed Goal
Orange: 0-20% Below Goal
Red: >20% Below Goal

Standards for Report Card Inclusion
1) Meaningful to the patient
2) Measurable by the system
3) Manageable by the provider

Liq. Damage Relief	
Score	**Relief**
95-100	100%
90-94.99	75%
85-89.99	50%
80-84.99	25%

24-069

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	**☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A**		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Suri Molina	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay

Title: **A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT CONTRACT FOR STATE LOBBYING SERVICES TO $100,000 PLUS APPLICABLE TAX, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 20-21-050).**

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

PURPOSE(S) OF ACTION:

To authorize an increase in the annual amount of state lobbying services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) requires lobbying services to secure capital outlay appropriations and legislative policy support through the State of New Mexico legislative process, coordination of the City's lobbying efforts, networking with Doña Ana County state legislative delegation, lobbying for or against proposed substantive legislation as directed by the City, interacting with the legislative activities of the New Mexico Municipal League, and provide reports to the City as and when required.

On November 2, 2020, Resolution 21-069 was taken to and approved by Council to enter into an agreement with Lawrence J. Horan, Ltd of Albuquerque, New Mexico. The initial term of the contract was one (1) year, with five (5) renewable one (1) year terms. The contract is currently on year four (4). The original contract amount exceeded the 2020 City Council threshold of $75,000 and was brought before and approved by Council.

Las Cruces Municipal Code, Chapter 24, Section 24-4 (17) – authorized exemptions, allows the City to contract lobbyist and legislative expert services without competitive procurement.

City Manager's Office (CMO) anticipates additional expenditure necessary for services and is requesting authorization for an amount not to exceed $100,000 annually, plus applicable tax, subject to approved budget appropriations.

SUPPORT INFORMATION:

Exhibit "A" 20-21-050 - State Lobbying Services - Lawrence J. Joran, Ltd

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: $275,000	**AVAILABLE AMOUNT:** $83,609.99	**EXPENDITURE AMOUNT:** $100,000

Funding Source(s):

10230001-721080

Overall Budget Impact:

$79,991.22 is currently budgeted and encumbered for Lawrence J. Horan, Ltd. for the current fiscal year. The available budget amount is sufficient to cover the increase of $20,008.78.

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 increase in the annual not-to-exceed amount contract for lobbying services to $100,000 annually, plus applicable tax.
2. Vote "No"; this will deny the Resolution and City Council may provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution, based on direction from City Council to staff.
4. Vote to "Table"; this will delay procurement for lobbying services, which could have a negative impact on CMO's operations.

RESOLUTION 24-069

A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT CONTRACT FOR STATE LOBBYING SERVICES TO $100,000 PLUS APPLICABLE TAX, SUBJECT TO APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 20-21-050).

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) requires lobbying services to help secure capital outlay appropriations and legislative policy support through the State of New Mexico legislative process, coordination of the City's lobbying efforts, networking with Doña Ana County state legislative delegation, lobbying for or against proposed substantive legislation as directed by the City, interacting with the legislative activities of the New Mexico Municipal League, and provide reports as and when required; and

WHEREAS, Resolution 21-069 entering into an agreement with Lawrence J. Horan Ltd. of Albuquerque, New Mexico was brought before and approved by Council on November 2, 2020; and

WHEREAS, Las Cruces Municipal Code, Chapter 24, Section 24-4 (17) - authorized exemptions, allows the City to contract lobbyist and legislative expert services without competitive procurement; and

WHEREAS, the City Manager's Office (CMO) anticipates additional expenditures necessary for services and is requesting authorization for an amount not to exceed $100,000 annually, plus applicable tax, subject to approved budget appropriations.

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

(I)

THAT the increase in the annual not-to-exceed amount of $100,000, plus applicable tax, 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

CITY OF LAS CRUCES

AMENDMENT NO. 1

BID/RFP 20-21-050 STATE LOBBYING SERVICES

This amendment, made this _____ day of December, 2023 by and between the CITY OF LAS CRUCES and Lawrence J. Horan, Ltd., of 14419 Oakwood Pl NE, Albuquerque, NM 871323.

W I T N E S S E T H

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated November 5, 2020, the parties hereby agree as set forth below:

The following provisions are added:

1. SECTION 4. COMPENSATION is amended to an annual amount not to exceed $100,000, plus applicable tax.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated November 5, 2020, between the parties is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed the signatures below.

LAWRENCE J. HORAN, LTD.

BY: _____
Lawrence J. Horan
President

_____
Date

CITY OF LAS CRUCES

BY: _____
Alicia Hernandez
Purchasing Manager

_____
Date

APPROVED AS TO FORM

11/3/23
City Attorney

Revised: May 2023

City of Las Cruces

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 5th day of November, 2020 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Lawrence J. Horan, Ltd., of 14419 Oakwood Pl NE, Albuquerque, NM, 87123 hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION
Lobbying services for State legislation and City priorities.

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, 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 $79,500.00 annually, 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 for the previous month's services. 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 one (1) year and, pending mutual written agreement, may be extended annually thereafter for up to five (5) 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.

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.

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. Professional Liability: $1,000,000 per claim

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.

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: Annette Granado

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Lawrence J. Horan, Ltd.
14419 Oakwood Pl NE
Albuquerque, NM, 87123
ATTENTION: Lawrence J. Horan

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.

SIGNATURE BLOCK FOLLOWS ON NEXT PAGE

LAWRENCE J. HORAN, LTD.

BY: _____
Lawrence J. Horan
President

11.03.2020
Date

CITY OF LAS CRUCES

BY: _____
Chenyu "Alex" Liu
Purchasing Manager

11/5/2020
Date

APPROVED AS TO FORM

for JLB 10/5/20
City Attorney

EXHIBIT A

I. SERVICES

The following services shall be performed under this contract.

a) CONTRACTOR shall assist CITY in pursuit of its government affairs, capital improvement funding and business objectives.
b) CITY shall determine the nature of objectives with the advice and assistance of CONTRACTOR.
c) CONTRACTOR, with cooperation of the CITY, will develop the concept for agreed-upon initiatives.
d) CONTRACTOR shall create a theme for the initiatives, formulate a comprehensive plan for the initiatives, prepare the outline of a proposal for the initiatives, and assist in review of supporting documentation for the initiatives.
e) CONTRACTOR shall develop meetings with members of the legislative delegation and committee members, and State agency personnel.
f) CONTRACTOR shall develop legislative strategies to support the initiatives, serve as liaison to agencies and legislators as necessary, and monitor and inform the CITY on government programs relevant to the initiatives and on other possible areas of interest to the CITY.

II. COST

a) CONTRACTOR shall make a statement of expenses to the CITY at the end of each month for expenses incurred during the previous month. The statement shall be made payable monthly. These expenses shall include payment for travel and lodging expenses as follows:
    i. During the legislative sessions at $1,500.00 per month.
    ii. Lump sum expense billing for January 2021 (30 and 60 day sessions) and February 2021 (only during 60 day sessions).
    iii. For travel to Las Cruces, NM for official lobbying services and activities.
    iv. Receipts for all reimbursement expenses shall be submitted with a monthly invoice.
b) CITY shall provide a lump sum payment of $3,000.00 annually for costs associated with legislative accommodations. Such expenses include travel, extended visits to Las Cruces, NM and Santa Fe, NM, entertainment and sponsor lunches and dinners for legislators during the session and providing meals for official committees of both houses.
c) All other voluntary expenses such as political contributions shall be at the sole expense of CONTRACTOR.

ACORD

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 09/21/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Nancy Young
Western Assurance Corp. 3701 Paseo Del Norte NE PO Box 94600 Albuquerque NM 87199-4600	PHONE (A/C, No, Ext): (505)265-8481 FAX (A/C, No): (505)266-3500 E-MAIL ADDRESS: nyoung@westernassurance.com

INSURED	INSURER(S) AFFORDING COVERAGE	NAIC #
Lawrence J. Horan, Ltd. 14419 Oakwood Place NE Albuquerque NM 87123	INSURER A: Capitol Indemnity Corp	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES CERTIFICATE NUMBER: CL2092156550 REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						GENERAL AGGREGATE	$
	OTHER:						PRODUCTS - COMP/OP AGG	$
								$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	ANY AUTO						BODILY INJURY (Per person)	$
	OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N ☐ N/A						E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability			SGC000684604	01/13/2020	01/13/2021	Retro Date 1/13/2017 $1,000,000 Each Claim $1,000 Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER	CANCELLATION
City of Las Cruces 700 North Main Street Las Cruces NM 88001	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

ACORD 25 (2016/03) The ACORD name and logo are registered marks of ACORD

SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 2 OF 6
RFQ No. 20-21-050 State Lobbying Services

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the State Lobbying Services Service Agreement (Agreement) dated November 5, 2020 between the City of Las Cruces (City) and Lawrence J. Horan, Ltd. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin November 5, 2021 and terminate November 4, 2022. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

LAWRENCE J. HORAN, LTD.

Signature — Date: 8-13-2021

President, Lawrence J. Horan
Printed Name/Title

CITY OF LAS CRUCES

Chenyu "Alex" Liu
Purchasing Manager — Date: 8/17/2021

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
08/13/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME: Nancy Young	
Western Assurance Corp. 3701 Paseo Del Norte NE PO Box 94600 Albuquerque NM 87199-4600	PHONE (A/C, No, Ext): (505) 265-8481	FAX (A/C, No): (505) 266-3500
	E-MAIL ADDRESS: nyoung@westernassurance.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : Capitol Indemnity Corp	
INSURED Lawrence J. Horan, Ltd. 14419 Oakwood Place NE Albuquerque NM 87123	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** CL2181359577 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability			SGC000684605	01/13/2021	01/13/2022	Retro Date 1/13/2017 $1,000,000 Each Claim $1,000 Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City of Las Cruces
PO Box 20000
Las Cruces NM 88004

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 3 OF 6
RFQ No. 20-21-050 State Lobbying Services

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the State Lobbying Services Service Agreement (Agreement) dated November 5, 2020 between the City of Las Cruces (City) and Lawrence J. Horan, Ltd. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin November 5, 2022 and terminate November 4, 2023. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

LAWRENCE J. HORAN, LTD.

Signature — Date: 11.01.22

Lawrence Horan / President
Printed Name/Title

CITY OF LAS CRUCES

Alicia Hernandez
Interim Purchasing Manager — Date: 11/9/2022

ACORD®

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 11/01/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Western Assurance Corp. 3701 Paseo Del Norte NE PO Box 94600 Albuquerque NM 87199-4600	CONTACT NAME: Nancy Young PHONE (A/C, No, Ext): (505) 265-8481 FAX (A/C, No): (505) 266-3500 E-MAIL ADDRESS: nyoung@westernassurance.com
INSURED Lawrence J. Horan, Ltd. 14419 Oakwood Place NE Albuquerque NM 87123	INSURER(S) AFFORDING COVERAGE — NAIC # INSURER A : Capitol Indemnity Corp INSURER B : INSURER C : INSURER D : INSURER E : INSURER F :

COVERAGES **CERTIFICATE NUMBER:** CL225261513 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE	$
	☐ CLAIMS-MADE ☐ OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence)	$
							MED EXP (Any one person)	$
							PERSONAL & ADV INJURY	$
	GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE	$
	☐ POLICY ☐ PRO-JECT ☐ LOC						PRODUCTS - COMP/OP AGG	$
	☐ OTHER:							$
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident)	$
	☐ ANY AUTO						BODILY INJURY (Per person)	$
	☐ OWNED AUTOS ONLY ☐ SCHEDULED AUTOS						BODILY INJURY (Per accident)	$
	☐ HIRED AUTOS ONLY ☐ NON-OWNED AUTOS ONLY						PROPERTY DAMAGE (Per accident)	$
								$
	☐ UMBRELLA LIAB ☐ OCCUR						EACH OCCURRENCE	$
	☐ EXCESS LIAB ☐ CLAIMS-MADE						AGGREGATE	$
	☐ DED ☐ RETENTION $							$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y / N						☐ PER STATUTE ☐ OTH-ER	
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? ☐ (Mandatory in NH)	N / A					E.L. EACH ACCIDENT	$
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. DISEASE - EA EMPLOYEE	$
							E.L. DISEASE - POLICY LIMIT	$
A	Professional Liability			SGC000684606	01/13/2022	01/13/2023	Retro Date 1/13/2017 $1,000,000 Each Claim $1,000 Deductible	

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

City of Las Cruces
700 North Main Street
Las Cruces NM 88001

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

© 1988-2015 ACORD CORPORATION. All rights reserved.

SERVICE AGREEMENT
ANNUAL EXTENSION – YEAR 4 OF 6
RFQ No. 20-21-050 State Lobbying Services

Pursuant to Section 7, EXTENSION, CHANGES AND AMENDMENTS of the State Lobbying Services Service Agreement (Agreement) dated November 5, 2020 between the City of Las Cruces (City) and Lawrence J. Horan, Ltd. (Contractor), the City and Contractor agree to renew the Agreement for a period of one (1) year, to begin November 5, 2023 and terminate November 4, 2024. All other terms and conditions, including any amendments, of the Agreement remain the same.

AGREED:

LAWRENCE J. HORAN, LTD.

Signature — Date: 10-30-2023

Larry Horan
Printed Name/Title

lhoran34@gmail.com

CITY OF LAS CRUCES

Alicia Hernandez
Purchasing Manager — Date: 10/31/2023

24-070

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	December 18, 2023
Drafter:	Vanessa Perez	**Department:**	Financial Services
Program:	Budget	**Line of Business:**	Fiscal Management

Title:	**A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2024 BUDGET AND THE FY2024 CAPITAL IMPROVEMENTS PLAN (CIP).**

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

PURPOSE(S) OF ACTION:

To accept awarded grants and adjust the FY24 budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) relies on grant funding for many of the critical programs provided each year for the residents of Las Cruces. Grant funding awards are received throughout the fiscal year and are not budgeted during the normal fiscal year budgeting process. Funds are not budgeted until the City has received a grant award agreement due to the unpredictable nature of funding levels and timing.

Per the City's Grants Administration Program Policy, the City Manager, or his designee, may execute grant agreements with funding agencies. Upon receipt of the fully executed agreement from the funding agency, the Council may adjust the budget.

The request for City Council is to accept the budget adjustments to be used by the departments for the scope of work as defined by each grant agreement.

SUPPORT INFORMATION:

Exhibit "A" Fund Summary
Exhibit "B" CIP Amendment
Attachment "A" Grant Listing
Attachment "B" PD FY23 JAG Fully Executed Agreement
Attachment "C" ED FY24 LEDA MOU Fully Executed Agreement
Attachment "D" HNS 23-ZH9196 Fully Executed Agreement
Attachment "E" FD 2023-171581 Fully Executed Agreement
Attachment "F" PD 23-ZH5048-40 LERF Fully Executed Agreement
Attachment "G" PW 23H2981 Fully Executed Agreement
Attachment "H" PW 23-H3324 Fully Executed Agreement
Attachment "I" PR 23-H4100 Fully Executed Agreement
Attachment "J" PW 23-H3325 Fully Executed Agreement

Attachment "K" PW 23-H3323 Fully Executed Agreement
Attachment "L" ED 23-H4095 Fully Executed Agreement
Attachment "M" PW 23-H2979 Fully Executed Agreement
Attachment "N" PW 23-H2986 Fully Executed Agreement
Attachment "O" AP 23-H3322 Fully executed Agreement
Attachment "P" UT 23-H4099 Fully Executed Agreement

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
VARIOUS	VARIOUS	VARIOUS

Funding Source(s):
Various

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

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 accept the budget adjustments as presented and adjust the City’s FY2024 Budget and Capital Improvements Plan (CIP).
2. Vote “No”; this will not approve the Resolution to adjust the FY2024 Budget and Capital Improvements Plan (CIP) as presented and return the funds to the granting agency.
3. Vote to “Amend”; this could delay the Resolution and the process of spending the grant funds within the predetermined grant schedule and require direction to staff.
4. Vote to “Table”; this will delay the Resolution and will impact the implementation of the grant agreement, the City department's ability to utilize the funds and return the grant funds to the granting agency.

RESOLUTION 24-070

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2024 BUDGET AND THE FY2024 CAPITAL IMPROVEMENTS PLAN (CIP).

The City Council is informed that:

WHEREAS, the City has received notice of grant awards for various City departments; and

WHEREAS, the grants will be used as designated in the scope of work and within the specified time period as shown in the grant agreements executed by the City Manager, or his designee; and

WHEREAS, the grant agreements that are the subject of this budget adjustment will be attached to the Resolution with a Summary, as Attachment "A"; and each agreement will be attached as subsequent attachments.

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

(I)

THAT the City hereby amends the FY2024 City Budget to accept all grant awards as shown in the Fund Summary, Exhibit "A", attached hereto and made part of this Resolution, are hereby approved.

(II)

THAT the FY2024 CIP, is hereby amended as outlined in Exhibit "B", attached hereto and made a part of this Resolution, are hereby approved.

(III)

THAT the City staff is hereby authorized to do all deeds 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 *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	2100 SPECIAL REVENUE REIMB GRANTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 698,496	698,496	0	698,496
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	1,538	0	1,538
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	247,000	247,000	0	247,000
Federal Grants	14,620,646	16,771,028	555,939	17,326,967
State Grants	5,898,088	11,371,504	1,875,000	13,246,504
Local Grants	26,065	32,577	0	32,577
Debt Service	0	0	0	0
Total Revenues	**20,791,799**	**28,423,647**	**2,430,939**	**30,854,586**
TOTAL RESOURCES	**$ 21,490,295**	**29,122,143**	**2,430,939**	**31,553,082**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	10,000,000	11,129,440	225,000	11,354,440
Legal	0	0	0	0
Las Cruces Police Department	2,707,818	5,113,327	1,570,939	6,684,266
Las Cruces Fire Department	1,314,070	1,043,795	485,000	1,528,795
Utilities	875,000	1,253,926	0	1,253,926
Economic Development	2,497,596	5,497,596	150,000	5,647,596
Internal Audit	0	0	0	0
Assistant City Manager-400	501,795	581,508	0	581,508
Human Resources	0	0	0	0
Financial Services	412,656	375,097	0	375,097
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	300,000	0	300,000
Parks & Recreation	9,793	384,334	0	384,334
Community Development	338,931	398,550	0	398,550
Quality of Life	1,769,141	2,007,091	0	2,007,091
Public Works	365,000	348,895	0	348,895
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 20,791,800**	**28,433,559**	**2,430,939**	**30,864,498**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 698,495**	**688,584**	**0**	**688,584**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	4100 CAPITAL PROJECTS REIMB GRANTS 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ (0)	(0)	0	(0)
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	0	0	0	0
Federal Grants	7,108,138	5,467,825	0	5,467,825
State Grants	12,716,645	17,112,256	4,848,671	21,960,927
Local Grants	851,264	861,264	0	861,264
Debt Service	0	0	0	0
Total Revenues	**20,676,047**	**23,441,345**	**4,848,671**	**28,290,016**
TOTAL RESOURCES	**$ 20,676,047**	**23,441,345**	**4,848,671**	**28,290,016**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	330,000	330,000	0	330,000
Utilities	0	0	0	0
Economic Development	876,147	1,776,147	796,714	2,572,861
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	370,000	370,000	0	370,000
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	3,323,869	4,430,138	411,956	4,842,094
Community Development	0	0	0	0
Quality of Life	0	690,746	0	690,746
Public Works	15,776,031	15,844,314	3,640,000	19,484,314
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 20,676,047**	**23,441,345**	**4,848,671**	**28,290,016**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ (0)**	**(0)**	**0**	**(0)**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5010 AIRPORT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 909,363	909,363	0	909,363
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	61,500	61,500	0	61,500
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	0	0	0	0
Miscellaneous Revenues	120,000	120,000	0	120,000
Federal Grants	0	28,949	0	28,949
State Grants	3,148,527	5,401,015	560,000	5,961,015
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**3,330,027**	**5,611,464**	**560,000**	**6,171,464**
TOTAL RESOURCES	**$ 4,239,390**	**6,520,827**	**560,000**	**7,080,827**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	0	0	0	0
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	4,876,992	7,091,771	560,000	7,651,771
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 4,876,992**	**7,091,771**	**560,000**	**7,651,771**
Other Resources				
Operating Transfers In	1,013,000	1,013,000	0	1,013,000
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 1,013,000**	**1,013,000**	**0**	**1,013,000**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 375,398**	**442,056**	**0**	**442,056**

CITY OF LAS CRUCES *Exhibit "A"*

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5450 WASTEWATER CAPITAL IMPROVEMENT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 2,931,197	2,931,197	0	2,931,197
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	0	0	0
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	0	0	0	0
Investment Income	2,214	2,214	0	2,214
Miscellaneous Revenues	0	0	0	0
Federal Grants	0	0	0	0
State Grants	1,756,438	1,671,467	0.42	1,671,467
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**1,758,652**	**1,673,681**	**0**	**1,673,681**
TOTAL RESOURCES	**$ 4,689,849**	**4,604,878**	**0**	**4,604,878**
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	0	0
Las Cruces Police Department	0	0	0	0
Las Cruces Fire Department	0	0	0	0
Utilities	4,107,847	4,592,094	0.42	4,592,094
Economic Development	0	0	0	0
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 4,107,847**	**4,592,094**	**0**	**4,592,094**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	**$ 0**	**0**	**0**	**0**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 582,002**	**12,784**	**0**	**12,784**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Exhibit "B"

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
ECONOMIC DEVELOPMENT							
Economic Development - Newly Funded Projects							
Downtown Video Security	100,000						**TIDD**
Economic Development - Total Newly Funded Projects	**$ 100,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Economic Development - Carryover Projects							
Downtown Plaza Shade Structures	643,400						**Taxes**
Downtown Callecitas Shade Structure	100,000	400,000					**TIDD**
Gateway Entry Points Improvements 1 - LCIIP Signage 2 - LCIIP Pocket Park 3 - Gateway Signage	250,000	230,000	25,000	25,000	25,000	25,000	**Bonds,** Grants, Taxes
Parking Lot 7 and Bathrooms	99,404						**TIDD**
Economic Development - Total Carryover Projects	**$ 1,092,804**	**$ 630,000**	**$ 25,000**	**$ 25,000**	**$ 25,000**	**$ 25,000**	
Economic Development - Annual Projects							
Downtown Parking Lots Renovation 1 - Parking Lot 9/10 2 - Parking Lot at Campo & Hadley	2,100,000	255,000	255,000	255,000	255,000	255,000	Grants, **TIDD**
Economic Development - Total Annual Projects	**$ 2,100,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	**$ 255,000**	
Economic Development - Future Projects							
Rocket Drive Expansion		820,000	7,173,000				Grants, Taxes
Transit Loop Road		1,661,000	7,800,000	7,800,000			Grants, Taxes
Economic Development - Total Future Projects	**$ -**	**$ 2,481,000**	**$ 14,973,000**	**$ 7,800,000**	**$ -**	**$ -**	
Total Economic Development	**$ 3,292,804**	**$ 3,366,000**	**$ 15,253,000**	**$ 8,080,000**	**$ 280,000**	**$ 280,000**	
FACILITIES MANAGEMENT							
Facilities Management - Carryover Projects							
Energy Efficiency Program - IGA	1,948,383						**Bonds, Taxes**
Facility Parking Lot Program 1 - Munson Center 2 - Henry R Benavidez Community Center 3 - Train Depot	200,000	250,000	250,000	250,000	250,000	250,000	**Taxes**
Gateway Entry Points Signage Maintenance	7,000	50,000	50,000	50,000	50,000	50,000	**Taxes**
Facilities Management - Total Carryover Projects	**$ 2,155,383**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	
Facilities Management - Annual Projects							
General Facilities Improvements 1 - Communication Office Construction 2 - Jardin de Esperanazas 3 - WIA Rehabilitation 4 - Arc Flash Plan 5 - City Hall Furnishings 6 - Surveillance Camera Upgrades 7 - Records Center Improvements 8 - Branigan Library Exterior Re-Stucco 9 - Frank O'Brien Papen Community Center 10 - City Hall Building Operations Storage	175,085	500,000	500,000	500,000	500,000	500,000	**Taxes**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Roof Replacement Program 1 - Police Department Main Building 2 - WIA Building 3 - Municipal Court 4 - Meerscheidt Rec Center 5 - Rio Grande Theater 6 - Museum of Fine Arts 7 - Museum of Nature and Science 8 - Railroad Museum 9 - Police Department Academy 10 - Roof Inspections	2,397,032	375,000	375,000	375,000	375,000	375,000	**Taxes, TIDD, Bonds**
Safety, Health, Environmental & Emergency 1 - City Hall Security Upgrades 2 - Parks Sidewalk Replacement 3 - Pool Hoist 4 - Fire Alarm & Security Upgrades 5 - Pigeon Abatement	28,448						**Taxes**
Facilities Management - Total Annual Projects	**$ 2,600,565**	**$ 875,000**	**$ 875,000**	**$ 875,000**	**$ 875,000**	**$ 875,000**	
Facilities Management - Future Projects							
HVAC Upgrade Program		200,000	200,000	200,000	200,000	200,000	Taxes
Generator Buffer Program Fire Stations		50,000	50,000	50,000	50,000	50,000	Taxes
Refuse & Recycling Buffer Program Henry R Benavidez Community Center		50,000	50,000	50,000	50,000	50,000	Taxes
Generator Replacement Program		35,000	35,000	35,000	35,000	35,000	Taxes
ADA Compliance		25,000	25,000	25,000	25,000	25,000	Taxes
Facilities Management - Total Future Projects	**$ -**	**$ 360,000**	**$ 360,000**	**$ 360,000**	**$ 360,000**	**$ 360,000**	
Total Facilities Management	**$ 4,755,948**	**$ 1,535,000**	**$ 1,535,000**	**$ 1,535,000**	**$ 1,535,000**	**$ 1,535,000**	
LAS CRUCES AIRPORT							
Las Cruces Airport - Newly Funded Projects							
LRU Runway 4/22 Rehabilitation	1,610,000	455,000					**Grants,** Taxes, Other
Las Cruces Airport - Total Newly Funded Projects	**$ 1,610,000**	**$ 455,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Las Cruces Airport - Carryover Projects							
LRU Airport Infrastructure Improvements	969,354						**Grants, Taxes, Other**
LRU Passenger Terminal	191,037		8,608,963				Grants, **Taxes, Other**
LRU Runway 8/26 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	219,417				4,200,000	8,400,000	Grants, **Taxes, Other**
LRU Runway 12/30 Extension 1 - Environmental Assessment 2 - Design 3 - Construction	262,902				13,500,000		Grants, **Taxes, Other**
LRU Taxilane Improvements	130,982	170,000					Grants, **Taxes, Other**
Las Cruces Airport - Total Carryover Projects	**$ 1,773,692**	**$ 170,000**	**$ 8,608,963**	**$ -**	**$ 17,700,000**	**$ 8,400,000**	
Las Cruces Airport - Annual Projects							
LRU Striping and Marking Maintenance Program	75,000	75,000	75,000	75,000	75,000	75,000	**Taxes, Other**
Las Cruces Airport - Total Annual Projects	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Las Cruces Airport - Future Projects							
LRU Utility Infrastructure Improvements		4,500,000					Bonds, Grants, Taxes, Other
LRU Commercial Hangar Design and Construct		2,800,000					Grants, Taxes, Other
LRU Maintenance Facility Design-Construct			650,000				Grants, Taxes, Other
LRU Airport Maintenance Equipment		850,000					Bonds, Grants, Taxes, Other
LRU Airport Automated Weather Observation System (AWOS)		412,460					Grants
LRU Airport Rotating Beacon		170,520					Bonds, Grants, Taxes, Other
LRU Runways 8/26 and 12/30 Blast Pads		166,667					Grants
LRU Pavement Maintenance Program		125,000	125,000	125,000	125,000	125,000	Taxes, Other
LRU Passenger Air Service Infrastructure Revitalization			15,200,000				Grants, Taxes, Other
LRU Fuel Farm Relocation & Expansion			1,900,000				Grants, Taxes, Other
LRU ARFF Index B Equipment Upgrades			1,600,000				Grants, Taxes, Other
LRU Passenger Terminal Parking			1,200,000				Grants, Taxes, Other
LRU Airline Ground Support Equipment Facilities				750,000			Grants, Taxes, Other
LRU Taxilane Extensions				3,400,000			Grants, Taxes, Other
LRU Multi-Modal Public Passenger Transit Facility					2,500,000		Grants, Taxes, Other
LRU East Perimeter Road						11,200,000	Grants, Taxes, Other
LRU Apron West Hangar Rehabilitation						70,000	Grants, Taxes, Other
LRU Apron West Rehabilitation						70,000	Grants, Taxes, Other
Las Cruces Airport - Total Future Projects	**$ -**	**$ 9,024,647**	**$ 20,675,000**	**$ 4,275,000**	**$ 2,625,000**	**$ 11,465,000**	
Total Las Cruces Airport	**$ 3,458,692**	**$ 9,724,647**	**$ 29,358,963**	**$ 4,350,000**	**$ 20,400,000**	**$ 19,940,000**	
NON-PROFIT ORGANIZATIONS							
Non-Profit Organizations - Newly Funded Projects							
Children's Museum Facility	690,746	100,000	400,000	5,500,000			Bonds, **Grants**
MV Community of Hope - Cocina de Peregrinos/El Caldito Kitchen	1,875,000	1,125,000	7,000,000	2,700,000			**Grants**
MV Community of Hope - Flooring	10,317						**Grants**
MV Community of Hope - Jardin de los Niños Re-Roof	250,000						**Grants**
Non-Profit Organizations - Total Newly Funded Projects	**$ 2,826,063**	**$ 1,225,000.00**	**$ 7,400,000.00**	**$ 8,200,000.00**	**$ -**	**$ -**	
Non-Profit Organizations - Carryover Projects							
Arts and Cultural District Improvements	2,572,861						**Grants**
MV Community of Hope - Building 1, Solar Project	200,000			600,000			**Grants**
MV Community of Hope - Casa de Peregrinos Food Rescue Whse	651,942	1,847,000					**Grants, Other**
MV Community of Hope - Expansion Remodel	1,200,000						**Grants**
MV Community of Hope - Health Facility Improvements	1,853,922						**Grants**
Non-Profit Organizations - Total Carryover Projects	**$ 6,478,726**	**$ 1,847,000**	**$ -**	**$ 600,000**	**$ -**	**$ -**	
Non-Profit Organizations - Future Projects							
MV Community of Hope - Campus Extension (Amador Crossing)		5,000,000					Grants
MV Community of Hope - Master Plan Implementation		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
Paseos Verdes		2,000,000	2,000,000	2,000,000	2,000,000	2,000,000	Grants
La Clinica de Familia - Behavioral Health Facility *2023 Legislative Appropriation*		*922,349*					Grants
MV Community of Hope - El Caldito Upgrade			150,000				Grants
MV Community of Hope - Patio to Office Remodel				1,000,000			Grants
MV Community of Hope - Jardin de los Niños Security Improvements				200,000			Grants
Non-Profit Organizations - Total Future Projects	**$ -**	**$ 9,922,349**	**$ 4,150,000**	**$ 5,200,000**	**$ 4,000,000**	**$ 4,000,000**	
Total Non-Profit Organizations	**$ 9,304,789**	**$ 12,994,349**	**$ 11,550,000**	**$ 14,000,000**	**$ 4,000,000**	**$ 4,000,000**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
PARKS & RECREATION							
Parks & Recreation - Newly Funded Projects							
Klein Park Improvements	210,000	590,000					**Grants,** Taxes
Parks and Recreational Facilities Structural Renovations	286,000	399,000	125,000				**Grants,** Taxes
Park Drinking Fountains	14,000	70,000	70,000				**Grants,** PIF, Taxes
Trail Renovations	100,000	400,000	500,000	500,000	500,000	500,000	Bonds, **Grants**
Various Park Restroom Replacement/Repairs & Upgrades	406,202	360,000					Grants, **PIF**
Veterans' Memorial Park Enhancements	250,000	412,500	662,500	662,500	662,500	662,500	Bonds, **Grants**
Parks & Recreation - Total Newly Funded Projects	**$ 1,266,202**	**$ 2,231,500**	**$ 1,357,500**	**$ 1,162,500**	**$ 1,162,500**	**$ 1,162,500**	
Parks & Recreation - Carryover Projects							
A. Fielder Memorial Safe Haven Renovations	685,905						**Taxes**
Apodaca Park Aquatic Playground and Multi-Use Path	1,614,000						**PIF, Taxes**
Ballfield/Soccer Field Renovations & Upgrades	820,236	834,600	144,000	3,200,000			**Grants**
Chandler Tank Park	1,082,035						**Bonds, Taxes**
Dona Ana Move Trail	690,000						**Grants, Taxes**
East Mesa Public Safety Area Park	100,000	100,000		100,000		100,000	Grants, **PIF**
Gallagher Park Improvements	149,189						**Taxes**
Highland Park	2,028,552	510,850					Grants,**PIF, Taxes**
JCP Learning Center Exterior Repairs	292,800						**Grants, Taxes**
Las Cruces Lateral RTP Trail	489,011						**Grants**
Las Cruces Regional Aquatic Center HVAC & Dehumidifier	75,000						**Taxes**
Meerscheidt Recreation Center - Remodel/Expansion	2,000,000						**Bonds,** Grants
Meerscheidt Recreation Center Improvements	186,169	145,831					Grants, **Taxes**
New Skate Park - Plan & Design	550,000	800,000					**Grants**
Parks Smart Controllers & Pumps	150,001						**Grants, Taxes**
Pioneer Women's Park Gazebo Improvements	835,699	600,000	600,000	600,000	600,000	600,000	**Grants**
Regional Rec & Aquatic Cntr - Ph II - Community Pool Construction	476,026						**Bonds, PIF, Taxes**
Skate Park Renovation & Improvements	1,070,000	836,500	1,650,000	500,000			**Grants, PIF**
Tortugas Trail	75,000						**Grants**
Wayfinding Signage	1,183						**Grants,** PIF
Parks & Recreation - Total Carryover Projects	**$ 13,370,806**	**$ 3,827,781**	**$ 2,394,000**	**$ 4,400,000**	**$ 600,000**	**$ 700,000**	
Parks & Recreation - Annual Projects							
Land Acquisition, Planning, and Design for Parks	100,000	500,000	500,000	500,000	500,000	500,000	**PIF**
Median Landscaping	651,434	200,000	200,000	200,000	200,000	200,000	**Grants**, Loans, Taxes
Metro Verde Neighborhood Parks	619,814	500,000	500,000	500,000	500,000	500,000	**PIF,** Grants
Neighborhood Parks	539,085	500,000	500,000	500,000	500,000	500,000	**PIF, Taxes**
Parks Parking Lots BMX Track Parking Lot & ADA Improvements Paz Ball Field Parking Lot Improvements Tony Gomez Park Parking Lot Improvements Veterans' Park Parking Lot Apodaca Park East Mesa Recreation Center Maag Ball Park Skate Park	2,465,881	907,500	252,500	272,700	272,700	272,700	**Bonds, Grants, Taxes**
Parks Shade Structures	24,000	24,000	24,000	24,000	24,000	24,000	**Taxes**
Parks & Recreation - Total Annual Projects	**$ 4,400,214**	**$ 2,631,500**	**$ 1,976,500**	**$ 1,996,700**	**$ 1,996,700**	**$ 1,996,700**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Parks & Recreation - Future Projects							
Multi-Use Recreation Center		60,000,000					Bonds, Grants
Indoor/Outdoor Aquatic Amenities		195,000					Grants, Taxes
East Mesa Bataan Memorial Pool - HVAC Replacement		78,000					Grants
Albert Johnson Park Electrical Improvements		70,000					Grants, Taxes
Benavidez Park			500,000				Grants
Veterans' Memorial Park Restroom Plumbing Repairs and Upgrades			134,000				Grants, PIF
Valley View Park - Heske Garden Lighting Replacement			80,000				Grants, Taxes
Laabs Pool - HVAC Replacement			78,000				Grants, Taxes
Hadley Complex Recreation Rehabilitation			31,500	318,500			Grants, Taxes
Four Field Baseball/Softball Complex				5,995,500			Bonds, Grants, PIF
Laabs Pool - Shade Structures				97,500			Bonds, Grants, PIF
New Sand Volleyball Courts					40,000		Grants, PIF
Waterfalls Park						1,200,000	Grants, PIF
Parks & Recreation - Total Future Projects	**$ -**	**$ 60,343,000**	**$ 823,500**	**$ 6,411,500**	**$ 40,000**	**$ 1,200,000**	
Total Parks & Recreation	**$ 19,037,222**	**$ 69,033,781**	**$ 6,551,500**	**$ 13,970,700**	**$ 3,799,200**	**$ 5,059,200**	
PUBLIC SAFETY							
Public Safety - Newly Funded Projects							
Fire Station Alerting System	434,492						**Taxes**
Fire Station 2 Bay Remodel	100,000						**Grants**
Fire Station 5	100,000	214,000	230,000				Bonds, **Grants**, Taxes, Other
1 - North/South Aprons 2 - Parking Lot 3 - Improvements							
Fire Station 6 Repairs	100,000						**Grants**
Fire Department Training tower	99,000	120,000					Grants, **Taxes**
Public Safety - Total Newly Funded Projects	**$ 833,492**	**$ 334,000**	**$ 230,000**	**$ -**	**$ -**	**$ -**	
Public Safety - Carryover Projects							
Fire Dept. Administration Building Lobby Remodel	199,026	350,000	193,400				**Grants,** Other
Fire Department CIT and MIH Building	348,895	3,420,315					**ARPA**, Grants, Taxes, Other
Police Department Building Renovations	37,598	400,000					**Grants, Taxes**
Public Safety Regional Radio Communication System	468,000	500,000	25,000	25,000	25,000	25,000	**Grants, Taxes**
Public Safety - Total Carryover Projects	**$ 1,053,519**	**$ 4,670,315**	**$ 218,400**	**$ 25,000**	**$ 25,000**	**$ 25,000**	
Public Safety - Annual Projects							
Fire Department Equipment	330,000	720,000	500,000	500,000	500,000		**Grants**
Public Safety - Total Annual Projects	**$ 330,000**	**$ 720,000**	**$ 500,000**	**$ 500,000**	**$ 500,000**	**$ -**	
Public Safety - Future Projects							
Fire Department Station 9		5,165,000					Bonds, Grants, Taxes, Other
Police Department Mobile Operations Command Vehicle							Grants
2023 Legislative Appropriation		*750,000*					
Public Safety Vehicles - Bearcat							Grants
2023 Legislative Appropriation		*500,000*					
Public Safety Vehicles - Rook							Grants
2023 Legislative Appropriation		*500,000*					

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Police Department Equipment							Grants
Technology Equipment							
2023 Legislative Appropriation		*450,000*					
Police Parking Lot Resurfacing		276,000					Grants, Taxes
Fire Stations 4 & 5 Security Fencing and Gates		130,000					Grants, Taxes
Public Safety Vehicles - Critical Incident Command Vehicle		100,000					Grants
Fire Station 4 Restroom Remodel		90,000					Grants, Taxes, Other
Police North Parking Lot Fencing		20,000					Grants
Fire-Energy Efficiency and Sustainability				334,000	330,000	270,000	Grants
Fire Station 2 Replacement					5,165,000		Taxes, Grants
1 - Land Acquisition							
2 - Plan, Design, Construct, and FF&E							
3 - Demolition							
Downtown Public Safety Complex						57,000,000	Bonds, Grants
Police/Fire Training Facility - Design & Construct						6,900,000	Grants
Police/Fire Training Facility - Furniture, Fixtures, & Equipment						2,100,000	Grants
Public Safety - Total Future Projects	**$ -**	**$ 7,981,000**	**$ -**	**$ 334,000**	**$ 5,495,000**	**$ 66,270,000**	
Total Public Safety	**$ 2,217,011**	**$ 13,705,315**	**$ 948,400**	**$ 859,000**	**$ 6,020,000**	**$ 66,295,000**	
PUBLIC WORKS							
Public Works - Newly Funded Projects							
Complete Streets	7,660,000	1,750,000	1,750,000	1,500,000	1,750,000	1,750,000	**Bonds**
University Ave. Complete Street Improvements							
El Paseo Rd.							
Idaho Ave							
Lift Up Las Cruces - Street Improvements	595,000	600,000	600,000	600,000	600,000	600,000	**Grants**
Mesquite Historical District Renovations	1,025,000						**Grants**
Resiliency	3,000,000	1,250,000	1,250,000	1,000,000	1,250,000	1,250,000	**Bonds**
University Ave. Complete Street Improvements-Design	520,000	480,000					**Grants**, Bonds, Taxes
Public Works - Total Newly Funded Projects	**$ 12,280,000**	**$ 3,600,000**	**$ 3,600,000**	**$ 3,100,000**	**$ 3,600,000**	**$ 3,600,000**	
Public Works - Carryover Projects							
Amador Hotel	3,086,723	2,950,000	2,950,000	2,950,000			**Grants, TIDD**
Bellamah Drive - Lees Drive to Luna Street	2,676,899						**Bonds, Taxes**
Campo Street Design and Reconstruct	1,401,103	4,815,197					**TIDD,** Taxes
Hadley Ave.							
Organ Ave.							
Casa Linda Acres Reconstruction	3,634,760						**ARPA, Taxes**
Del Rey Blvd Signal Improvements	177,390						**Grants, Taxes**
East Mesa Recreation Complex	2,000,000						**Bonds**
East Mesa Recreation Complex Roads	567,698	637,906					**Bonds, Taxes**
East Mesa Roads and Drainage	1,617,088		900,000	500,000	500,000	500,000	**Grants, Taxes**
2023 Legislative Appropriation		*550,000*					
GO Bonds - ARPA Funding	2,506,687						**ARPA**
GO Bond 2022 - New Fire Station	9,800,000						**Bond**
GO Bond 2022 - Parks Improvements	1,960,000						**Bond**
GO Bond 2022 - East Mesa Recreation Facility	4,900,000						**Bond**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
GO Bond Q1 - Park & Sport Field Improvements & Additions	45,517						GO Bonds, PIF
GO Bond Q2 - New Animal Shelter Facility	49,997						GO Bonds
GO Bond Q3 - New Fire Station No. 3 Building	29,164						GO Bonds
GO Bond Q4 - Walking, Jogging, Biking Trails Improvements & Additions	7,065						GO Bonds
Madrid Ave Extension - Martha Dr to N Triviz Dr	2,864,997	1,000,000					Grants, Taxes
Midway Ave - Gas Line Rd to Mesa Dr	600,000						Taxes, Grants
Picacho Ave HAWK System	238,652						Grants, Taxes
South Main St - Avenida de Mesilla to Boutz	3,308,139						Bonds
Storm Water System Mapping	100,000	100,000					Taxes
Traffic Signals Hoagland Rd & N Alameda Blvd Roadrunner Parkway & Sonora Springs Sonoma Ranch Blvd & Northrise	1,010,523						Bonds
Telshor ADA Improvements Phase VI	316,659						Grants, Taxes
Telshor Spruce Intersection Improvements	836,959	850,000					Grants
Voluntary Assessment District Phase I Sanitary Sewer Infrastructure Sonoma Ranch Blvd Mile 2: Peachtree to Arroyo Red Hawk Golf Rd: N.Bound Metro Verde S.P1E to Arroyo Rd Regional Drainage Phase 1	69,808						Bonds
Voluntary Assessment District Phase II Peachtree Hills Rd. East & West Regional Drainage Sonoma Ranch Blvd to Engler, Mile 1, Mile 2, Mile 3, & Roundabout Sonoma Ranch Blvd Landscaping to Engler, Mile 1, Mile 2, & Mile 3	3,196,542						Bonds
Villa Mora Dam Park Study	612,588						Grants, Taxes
Walnut-Madrid TAP Bike/Pedestrian Improvements	982,250						Bonds, Grants
Public Works - Total Carryover Projects	**$ 48,597,207**	**$ 10,903,103**	**$ 3,850,000**	**$ 3,450,000**	**$ 500,000**	**$ 500,000**	
Public Works - Annual Projects							
Active Transportation Bicycle Facilities Pedestrian Safety Improvements ADA Sidewalk Gap	5,115,779	350,000	350,000	350,000	350,000	350,000	Bonds, Taxes
Chip Seal Program	200,000	200,000	200,000	200,000	200,000	200,000	Taxes
CO-OP Match	80,000	80,000	80,000	80,000	80,000	80,000	Taxes
Drainage Infrastructure Improvements EBID Drains & Laterals Land Acquisition Other Improvements	3,068,122	500,000	500,000	500,000	500,000	500,000	Bonds, Taxes
Land Acquisition - Public Works Flood Control Rights of Way East Mesa Other	200,000	250,000	250,000	250,000	250,000	250,000	Taxes
M.A.P. Match	165,000	150,000	150,000	150,000	150,000	150,000	Taxes
Materials Testing	240,000	250,000	250,000	250,000	250,000	250,000	Taxes
Neighborhood Traffic Calming Program	60,000	60,000	60,000	60,000	60,000	60,000	Taxes
Pavement Condition Index Improvements Pavement Condition Index Improvements Pavement Overlays Pavement Replacement Pavement Treatment	10,238,981	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	Bonds, Taxes

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Pavement Marking Program	169,000	500,000	250,000	500,000	250,000	500,000	Taxes
Roadway Maintenance Program	902,569	700,000	700,000	700,000	700,000	700,000	Taxes
Street Lighting & Traffic Signal Maintenance Program	1,096,291	500,000	500,000	500,000	500,000	500,000	Taxes
Traffic Signal Program Bataan Memorial at Rinconada	514,847	500,000	500,000	500,000	500,000	500,000	Taxes
Transportation System Modernization ITS	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	Taxes
Unpaved Roads	250,000	250,000	250,000	250,000	250,000	250,000	Taxes
Weed Control & Maintenance Program City Rights of Way Las Cruces Dam Ponds	95,000	100,000	100,000	100,000	100,000	100,000	Taxes
Public Works - Total Annual Projects	**$ 23,395,589**	**$ 11,690,000**	**$ 11,440,000**	**$ 11,690,000**	**$ 11,440,000**	**$ 11,690,000**	
Public Works - Future Projects							
HWY 70 and Elks/Triviz Intersection Improvements		25,000,000					Grants, Taxes
Melendres Ave - Hadley to Picacho		1,979,500					Loans, Taxes
Johnson St - Rouault Ave to Topley Dr		1,712,000					Loans, Taxes
Ethel Ave - Alameda Blvd to Miranda, and Houma		1,043,250					Loans, Taxes
Pittsburg Ave - Melendres to Cul de Sac		250,000					Loans, Taxes
Med Park Ave - Idaho to Perkins Ave			1,824,000				Loans, Taxes
Evelyn St - Madrid Ave to Ash Ave			1,710,000				Loans, Taxes
Sacramento St - Ash Ave to Oasis Ave			1,482,000				Loans, Taxes
Mountain Ave - Melendres St to Armijo St			1,368,000				Loans, Taxes
Armijo St - Picacho Ave to Parker Rd			684,000				Loans, Taxes
Sequoia Ave - Valley Dr to E.O.P.				2,420,000			Loans, Taxes
Lohman at Walnut and Walton Signal Improvements				1,500,000			Bonds, Loans, Taxes
Kilmer St - Spruce Ave to Ash Ave				1,391,000			Loans, Taxes
Armijo St - Organ Ave to Mountain Ave				1,331,000			Loans, Taxes
Poplar Ave - Mesquite St to Santa Fe St				871,200			Loans, Taxes
La Fonda Dr - Idaho Ave to E.O.P.				726,000			Loans, Taxes
6th Street - Hayner Ave to Hadley Ave				484,000			Loans, Taxes
South Valley Dr Reconstruction - Avenida de Mesilla to Boutz					3,379,200		Loans, Taxes
Miranda Ave - Picacho Ave to Court Ave					1,664,000		Loans, Taxes
Rigsby Rd - Barker to Valley Dr					768,000		Loans, Taxes
Scoggins Ave - 6th St to Sweet St					652,800		Loans, Taxes
Mountain Ave - Water St to Alameda Blvd					640,000		Loans, Taxes
Street Lighting Management System					500,000		Bonds, Loans, Taxes
Aspen Ave - Sequioa Ave to S Valley Dr						2,970,000	Loans, Taxes
Alameda Blvd - Amador Ave to Las Cruces Ave						1,409,400	Taxes, TIDD
Westgate St - Amador Ave to Cul de Sac						1,350,000	Loans, Taxes
Parkview Dr - Espina St to E.O.P.						972,000	Loans, Taxes
Sweet St - Hadley Ave to Hayner St						568,000	Loans, Taxes
Targeted Road and Lighting Improvements - Design						50,000	Taxes
West Mesa Fiber Optics Improvements - Design						50,000	Taxes
Public Works - Total Future Projects	**$ -**	**$ 29,984,750**	**$ 7,068,000**	**$ 8,723,200**	**$ 7,604,000**	**$ 7,369,400**	
Total Public Works	**$ 84,792,796**	**$ 56,657,853**	**$ 25,958,000**	**$ 26,963,200**	**$ 23,144,000**	**$ 23,159,400**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
QUALITY OF LIFE							
Quality of Life - Newly Funded Projects							
Museum of Nature and Science - Atrium Redesign	50,000	15,000					**Grants**, Taxes
Museum System Technology Improvements	210,000						**TIDD**
Quality of Life - Total Newly Funded Projects	**$ 260,000**	**$ 15,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Quality of Life - Carryover Projects							
Branigan Cultural Center Improvements	289,363	93,000	1,000,000	1,000,000	1,200,000		**Grants, Taxes**
Branigan Library - Expansion Phase II/Branch	64,364	2,615,000	1,650,000				Bonds, Grants, **Other**
Go Bond 2023 Public Art	340,000						**Bond**
Munson Center Renovations	885,952						**Grants**
2023 Legislative Appropriation		*2,302,399*					
Sage Café Expansion	902,525	3,083,180					**Grants**
Senior Programs Kitchen Equipment	52,409	150,000					**Taxes**
Quality of Life - Total Carryover Projects	**$ 2,534,613**	**$ 8,243,579**	**$ 2,650,000**	**$ 1,000,000**	**$ 1,200,000**	**$ -**	
Quality of Life - Annual Projects							
Public Art Program	108,506	300,000	300,000	300,000	300,000	300,000	**Taxes**
Quality of Life - Total Annual Projects	**$ 108,506**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	**$ 300,000**	
Quality of Life - Future Projects							
Munson Center Floor		750,000					Bonds, Grants, Taxes
Sage Café Backup Generator		422,500					Bonds, Grants, Taxes
Senior Programs Vehicles		30,000	280,000	280,000			Grants
2023 Legislative Appropriation		*310,000*					
Senior Programs Existing Kitchen Expansion Assessment		260,000					Taxes
Munson Center Bathrooms		250,000					Bonds, Grants, Taxes
Munson Center Kitchen Expansion		221,000	3,053,100				Bonds, Grants, Taxes
Benavidez Kitchen Expansion			93,800	2,854,800			Bonds, Grants, Taxes
Museum System On-site Server		115,000					Bonds, Grants, Taxes
Frank O'Brien Papen Center - Dining Room Floor			47,140				Grants, Taxes
2023 Legislative Appropriation		*35,000*					
Museum of Art Improvements		35,000	95,000	320,000	200,000		Bonds, Grants, Taxes
Museum of Art - Gallery Flooring		35,000	165,000				Bonds, Grants, Taxes
Museum of Nature and Science - Nature Center Redesign		25,000	75,000	175,000			Taxes, Grants
Railroad Museum Reinterpretation		25,000	60,000	150,000	75,000		Bonds, Grants, Taxes
Benavidez Center Renovations			38,900				Bonds, Grants, Taxes
2023 Legislative Appropriation		*127,500*					
Railroad Museum - Exterior Improvements			38,000	60,000	17,500		Bonds, Grants, Taxes
Branigan Library Renovation				209,000	2,750,000	1,111,000	Bonds, Grants, Taxes
Museum of Art Relocation/Remodel						30,000,000	Bonds, Grants, Taxes
Museums Collection Storage Facility						9,500,000	Grants, Taxes
Quality of Life - Total Future Projects	**$ -**	**$ 2,641,000**	**$ 3,945,940**	**$ 4,048,800**	**$ 3,042,500**	**$ 40,611,000**	
Total Quality of Life	**$ 2,903,119**	**$ 11,199,579**	**$ 6,895,940**	**$ 5,348,800**	**$ 4,542,500**	**$ 40,911,000**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
ROADRUNNER TRANSIT							
RoadRUNNER Transit - Carryover Projects							
Municipal Services Center - Transit	20,831,233	8,383,338					ARPA, Bonds, Grants, Taxes
RoadRUNNER Transit - Total Carryover Projects	**$ 20,831,233**	**$ 8,383,338**	**$ -**	**$ -**	**$ -**	**$ -**	
RoadRUNNER Transit - Annual Projects							
Transit Facilities Improvement Program	75,000	75,000	75,000	75,000	80,000	185,000	Grants, Taxes
RoadRUNNER Transit - Total Annual Projects	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
Total RoadRUNNER Transit	**$ 20,906,233**	**$ 8,458,338**	**$ 75,000**	**$ 75,000**	**$ 80,000**	**$ 185,000**	
SUSTAINABILITY							
Sustainability - Carryover Projects							
Solar Energy Photo Voltaic Projects	214,152						Taxes
Fleet Electric Vehicle Chargers	376,000	-					Grants, Bonds, Taxes
Sustainability - Total Carryover Projects	**$ 590,152**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Sustainability - Future Projects							
DC Fast Chargers for Electric Vehicles		200,000	200,000				Grants, Bonds, Taxes
Public Electric Vehicle Chargers		200,000	200,000				Grants, Bonds, Taxes
Green Cool Corridors for Bicycles				174,000			Grants, Bonds, Taxes
LMI Housing Retrofits for Resiliency				1,270,000			Grants, Bonds, Taxes
Sustainability - Total Future Projects	**$ -**	**$ 400,000**	**$ 400,000**	**$ 1,444,000**	**$ -**	**$ -**	
Total Sustainability	**$ 590,152**	**$ 400,000**	**$ 400,000**	**$ 1,444,000**	**$ -**	**$ -**	
UTILITIES							
Utilities - Newly Funded Projects							
JHWWTF Rehabilitation	15,111,385						Bonds
Wastewater SCADA	596,277	296,569	196,569	30,000	30,000	30,000	Other
Water Development	163,224	1,469,019					WIF
Utilities - Total Newly Funded Projects	**$ 15,870,886**	**$ 1,765,588**	**$ 196,569**	**$ 30,000**	**$ 30,000**	**$ 30,000**	
Utilities - Carryover Projects							
Wastewater Development	165,000						WWIF
Wastewater Septic Systems	2,171,467	1,472,100	1,619,000				Other, Bonds, Grant
Water Rehabilitation - NMFA	56,155						Loans
Water Utilities Bond Projects 2020A	1,928,849	4,939,151					Bonds
Utilities - Total Carryover Projects	**$ 4,321,471**	**$ 6,411,251**	**$ 1,619,000**	**$ -**	**$ -**	**$ -**	
Utilities - Annual Projects							
Gas Admin Building Improvements Fiberoptic Cable Replacement from Roundtree to JU	468,323	475,000	125,000	125,000	125,000	125,000	Other
Gas Development - Low & High Pressure	35,624	19,234,390	3,168,364	652,341	300,000	300,000	Other
Gas Rehabilitation - Low & High Pressure	110,000	2,403,244	2,543,189	460,000	250,000	250,000	Other
Gas Rehabilitation - Street Utility Rehabilitation	1,566,258	1,044,223					Other
Gas SCADA	236,748	236,748	236,748	50,000	50,000	50,000	Other
Solid Waste Building Improvements Fiberoptic Cable Replacement from Roundtree to JU	1,088,572	405,000	125,000	125,000	125,000	125,000	Other Other

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 12/18/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
Wastewater Building Improvements	175,000	1,031,000	75,000	75,000	75,000	75,000	**Other**
Fiberoptic Cable Replacement from Roundtree to JU							**Other**
Wastewater JHWWTF	69,219	727,835					**Other**
Wastewater Lift Station Renovations	50,000	100,000	50,000	100,000	50,000	100,000	**Other**
Wastewater Rehabilitation - East Mesa Water Reclamation Facility	1,631,309						**Other**
Wastewater Street Utility Rehabilitation	1,931,532	3,465,381	400,000		400,000		**Other**
Water Building Improvements	245,333	475,000	125,000	125,000	125,000	125,000	**Other**
Fiberoptic Cable Replacement from Roundtree to JU							**Other**
Water Rehabilitation - Line Extension	106,832	1,126,230					**Other**
Water Rehabilitation - Reservoir Rehabilitation	60,068	7,367,011	3,565,500				**Other**
Water Rehabilitation - Street Utility Rehabilitation	2,321,605	3,098,992	250,000	350,000	250,000	350,000	**Other**
Water SCADA	50,000	689,214	669,461	50,000	30,000	50,000	**Other**
Utilities - Total Annual Projects	**$ 10,146,423**	**$ 41,879,268**	**$ 11,333,262**	**$ 2,112,341**	**$ 1,780,000**	**$ 1,550,000**	
Utilities - Future Projects							
Water Transite Pipe ID and replace		5,000,000					Grants
Water Well Buildings		1,800,000					Other
Water Booster Station		1,006,771					Other
Water Pump Station Well Rehab		481,040	2,709,364				Other
Water Rehabilitation - Pump Station Rehabilitation		377,800	100,000	100,000	100,000	100,000	Other
Water Rehabilitation - Pump PRV		324,000					Other
Gas Rehabilitation - Regulator Stations		223,658	2,012,923				Other
Wastewater Jacob Hands Wastewater Treatment Facility		100,000	100,000	100,000	100,000	100,000	Other
Water NMFA Loan		100,000					Bonds
Wastewater East Mesa Water Reclamation		50,000	50,000	50,000	50,000	50,000	Other
Wastewater Development Lift Station Upgrades			100,000				WWIF
Utilities - Total Future Projects	**$ -**	**$ 9,463,269**	**$ 5,072,287**	**$ 250,000**	**$ 250,000**	**$ 250,000**	
Total Utilities	**$ 30,338,780**	**$ 59,519,376**	**$ 18,221,118**	**$ 2,392,341**	**$ 2,060,000**	**$ 1,830,000**	
VISIT LAS CRUCES							
Visit Las Cruces - Carryover Projects							
Convention Center FF&E	75,000	75,000	-	-	-	-	**Taxes**
Visit Las Cruces - Total Carryover Projects	**$ 75,000**	**$ 75,000**	**$ -**	**$ -**	**$ -**	**$ -**	
Total Visit Las Cruces	**$ 75,000**	**$ 75,000**	**$ -**	**$ -**	**$ -**	**$ -**	
ALL DEPARTMENTS							
Total Newly Funded Projects	**$ 35,566,643**	**$ 10,106,088**	**$ 12,784,069**	**$ 12,492,500**	**$ 4,792,500**	**$ 4,792,500**	
Total Carryover Projects	**$ 102,874,607**	**$ 45,461,367**	**$ 19,665,363**	**$ 9,800,000**	**$ 20,350,000**	**$ 9,950,000**	
Total Annual Projects	**$ 43,231,297**	**$ 58,500,768**	**$ 26,829,762**	**$ 17,879,041**	**$ 17,301,700**	**$ 16,926,700**	
Total Future Projects	**$ -**	**$ 132,601,015**	**$ 57,467,727**	**$ 38,846,500**	**$ 23,416,500**	**$ 131,525,400**	
GRAND TOTAL	**$ 181,672,547**	**$ 246,669,238**	**$ 116,746,921**	**$ 79,018,041**	**$ 65,860,700**	**$ 163,194,600**	

Abbreviations and Notes:
Indicates a Change
Pending Legislative Appropriations noted in italic
Current funding sources noted in bold

ARPA - American Rescue Plan Act
Bonds - Includes Bonds and Loans
Grants - Includes Local, State, Federal, or private entity
Other - Includes Fees, State Entitlements, Leases, Developer Contributions, and Donations
PIF - Park Impact Fees
PSIF - Public Safety Impact Fees
TIDD - *Tax Increment Development District*
WIF - *Water Impact Fees*
WWIF - *Wastewater Impact Fees*

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/16/2023
Application Submission Date:
Requested Amount:
Award Notification Date:
Funding Agency: United States Department of Justice

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/18/2023
Amount of Award: $ 70,939.00
Grant Agreement #:

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG)
Type of Funding: Federal Capital
Grantor Type: Federal
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 10/01/2022
Starting Fiscal Year of Grant: FY2024
Grant Scope of Work:

Type of Grant: Non-Competitive/Entitlement Recurring
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 04/30/2024

The City of Las Cruces will use JAG funds to purchase pole-mounted cameras to assist in crime prevention and deterrence efforts, continuing to expand community partnership, and Dona Ana County Sheriff's Office will use JAG funds to purchase a modernized evidence system, to improve efficiency and control. $49,608 is allocated for LCPD and $21,331 for DASO.

Does this grant involve Sub-Grantees or Pass Through Grants: ☑ **YES** ☐ **NO**

DEPARTMENT INFORMATION

Department: Police
Program: Administration
Email: lstory@lascruces.gov
MUNIS Dept. Number: 320

Line of Business: Office of the Chief
Project Manager: Jeremy Story
Phone: 575-528-4147

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

2100-20232006-599100-24156-	REVENUE	$ 70,939
2100-20232006-808000-24156-	LCPD EXPENSE	49,608
2100-20232006-721080-24156-	DASO EXPENSE	21,331

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 24156
Set-Up Date: _____
Date to Accounting: _____

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/16/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount:
Amount of Award: $ 150,000.00
Award Notification Date:
Grant Agreement #:
Funding Agency: State of New Mexico, Economic Development Department (EDD)

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 2023 LEDA Junior Bill
Type of Funding: State Operating
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Grant Reversion Date: 04/30/2024
Starting Fiscal Year of Grant: FY2024
Grant Scope of Work:

EDD shall provide one hundred fifty thousand dollars ($150,000.00) under SB192 to the city of Las Cruces for projects pursuant to the Local Economic Development Act to support small businesses in Las Cruces.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Economic Development
Line of Business: Business Support
Program: Business Development
Project Manager: Chris Faivre
Email: cfaivre@lascrues.gov
Phone: 575-541-2150
MUNIS Dept. Number: 470

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

2100-20247001-599200-24192
2100-20247001-721080-24192

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 24192
Set-Up Date: 11/21/2023
Date to Accounting:

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/27/2023
Application Submission Date:
Requested Amount: $225,000.00
Award Notification Date: 07/01/2023
Funding Agency: New Mexico Department of Finance and Administration

Grant Team Representative: Crystal Silva
Council Budget Adjustment Date: 12/18/2023
Amount of Award: $ 225,000.00
Grant Agreement #: 23-ZH9196

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Mental Health Services & Building Equipment
Type of Funding: State Legislative Outlay
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Legislative Appropriation
Match Amount: $ 0.00
Match Percent/Ratio: N/A

Grant Reversion Date: 04/30/2024

Grant Scope of Work:

For the expansion of mental health services and building equipment expenses for the supportive transitional housing for vulnerable, high risk and high need population.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: City Managers Office
Program: Housing and Neighborhood Services
Email: ngreen@lascruces.gov
MUNIS Dept. Number: 300

Line of Business: Housing and Neighborhood Services
Project Manager: Natalie Green
Phone: 575-528-3086

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*
2100-20430021-721080 (Expenditure) and 2100-20430021-599200 (Revenue).

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23196
Set-Up Date: 11/29/2023
Date to Accounting: 11/29/2023

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/16/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount:
Amount of Award: $ 485,000.00
Award Notification Date:
Grant Agreement #: 2023-171581
Funding Agency: USDOJ United States Deoartment of Justice, Office for Victims of Crime

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Byrne Discretionary Community Project Funding - Project Light
Type of Funding: Federal Capital
Type of Grant: Competitive
Grantor Type: Federal
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 08/10/2023
Grant Reversion Date: 04/30/2024
Starting Fiscal Year of Grant: FY2024
Grant Scope of Work:

To deploy a highly skilled Mobile Crisis Response Team that can promptly respond to individuals in crisis and offer immediate care and support.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Fire
Line of Business: Community Engagement
Program: Mobile Integrated Healthcare
Project Manager: BC Matt Hiles
Email: mhiles@lascruces.gov
Phone: 575-528-4068
MUNIS Dept. Number: 330

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

2100-20233004-599100-24256	$485,000.00
2100-20233004-601010-24256	$448,843.72
2100-20233004-721080-24256	$ 11,156.28
2100-20233004-808000-24256	$ 25,000.00

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 24256
Set-Up Date: 11/29/2023
Date to Accounting: 11/21/2023

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/17/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount:
Amount of Award: $ 2,625,000.00
Award Notification Date:
Grant Agreement #: 23-ZH5048-40
Funding Agency: NMDFA New Mexico Department of Finanace and Administration

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: State of New Mexico Law Enforcement Retirement Fund
Type of Funding: State Capital
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Grant Reversion Date: 04/30/2024
Starting Fiscal Year of Grant: FY2024
Grant Scope of Work:

To hire law enforcement/support positions.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Police
Line of Business: Office of the Chief
Program: Administration
Project Manager: Jeremy Story
Email: istorv@lascruces.gov
Phone: 575-528-4147
MUNIS Dept. Number: 320

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Total Award: $2,625,000. Year 1: $1,500,000. Year 2: $750,000. Year 3: $375,000.
Below are the accounts for Year 1.
Revenue: 2100-20132001-599200
Expense: 2100-20132001-601010-$1,319,756.76; 601030-$118,682.32; 601110-$27,109.39; 601120-$2,928.18; 601130-$8,861.60; 601140-$2,808.15; 601160-$560.75; 601170-$11,791.31; 601180-$2.30; 601230-$142.78; 601260-$273.70; 721030-$7,083.30.

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #:
Project Code # 24484
Set-Up Date: 09/26/2023
Date to Accounting: 09/22/2023

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/15/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount: 250,000.00
Amount of Award: $ 100,000.00
Award Notification Date: 11/03/2023
Grant Agreement #: 23-H2981
Funding Agency: State of New Mexico Department of Finance and Administration

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Las Cruces Fire Station 5 Improvement
Type of Funding: State Legislative Outlay
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 04/30/2024

Grant Scope of Work:

To plan, design, construct, equip and improve fire station 5, including parking lot improvements, purchase and installation of a generator and removal and replacement of bay doors, in Las Cruces in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Architectural Management
Project Manager: Sreedevi Bhathala Mohanrai
Email: sbhathalam@lascruces.gov
Phone: 575.541-2538
MUNIS Dept. Number: 550

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

4100-40255005-599200-23981
4100-40255005-801000-23981

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23981
Set-Up Date: 11/20/2023
Date to Accounting: 11/17/2023

Accounting Department Info: Josie Trevino

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/08/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date:
Requested Amount: 250,000.00
Amount of Award: $ 250,000.00
Award Notification Date: 11/03/2023
Grant Agreement #: C1233324
Funding Agency: State of New Mexico Department of Transportation

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H3324 Telshor Boulevard and Spruce Avenue Improvements
Type of Funding: State Capital
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: 0
Match Source:
Grant Effective Date: 11/03/2023
Starting Fiscal Year of Grant: FY2023
Grant Reversion Date: 06/30/2027

Grant Scope of Work:
The funding is to acquire rights of way and to plan, design, construct and install improvements to the intersection of Telshor Boulevard and Spruce Avenue, including associated infrastructure and utilities, in Las Cruces in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Engineering and Surveying
Project Manager: Hector Terrazas
Email: hterrazas@lascruces.gov
Phone: (575) 528-3142
MUNIS Dept. Number: 550

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

4100-40255004-599200-23324 (REVENUE) $250,000.00
4100-40255004-802000-23324 (EXPENSE) $250,000.00

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: _____
Project Code # 23324
Set-Up Date: 11/20/2023
Date to Accounting: _____

Josie Trevino
Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/15/2023
Application Submission Date:
Requested Amount:
Award Notification Date:
Funding Agency: NMDOT New Mexico Department of Transportation

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/18/2023
Amount of Award: $ 411,956.48
Grant Agreement #: 23-H4100

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Las Cruces Median Improvement Project
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Scope of Work:

Type of Grant: Legislative Appropriation
Match Amount: $ 0.00
Match Percent/Ratio: N/A
Grant Reversion Date: 04/30/2024

To plan, design, construct, purchase, and install park improvements, landscaping and drainage improvements to street medians in Las Cruces, in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Parks & Recreation
Program: Special Projects
Email: cmathews@lascruces.gov
MUNIS Dept. Number: 450

Line of Business: Office of the Director
Project Manager: Cathy Mathews
Phone: 575-541-2592

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Reauthorization of 21-F4029 : Project number 12095
4100-40245003-802000-24095
4100-40245003-599200-24095

REORGED FROM 12095 TO 24095
ONLY NEED TO BUDGET $411,956.48 NOT THE FULL $418,842
SOME WAS EXPENSED IN FY23

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 24095
Set-Up Date: 11/21/2023
Date to Accounting:

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/13/2023
Application Submission Date:
Requested Amount: $ 520,000.00
Award Notification Date: 07/01/2023
Funding Agency: New Mexico Department of Transportation (NMDOT)

Grant Team Representative: Crystal Silva
Council Budget Adjustment Date: 12/18/2023
Amount of Award: $ 520,000.00
Grant Agreement #: C1233325

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: University Avenue Construction
Type of Funding: State Legislative Outlay
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Legislative Appropriation
Match Amount: $ 0.00
Match Percent/Ratio: N/A

Grant Reversion Date: 04/30/2024

Grant Scope of Work:

To acquire rights of way and to plan, design, construct and improve University Avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure in Las Cruces in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Public Works
Program: Engineering and Surveying
Email: hterrazas@las cruces.gov
MUNIS Dept. Number: 550

Line of Business: Public Infrastructure
Project Manager: Hector Terrazas
Phone: 575-528-3142

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

4100-40255004-599200-23325
4100-40255004-802000-23325

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23325
Set-Up Date: 11/20/2023
Date to Accounting: 11/17/2023

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/08/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount: 595,000.00
Amount of Award: $ 595,000.00
Award Notification Date: 11/03/2023
Grant Agreement #: 23-H3323
Funding Agency: State of New Mexico Department of Transportation (NMDOT)

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 23-H3323 Lift Up Street Improvements
Type of Funding: State Capital
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: 0
Match Source:
Grant Effective Date: 11/03/2023
Starting Fiscal Year of Grant: FY2023
Grant Reversion Date: 04/30/2024

Grant Scope of Work:
The funding is to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Engineering and Surveying
Project Manager: Hector Terrazas
Email: hterrazas@lascruces.gov
Phone: (575) 528-3142
MUNIS Dept. Number: 550

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

4100-40455004-599200-23323
4100-40455004-802000-23323

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #:
Project Code # 23323
Set-Up Date: 11/20/2023
Date to Accounting: 11/17/2023

Accounting Department Info: Josie Trevino

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/15/2023
Application Submission Date:
Requested Amount:
Award Notification Date:
Funding Agency: NMDFA New Mexico Department of Finanace and Administration

Grant Team Representative: Cynthia Alamillo
Council Budget Adjustment Date: 12/18/2023
Amount of Award: $ 796,714.20
Grant Agreement #: 23-H4095

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Arts and Cultural District Improvements
Type of Funding: State Capital
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Legislative Appropriation
Match Amount: $ 0.00
Match Percent/Ratio: N/A

Grant Reversion Date: 04/30/2024

Grant Scope of Work:

This appropriation reauthorizes 19-D2993 for an extension of time to acquire rights of way and to plan, design, construct, improve, purchase and install signage, street lighting and infrastructure in the Arts and Cultural District in Las Cruces in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Public Works
Program: Engineering and Surveying
Email: nbilly@lascruces.gov
MUNIS Dept. Number: 550

Line of Business: Public Infrastructure
Project Manager: Natashia Billy
Phone: 575 528 3168

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Reauthorization of 19-D2993 : Project number 11910
4100-40247002-599200-23095
4100-40247002-804000-23095

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23095
Set-Up Date: 11/21/2023
Date to Accounting:

Josie Trevino

Accounting Department Info:

REORGED 11910 TO 23095

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/08/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount:
Amount of Award: $ 1,025,000.00
Award Notification Date:
Grant Agreement #: 23-H2979
Funding Agency: State of New Mexico Department of Finance and Administration

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Las Cruces Improvement - El Caldito Soup Kitchen
Type of Funding: State Capital
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024
Grant Reversion Date: 04/30/2024

Grant Scope of Work:

Demolition of existing warehouse to construct new HQ for El Caldito Soup Kitchen and Community Kitchen, including, but not limited to, the creation of 17,000 sq ft space to house kitchen and commercial space for food production for training facility.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Architectural Management
Project Manager: Sreedevi Bhathala Mohanrai
Email: sbhathalam@lascruces.gov
Phone: 575 541 2538
MUNIS Dept. Number: 550

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

4100-40255005-599200-23979
4100-40255005-801000-23979

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code
Set-Up Date: 11/20/2023
23979 **Date**
to Accounting:
Accounting Department Info: Josie Trevino

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/08/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount: 1,150,000.00
Amount of Award: $ 1,150,000.00
Award Notification Date:
Grant Agreement #:
Funding Agency: State of New Mexico Department of Finance and Administration

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: MVCOH Facility Renovations
Type of Funding: State Capital
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: 0
Match Source:
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2023
Grant Reversion Date: 04/30/2024

Grant Scope of Work:
The funding is to plan, design, construct, renovate, purchase, equip, furnish and install improvements to a section of the building for the Mesilla Valley Community of Hope offices in Las Cruces in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Public Works
Line of Business: Public Infrastructure
Program: Architectural Management
Project Manager: Sreedevi Bhathalan Mohanraj
Email: sbhathalam@lascruces.gov
Phone: (575) 541-2538
MUNIS Dept. Number: 550

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

4100-40255005-599200-23986
4100-40255005-801000-23986

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #:
Project Code # 23986
Set-Up Date: 11/20/2023
Date to Accounting:

Josie Trevino
Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/15/2023
Grant Team Representative: Cynthia Alamillo
Application Submission Date:
Council Budget Adjustment Date: 12/18/2023
Requested Amount: 250,000.00
Amount of Award: $ 560,000.00
Award Notification Date:
Grant Agreement #: 23-H3322
Funding Agency: New Mexico Department of Transportation (NMDOT)

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: Las Cruces International Airport Improvement
Type of Funding: State Capital
Type of Grant: Legislative Appropriation
Grantor Type: State
Match Amount: $ 0.00
Match Description: No Match Required-Provided
Match Percent/Ratio: N/A
Match Source: N/A
Grant Effective Date: 07/01/2023
Grant Reversion Date: 04/30/2024
Starting Fiscal Year of Grant: FY2024
Grant Scope of Work:

To plan, design, construct, and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes, at the Las Cruces International Airport in Las Cruces in Dona Ana County.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Assistant City Managers Office
Line of Business: Office of the Assistant City Manager
Program: LC Airport
Project Manager: Michael Villa
Email: mivilla@lascruces.gov
Phone: 575-541-2473
MUNIS Dept. Number: 400

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

5010-50140022-599200-23322
5010-50140022-804000-23322

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23322
Set-Up Date: 11/17/2023
Date to Accounting:

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 11/13/2023
Application Submission Date:
Requested Amount: $662,046.42
Award Notification Date: 07/01/2023
Funding Agency: State of NM Department of Environment

Grant Team Representative: Crystal Silva
Council Budget Adjustment Date: 12/18/2023
Amount of Award: $ 662,046.42
Grant Agreement #: SAP 23-H4099-GFR

CFDA #:
Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: 2023 Las Cruces Septic Systems Replacement and Improvements
Type of Funding: State Legislative Outlay
Grantor Type: State
Match Description: No Match Required-Provided
Match Source: N/A
Grant Effective Date: 07/01/2023
Starting Fiscal Year of Grant: FY2024

Type of Grant: Legislative Appropriation
Match Amount: $ 0.00
Match Percent/Ratio: N/A

Grant Reversion Date: 04/30/2024

Grant Scope of Work:

To plan, design and construct phase 2 and 3 septic systems replacements and improvements in Las Cruces in Dona Ana County may include improvements to related infrastructure and utilities.

Does this grant involve Sub-Grantees or Pass Through Grants: ☐ **YES** ☑ **NO**

DEPARTMENT INFORMATION

Department: Utilities
Program: Technical Support
Email: kmontoya@lascruces.gov
MUNIS Dept. Number: 340

Line of Business: Utilities Support and Project M
Project Manager: Kristin Montova
Phone: 575-528-3684

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: *(2100 for General Grants/4100 for Capital Grants*

Reauthorization of 19-D2457 ; Project Number 11836
5450-51034020-599200-23099
5450-51034020-804200-23099

$662,046.00 is budgeted. Difference of $0.42 will need to be taken for budget adjustment to add to the total award amount.

Capital Assets: ☑ **YES** ☐ **NO**

Reimbursable Grant: ◉ **Revenue Collected in Advance:** ○

Grant Application #: N/A
Project Code # 23099
Set-Up Date: 11/27/2023
Date to Accounting:

Josie Trevino

Accounting Department Info:

CITY OF LAS CRUCES

MEMORANDUM

To: Ifo Pili, City Manager
From: Candice Moreno, Grant Development and Compliance Specialist **Initials:** CM
Date: November 15, 2023 **File #:** GAP #24-64
Subject: Request for approval to accept the BJA FY 23 Edward Byrne Memorial Justice Assistance Grant for (JAG) Program from the United States Department of Justice

Please sign below indicating your acceptance of the BJA FY 23 Edward Byrne Memorial Justice Assistance Grant. Our jurisdiction's allocation of $ 70,939.00 for the JAG program includes funds for both the Las Cruces Police Department, $49,608.00; and DASO, $21,331.00. As the City is the lead applicant for this funding on behalf of the jurisdiction, it acts as a fiscal agent for DAC.

The purpose of this grant is to improve or enhance the administration and operations of law enforcement in local adult criminal justice systems in our jurisdiction. The project period is October 1, 2022 - September 30, 2026. The city will use its allocation of $49,608.00 for pole mounted cameras. There is no required non-federal match.

Please return to the Grants Administration Program by Wednesday, November 22, 2023. If there are any questions, please feel free to contact me at 528-2716.

REVIEWED:

_____ _____

Ifo Pili, City Manager Date

Attachments: (BJA FY23 Edward Byrne Memorial Justice Assistance Grant Award Package)

cc: Cynthia Alamillo, Interim Grants Manager **Initials:** CA Nov 15, 2023

cc: Jeremy Story, Police Deputy Chief **Initials:** JS Nov 15, 2023

cc: Linda A. Samples, City Attorney **Initials:**

Department of Justice (DOJ)

Office of Justice Programs

Bureau of Justice Assistance

Washington, D.C. 20531

Name and Address of Recipient:	CITY OF LAS CRUCES 700 N MAIN ST
City, State and Zip:	LAS CRUCES, NM 88001
Recipient UEI:	J3ZLWA2K1X47
Project Title: FY23 City of Las Cruces Edward J Byrne JAG Grant	**Award Number:** 15PBJA-23-GG-03648-JAGX
Solicitation Title: BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation	
Federal Award Amount: $70,939.00	**Federal Award Date:** 9/25/23
Awarding Agency:	Office of Justice Programs Bureau of Justice Assistance
Funding Instrument Type:	Grant
Opportunity Category: D **Assistance Listing:** 16.738 - Edward Byrne Memorial Justice Assistance Grant Program	
Project Period Start Date: 10/1/22	**Project Period End Date:** 9/30/26
Budget Period Start Date: 10/1/22	**Budget Period End Date**: 9/30/26

Project Description:
The disparate jurisdictions of the City of Las Cruces/Las Cruces Police Department and Dona Ana County/Dona Ana County Sheriff's Office will use JAG funds for technology improvements and equipment. Specifically, the city of Las Cruces will use JAG funds to purchase pole-mounted cameras to assist in crime prevention and deterrence efforts, continuing to expand community partnership, and Dona Ana County Sheriff's Office will use JAG funds to purchase a modernized evidence system, to improve efficiency and control.

Award Letter

September 25, 2023

Dear Ifo Pili,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Justice Programs (OJP) has approved the application submitted by CITY OF LAS CRUCES for an award under the funding opportunity entitled 2023 BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation. The approved award amount is $70,939.
Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by OJP, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven't already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

Maureen Henneberg
Deputy Assistant Attorney General

Office for Civil Rights Notice for All Recipients

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance to give assurances that they will comply with those laws. Taken together, these civil rights laws prohibit recipients of federal financial assistance from DOJ from discriminating in services and employment because of race, color, national origin, religion, disability, sex, and, for grants authorized under the Violence Against Women Act, sexual orientation and gender identity. Recipients are also prohibited from discriminating in services because of age. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with DOJ awards, see https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm.

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria.

These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a nondiscriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOPs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEOP requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5).

The OCR is available to help you and your organization meet the civil rights requirements that are associated with DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to contact the OCR at askOCR@ojp.usdoj.gov.

Memorandum Regarding NEPA

NEPA Letter Type

OJP - Ongoing NEPA Compliance Incorporated into Further Developmental Stages

NEPA Letter

The Edward Byrne Memorial Justice Assistance Grant Program (JAG) allows states and local governments to support a broad range of activities to prevent and control crime and to improve the criminal justice system, some of which could have environmental impacts. All recipients of JAG funding must assist BJA in complying with NEPA and other related federal environmental impact analyses requirements in the use of grant funds, whether the funds are used directly by the grantee or by a subgrantee or third party.? Accordingly,?prior to obligating?funds for any of the specified activities, the grantee must first determine if any of the specified activities will be?funded by the grant.

The specified activities requiring environmental analysis are:

a. New construction;

b. Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

c.? A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

d.? Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

Complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. Further, for programs relating to methamphetamine laboratory operations, the preparation of a detailed Mitigation Plan will be required. For more information about Mitigation Plan requirements, please see https://www.bja.gov/Funding/nepa.html.

NEPA Coordinator

First Name	Middle Name	Last Name
Orbin		Terry

Award Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Recipient Information

Recipient Name
CITY OF LAS CRUCES

UEI
J3ZLWA2K1X47

Street 1
700 N MAIN ST

Street 2

City
LAS CRUCES

State/U.S. Territory
New Mexico

Zip/Postal Code
88001

Country
United States

County/Parish

Province

Award Details

Federal Award Date
9/25/23

Award Type
Initial

Award Number
15PBJA-23-GG-03648-JAGX

Supplement Number
00

Federal Award Amount
$70,939.00

Funding Instrument Type
Grant

Assistance Listing Number	Assistance Listings Program Title
16.738	Edward Byrne Memorial Justice Assistance Grant Program

Statutory Authority

Title I of Public Law 90-351 (generally codified at 34 U.S.C. 10101-10726), including subpart 1 of part E (codified at 34 U.S.C. 10151-10158); see also 28 U.S.C. 530C(a)

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Project Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Solicitation Title

2023 BJA FY 23 Edward Byrne Memorial Justice Assistance Grant (JAG) Program - Local Solicitation

Awarding Agency
OJP

Program Office
BJA

Application Number
GRANT13949417

Grant Manager Name
Elaine Smokes
Phone Number
202-616-3625
E-mail Address
Elaine.Smokes@usdoj.gov

Project Title
FY23 City of Las Cruces Edward J Byrne JAG Grant

Performance Period Start Date
10/01/2022

Performance Period End Date
09/30/2026

Budget Period Start Date
10/01/2022

Budget Period End Date
09/30/2026

Project Description
The disparate jurisdictions of the City of Las Cruces/Las Cruces Police Department and Dona Ana County/Dona Ana County Sheriff's Office will use JAG funds for technology improvements and equipment. Specifically, the city of Las Cruces will use JAG funds to purchase pole-mounted cameras to assist in crime prevention and deterrence efforts, continuing to expand community partnership, and Dona Ana County Sheriff's Office will use JAG funds to purchase a modernized evidence system, to improve efficiency and control.

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Financial Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Conditions

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

1

Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards

Consistent with Executive Order 14074, “Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety,” OJP has prohibited the use of federal funds under this award for purchases or transfers of specified equipment by law enforcement agencies. In addition, OJP requires the recipient, and any subrecipient (“subgrantee”) at any tier, to put in place specified controls prior to using federal funds under this award to acquire or transfer any property identified on the “controlled equipment” list. The details of the requirement are posted on the OJP web site at https://www.ojp.gov/funding/explore/prohibited-and-controlled-equipment (Award condition: Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards), and are incorporated by reference here.

2

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

3

Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

4

Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2022 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2022 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2022 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at https://ojp.gov/funding/Part200UniformRequirements.htm.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP

that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

5

Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

6

Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

7

Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at https://ojp.gov/financialguide/DOJ/index.htm), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

8

Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general provisions" in the Consolidated Appropriations Act, 2022, are set out at https://www.ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

9

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at https://www.ecfr.gov/cgi-bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

10

Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

11

Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

12

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an equal employment opportunity program.

13

Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

14

Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient (or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (https://www.e-verify.gov/) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

15

OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees.

16

Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at https://ojp.gov/funding/Explore/Interact-Minors.htm (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

17

Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

18

Required training for Grant Award Administrator and Financial Manager

The Grant Award Administrator and all Financial Managers for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

In the event that either the Grant Award Administrator or a Financial Manager for this award changes during the period of performance, the new Grant Award Administrator or Financial Manager must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after the date the Entity Administrator enters updated Grant Award Administrator or Financial Manager information in JustGrants. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at https://onlinegfmt.training.ojp.gov/. All trainings that satisfy this condition

include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

19

Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

20

Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and

cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

21

Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

22

Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

23

Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

24

All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at https://ojp.gov/funding/Explore/SubawardAuthorization.htm (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

25

Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain

specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, $250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed $250,000)), and are incorporated by reference here.

26

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

27

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

28

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at https://oig.justice.gov/hotline/contact-grants.htm (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General, Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at https://oig.justice.gov/hotline.

29

Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at https://www.sam.gov/. This includes applicable requirements regarding registration with SAM, as well as

maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at https://ojp.gov/funding/Explore/SAM.htm (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

30

Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

31

Justice Information Sharing

Information sharing projects funded under this award must comply with DOJ's Global Justice Information Sharing Initiative (Global) guidelines. The recipient (and any subrecipient at any tier) must conform to the Global Standards Package (GSP) and all constituent elements, where applicable, as described at: https:/ / it.ojp.gov/ gsp_grantcondition. The recipient (and any subrecipient at any tier) must document planned approaches to information sharing and describe compliance with the GSP and appropriate privacy policy that protects shared information, or provide detailed justification for why an alternative approach is recommended.

32

Avoidance of duplication of networks

To avoid duplicating existing networks or IT systems in any initiatives funded by BJA for law enforcement information sharing systems which involve interstate connectivity between jurisdictions, such systems shall employ, to the extent possible, existing networks as the communication backbone to achieve interstate connectivity, unless the recipient can demonstrate to the satisfaction of BJA that this requirement would not be cost effective or would impair the functionality of an existing or proposed IT system.

33

Law enforcement task forces - required training

Within 120 days of award acceptance, each current member of a law enforcement task force funded with award funds who is a task force commander, agency executive, task force officer, or other task force member of equivalent rank,

must complete required online (internet-based) task force training. Additionally, all future task force members must complete this training once during the period of performance for this award, or once every four years if multiple OJP awards include this requirement.

The required training is available free of charge online through the BJA-funded Center for Task Force Integrity and Leadership (www.ctfli.org). The training addresses task force effectiveness, as well as other key issues including privacy and civil liberties/rights, task force performance measurement, personnel selection, and task force oversight and accountability. If award funds are used to support a task force, the recipient must compile and maintain a task force personnel roster, along with course completion certificates.

Additional information regarding the training is available through BJA's web site and the Center for Task Force Integrity and Leadership (www.ctfli.org).

34

Required monitoring of subawards

The recipient must monitor subawards under this award in accordance with all applicable statutes, regulations, award conditions, and the DOJ Grants Financial Guide, and must include the applicable conditions of this award in any subaward. Among other things, the recipient is responsible for oversight of subrecipient spending and monitoring of specific outcomes and benefits attributable to use of award funds by subrecipients. The recipient agrees to submit, upon request, documentation of its policies and procedures for monitoring of subawards under this award.

35

Any written, visual, or audio publications funded in whole or in part under this award, with the exception of press releases, shall contain the following statements: "This project was supported by Grant No. <AWARD_NUMBER> awarded by the Bureau of Justice Assistance. The Bureau of Justice Assistance is a component of the Department of Justice's Office of Justice Programs, which also includes the Bureau of Justice Statistics, the National Institute of Justice, the Office of Juvenile Justice and Delinquency Prevention, the Office for Victims of Crime, and the SMART Office. Points of view or opinions in this document are those of the author and do not necessarily represent the official position or policies of the U.S. Department of Justice." The current edition of the DOJ Grants Financial Guide provides guidance on allowable printing and publication activities.

36

Any Web site that is funded in whole or in part under this award must include the following statement on the home page, on all major entry pages (i.e., pages (exclusive of documents) whose primary purpose is to navigate the user to interior content), and on any pages from which a visitor may access or use a Web-based service, including any pages that provide results or outputs from the service: "This Web site is funded in whole or in part through a grant from the Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice. Neither the U.S. Department of Justice nor any of its components operate, control, are responsible for, or necessarily endorse, this Web site (including, without limitation, its content, technical infrastructure, and policies, and any services or tools provided)." The full text of the foregoing statement must be clearly visible on the home page. On other pages, the statement may be included through a link, entitled "Notice of Federal Funding and Federal Disclaimer," to the full text of the statement.

37

Verification and updating of recipient contact information

The recipient must verify its Grant Award Administrator, Financial Manager, and Authorized Representative contact information in JustGrants, including telephone number and e-mail address. If any information is incorrect or has changed, the award recipient’s Entity Administrator must make changes to contact information through DIAMD. Instructions on how to update contact information in JustGrants can be found at https://justicegrants.usdoj.gov/training/training-entity-management.

38

Compliance with National Environmental Policy Act and related statutes

Upon request, the recipient (and any subrecipient at any tier) must assist BJA in complying with the National

Environmental Policy Act (NEPA), the National Historic Preservation Act, and other related federal environmental impact analyses requirements in the use of these award funds, either directly by the recipient or by a subrecipient. Accordingly, the recipient agrees to first determine if any of the following activities will be funded by the grant, prior to obligating funds for any of these purposes. If it is determined that any of the following activities will be funded by the award, the recipient agrees to contact BJA.

The recipient understands that this condition applies to new activities as set out below, whether or not they are being specifically funded with these award funds. That is, as long as the activity is being conducted by the recipient, a subrecipient, or any third party, and the activity needs to be undertaken in order to use these award funds, this condition must first be met. The activities covered by this condition are:

a. New construction;

b. Minor renovation or remodeling of a property located in an environmentally or historically sensitive area, including properties located within a 100-year flood plain, a wetland, or habitat for endangered species, or a property listed on or eligible for listing on the National Register of Historic Places;

c. A renovation, lease, or any proposed use of a building or facility that will either (a) result in a change in its basic prior use or (b) significantly change its size;

d. Implementation of a new program involving the use of chemicals other than chemicals that are (a) purchased as an incidental component of a funded activity and (b) traditionally used, for example, in office, household, recreational, or education environments; and

e. Implementation of a program relating to clandestine methamphetamine laboratory operations, including the identification, seizure, or closure of clandestine methamphetamine laboratories.

The recipient understands and agrees that complying with NEPA may require the preparation of an Environmental Assessment and/or an Environmental Impact Statement, as directed by BJA. The recipient further understands and agrees to the requirements for implementation of a Mitigation Plan, as detailed at https://bja.gov/Funding/nepa.html, for programs relating to methamphetamine laboratory operations.

Application of This Condition to Recipient's Existing Programs or Activities: For any of the recipient's or its subrecipients' existing programs or activities that will be funded by these award funds, the recipient, upon specific request from BJA, agrees to cooperate with BJA in any preparation by BJA of a national or program environmental assessment of that funded program or activity.

39

Recipients utilizing award funds for forensic genealogy testing must adhere to the United States Department of Justice Interim Policy Forensic Genealogical DNA Analysis and Searching (https://www.justice.gov/olp/page/file/1204386/download), and must collect and report the metrics identified in Section IX of that document to BJA.

40

Establishment of trust fund

If award funds are being drawn down in advance, the recipient (or a subrecipient, with respect to a subaward) is required to establish a trust fund account. Recipients (and subrecipients) must maintain advance payments of federal awards in interest-bearing accounts, unless regulatory exclusions apply (2 C.F.R. 200.305(b)(8)). The trust fund, including any interest, may not be used to pay debts or expenses incurred by other activities beyond the scope of the Edward Byrne Memorial Justice Assistance Grant Program (JAG). The recipient also agrees to obligate the award funds in the trust fund (including any interest earned) during the period of performance for the award and expend within 90 days thereafter. Any unobligated or unexpended funds, including interest earned, must be returned to OJP at the time of closeout.

41

All State and Local JAG recipients must submit quarterly Federal Financial Reports (SF-425). Additionally, State JAG and Local JAG Category Two ($25K or more) must submit semi-annual performance reports through JustGrants and

Local JAG Category One (Less than $25K) must submit annual performance reports through JustGrants. Consistent with the Department's responsibilities under the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, the recipient must provide data that measure the results of its work. The recipient must submit quarterly performance metrics reports through BJA's Performance Measurement Tool (PMT) website: https://bjapmt.ojp.gov/. For more detailed information on reporting and other JAG requirements, refer to the JAG reporting requirements webpage (https://bjapmt.ojp.gov/help/jagdocs.html). Failure to submit required JAG reports by established deadlines may result in the freezing of grant funds and future High Risk designation.

42

Required data on law enforcement agency training

Any law enforcement agency receiving direct or sub-awarded funding from this JAG award must submit quarterly accountability metrics data related to training that officers have received on the use of force, racial and ethnic bias, de-escalation of conflict, and constructive engagement with the public.

43

Authorization to obligate (federal) award funds to reimburse certain project costs incurred on or after October 1, 2022

The recipient may obligate (federal) award funds only after the recipient makes a valid acceptance of the award. As of the first day of the period of performance for the award (October 1, 2022), however, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum-- (1) the recipient makes a valid acceptance of the award, and (2) all applicable withholding conditions are removed by OJP (via an Award Condition Modification (ACM)). (A withholding condition is a condition in the award document that precludes the recipient from obligating, expending, or drawing down all or a portion of the award funds until the condition is removed.)

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through an Award Condition Modification (ACM), the recipient is authorized to obligate (federal) award funds to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

44

If award funds are used for DNA testing of evidentiary materials, any resulting eligible DNA profiles must be uploaded to the Combined DNA Index System ("CODIS," the DNA database operated by the FBI) by a government DNA laboratory with access to CODIS. With the exception of Forensic Genetic Genealogy, no profiles generated under this award may be entered or uploaded into any non-governmental DNA database without prior express written approval from BJA. Award funds may not be used for the purchase of DNA equipment and supplies unless the resulting DNA profiles may be accepted for entry into CODIS. Booking agencies should work with their state CODIS agency to ensure all requirements are met for participation in Rapid DNA (see National Rapid DNA Booking Operational Procedures Manual).

45

Submission of eligible records relevant to the National Instant Background Check System

Consonant with federal statutes that pertain to firearms and background checks -- including 18 U.S.C. 922 and 34 U.S.C. ch. 409 -- if the recipient (or any subrecipient at any tier) uses this award to fund (in whole or in part) a specific project or program (such as a law enforcement, prosecution, or court program) that results in any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the National Instant Background Check System (NICS), or that has as one of its purposes the establishment or improvement of records systems that contain any court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS, the recipient (or subrecipient, if applicable) must ensure that all such court dispositions, information, or other records that are "eligible records" (under federal or State law) relevant to the NICS are promptly made available to the NICS or to the "State" repository/database that is electronically available to (and accessed by) the NICS, and -- when appropriate -- promptly must update, correct, modify, or remove such NICS-relevant "eligible records".

In the event of minor and transitory non-compliance, the recipient may submit evidence to demonstrate diligent monitoring of compliance with this condition (including subrecipient compliance). DOJ will give great weight to any such evidence in any express written determination regarding this condition.

46

Prohibition on use of award funds for match under BVP program

JAG funds may not be used as the 50% match for purposes of the DOJ Bulletproof Vest Partnership (BVP) program.

47

Certification of body armor "mandatory wear" policies, and compliance with NIJ standards

If recipient uses funds under this award to purchase body armor, the recipient must submit a signed certification that each law enforcement agency receiving body armor purchased with funds from this award has a written "mandatory wear" policy in effect. The recipient must keep signed certifications on file for any subrecipients planning to utilize funds from this award for ballistic-resistant and stab-resistant body armor purchases. This policy must be in place for at least all uniformed officers before any funds from this award may be used by an agency for body armor. There are no requirements regarding the nature of the policy other than it be a mandatory wear policy for all uniformed officers while on duty.

Ballistic-resistant and stab-resistant body armor purchased with award funds may be purchased at any threat level, make or model, from any distributor or manufacturer, as long as the body armor has been tested and found to comply with applicable National Institute of Justice ballistic or stab standards, and is listed on the NIJ Compliant Body Armor Model List. In addition, ballistic-resistant and stab-resistant body armor purchased must be made in the United States and must be uniquely fitted, as set forth in 34 U.S.C. 10202(c)(1)(A). The latest NIJ standard information and the NIJ Compliant Body Armor List may be found by following the links located on the NIJ Body Armor page: https://nij.ojp.gov/topics/equipment-and-technology/body-armor

48

Extreme risk protection programs funded by JAG must include, at a minimum: pre-deprivation and post-deprivation due process rights that prevent any violation or infringement of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive or procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). Such programs must include, at the appropriate phase to prevent any violation of constitutional rights, at minimum, notice, the right to an in-person hearing, an unbiased adjudicator, the right to know opposing evidence, the right to present evidence, and the right to confront adverse witnesses; the right to be represented by counsel at no expense to the government; pre-deprivation and post-deprivation heightened evidentiary standards and proof which mean not less than the protections afforded to a similarly situated litigant in Federal court or promulgated by the State's evidentiary body, and sufficient to ensure the full protections of the Constitution of the United States, including but not limited to the Bill of Rights, and the substantive and procedural due process rights guaranteed under the Fifth and Fourteenth Amendments to the Constitution of the United States, as applied to the States, and as interpreted by State courts and United States courts (including the Supreme Court of the United States). The heightened evidentiary standards and proof under such programs must, at all appropriate phases to prevent any violation of any constitutional right, at minimum, prevent reliance upon evidence that is unsworn or unaffirmed, irrelevant, based on inadmissible hearsay, unreliable, vague, speculative, and lacking a foundation; and penalties for abuse of the program.

49

Expenditures prohibited without waiver

No funds under this award may be expended on the purchase of items prohibited by the JAG program statute, unless, as set forth at 34 U.S.C. 10152, the BJA Director certifies that extraordinary and exigent circumstances exist, making such expenditures essential to the maintenance of public safety and good order.

50

FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of $30,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at https://ojp.gov/funding/Explore/FFATA.htm (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than $30,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

51

Exceptions regarding Prohibited and Controlled Equipment under OJP awards

Notwithstanding any provision to the contrary in the other terms and conditions of this award, including in the condition regarding "Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards," the requirements for the “Transfer/Sale of Award-Funded Controlled Equipment to Other LEAs” and the requirements for the “Transfer/Sale of Award-Funded Controlled Equipment to NON-LEAs” do not apply to this award.

52

The recipient agrees that no funds under this grant award (including via subcontract or subaward, at any tier) may be used for unmanned aircraft systems (UAS), which includes unmanned aircraft vehicles (UAV), or for any accompanying accessories to support UAS.

53

Initial period of performance; requests for extension.

The recipient understands that for award amounts of less than $25,000 under JAG (Category 1), the initial period of performance of the award is two years. The recipient further understands that any requests for an extension of the period of performance for an award of less than $25,000 will be approved automatically for up to a total of two additional years, pursuant to 34 U.S.C. 10152(f) and in accordance with the program solicitation associated with this award.

Any request for an extension of the period of performance beyond a four-year award period will require approval, and the approval (if any) will be at the discretion of the Director of BJA.

54

Applicants must ensure that Limited English Proficiency persons have meaningful access to the services under this program(s). National origin discrimination includes discrimination on the basis of limited English proficiency (LEP). To ensure compliance with Title VI and the Safe Streets Act, recipients are required to take reasonable steps to ensure that LEP persons have meaningful access to their programs. Meaningful access may entail providing language assistance services, including oral and written translation when necessary. The U.S. Department of Justice has issued guidance for grantees to help them comply with Title VI requirements. The guidance document can be accessed on the Internet at www.lep.gov.

55

Cooperating with OJP Monitoring

The recipient agrees to cooperate with OJP monitoring of this award pursuant to OJP's guidelines, protocols, and procedures, and to cooperate with OJP (including the grant manager for this award and the Office of Chief Financial Officer (OCFO)) requests related to such monitoring, including requests related to desk reviews and/or site visits. The recipient agrees to provide to OJP all documentation necessary for OJP to complete its monitoring tasks, including documentation related to any subawards made under this award. Further, the recipient agrees to abide by reasonable deadlines set by OJP for providing the requested documents. Failure to cooperate with OJP's monitoring activities may

result in actions that affect the recipient's DOJ awards, including, but not limited to: withholdings and/or other restrictions on the recipient's access to award funds; referral to the DOJ OIG for audit review; designation of the recipient as a DOJ High Risk grantee; or termination of an award(s).

56

Use of program income

Program income (as defined in the Part 200 Uniform Requirements) must be used in accordance with the provisions of the Part 200 Uniform Requirements. Program income earnings and expenditures both must be reported on the quarterly Federal Financial Report, SF 425.

57

Compliance with 28 C.F.R. Part 23

With respect to any information technology system funded or supported by funds under this award, the recipient (and any subrecipient at any tier) must comply with 28 C.F.R. Part 23, Criminal Intelligence Systems Operating Policies, if OJP determines this regulation to be applicable. Should OJP determine 28 C.F.R. Part 23 to be applicable, OJP may, at its discretion, perform audits of the system, as per the regulation. Should any violation of 28 C.F.R. Part 23 occur, the recipient may be fined as per 34 U.S.C. 10231(c)-(d). The recipient may not satisfy such a fine with federal funds.

58

Protection of human research subjects

The recipient (and any subrecipient at any tier) must comply with the requirements of 28 C.F.R. Part 46 and all OJP policies and procedures regarding the protection of human research subjects, including obtainment of Institutional Review Board approval, if appropriate, and subject informed consent.

59

Confidentiality of data

The recipient (and any subrecipient at any tier) must comply with all confidentiality requirements of 34 U.S.C. 10231 and 28 C.F.R. Part 22 that are applicable to collection, use, and revelation of data or information. The recipient further agrees, as a condition of award approval, to submit a Privacy Certificate that is in accord with requirements of 28 C.F.R. Part 22 and, in particular, 28 C.F.R. 22.23.

60

The recipient agrees to cooperate with any assessments, national evaluation efforts, or information or data collection requests, including, but not limited to, the provision of any information required for the assessment or evaluation of any activities within this project.

61

The recipient understands that, in accepting this award, the Authorized Representative declares and certifies, among other things, that he or she possesses the requisite legal authority to accept the award on behalf of the recipient entity and, in so doing, accepts (or adopts) all material requirements that relate to conduct throughout the period of performance under this award. The recipient further understands, and agrees, that it will not assign anyone to the role of Authorized Representative during the period of performance under the award without first ensuring that the individual has the requisite legal authority.

62

In accepting this award, the recipient agrees that grant funds cannot be used for Facial Recognition Technology (FRT) unless the recipient has policies and procedures in place to ensure that the FRT will be utilized in an appropriate and responsible manner that promotes public safety, and protects privacy, civil rights, and civil liberties and complies with all applicable provisions of the U.S. Constitution, including the Fourth Amendment’s protection against unreasonable searches and seizures and the First Amendment’s freedom of association and speech, as well as other laws and regulations. Recipients utilizing funds for FRT must make such policies and procedures available to DOJ upon request.

63

Withholding of funds: Subrecipient monitoring policies

The recipient's response to the Subrecipient Management and Monitoring question(s) of the Financial Management and System of Internal Controls Questionnaire indicates that the recipient may not have controls in place to monitor the activities of any subrecipient, as necessary, to ensure that the subaward is used for authorized purposes in compliance with Federal laws, regulations, and the terms and conditions of the subaward and that subaward performance goals are achieved. (See 2 CFR 200.331(d)). The recipient agrees to submit a copy of its subrecipient monitoring policies and procedures to the OJP program office. If the recipient anticipates that it will not make a subaward under this award then, instead of submitting subrecipient monitoring policies and procedures, the recipient agrees that it must advise OJP in writing that it does not intend to make a subaward under this award. The recipient may not expend, or draw down funds under this award until either-- (1) the OJP program office has received, and OJP has reviewed and approved, the subrecipient monitoring policies and procedures, or (2) the OJP program office has received and considered the recipient's written communication and has agreed (for purposes of federal grants administrative requirements) that no subawards are anticipated under this award, and an Award Condition Modification (ACM) has been issued to remove this condition. The recipient understands and agrees that it is obligated to immediately notify the OJP grant manager in writing of any later change in its plan to make or not make a subaward under this award.

64

Withholding of funds for Memorandum of Understanding

The recipient may not expend or draw down any award funds until OJP has reviewed and approved the Memorandum of Understanding (MOU), and an Award Condition Modification has been issued to remove this condition.

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Acceptance

Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I--

A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.

B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.

C. Accept this award on behalf of the applicant.

D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant to civil penalties and administrative remedies under the federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

Agency Approval

Title of Approving Official	Name of Approving Official	Signed Date And Time
Deputy Assistant Attorney General	Maureen Henneberg	9/20/23 8:58 PM

Authorized Representative

Entity Acceptance

Title of Authorized Entity Official
City Manager

Signed Date And Time

Signature: Cynthia Alamillo

Email: calamillo@las-cruces.org

Signature: Jeremy Story

Email: jstory@las-cruces.org

Signature:

Email: lsamples@las-cruces.org

STATE OF NEW MEXICO

(ECONOMIC DEVELOPMENT DEPARTMENT)
MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (agreement) is made and entered into by and between the State of New Mexico, **ECONOMIC DEVELOMENT DEPARTMENT (EDD)** now referred to as the AGENCY, and the **CITY OF LAS CRUCES.**

RECITALS

WHEREAS, the city of Las Cruces is an incorporated municipality in the State of New Mexico; and

WHEREAS, EDD is an agency of the State of New Mexico pursuant to NMSA 1978, § 9-15-1 et. seq., which received an appropriation of one hundred fifty thousand dollars ($150,000.00) from Senate Bill 192 (2023) for projects pursuant to the Local Economic Development Act to support small businesses in Las Cruces.

WHEREAS, EDD is transferring to the city of Las Cruces, and the city of Las Cruces is accepting these funds designated for this purpose.

NOW THEREFORE, it is agreed between the parties:

1. AGENCY RESPONSIBILITIES

Responsibility of EDD:

EDD shall provide one hundred fifty thousand dollars ($150,000.00) under SB192 to the city of Las Cruces for projects pursuant to the Local Economic Development Act to support small businesses in Las Cruces:

Responsibilities of City of Las Cruces:

1. Accept the one hundred fifty thousand dollars ($150,000.00) of funding.
2. Implement the projects described above.

2. Term.

This Agreement shall become effective on the date it is fully executed. This Agreement shall terminate on **June 30, 2024,** unless terminated pursuant to paragraph 3 (Termination), or paragraph 4 (Appropriations).

3. Termination.

Each party shall have the right to terminate this MOU upon written notice, in the event of the other party's (the "Breaching Party") material failure to perform that party's undertakings, if not cured within sixty (60) days after notice specifying such breach. By such termination, no party may nullify obligations already incurred for performance or failure to perform prior to the date of termination. No party shall be relieved of liability to the other party for damages sustained because of a party's failure to perform their undertakings set forth in this agreement.

4. Appropriations.

The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, this Agreement shall terminate immediately upon written notice being given by EDD to the City of Las Cruces.

5. Assignment.

Neither party shall assign or transfer any interest in this Agreement or assign any claims for money due or to become due under this Agreement without the prior written approval of the other party.

6. Amendment.

This Agreement shall not be altered, changed or amended except by instrument in writing executed by the parties hereto and all other required signatories.

7. Merger.

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

8. Records, Financial Audit and Return of Surplus Funds.

The city of Las Cruces shall maintain detailed time and expenditure records that indicate the date; cost category, and cost of services rendered during the Agreement's term and effect and retain them for a period of three (3) years from the date of final payment under this Agreement. The records shall be subject to inspection by EDD, the Department of Finance and Administration and the State Auditor. EDD shall have the right to audit billings both before and after payment. Payment under this Agreement shall not foreclose the right of EDD to recover excessive or illegal payments.

A. If, upon the expiration date of this Agreement, any surplus funds are possessed by the city of Las Cruces, it shall return said funds to EDD in accordance with law.

9. New Mexico Tort Claims Act.

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, NMSA 1978,; 41-4-1, et seq., as amended.

10. Invalid Term or Condition.

If any term or condition of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be valid and enforceable.

11. Enforcement of Agreement.

A party's failure to require strict performance of any provision of this Agreement shall not waive or diminish that party's right thereafter to demand strict compliance with that or any other provision. No waiver by a party of any of its rights under this Agreement shall be effective unless express and in writing, and no effective waiver by a party of any of its rights shall be effective to waive any other rights.

12. Notices.

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. mail, either first class or certified, return receipt requested, postage prepaid, as follows:

To EDD:

Economic Development Department
Jon Clark, Deputy Cabinet Secretary
1100 S. St. Francis Dr.
Santa Fe, NM 87505
505-946-7526

To the city of Las Cruces:

City of Las Cruces
Ifo Pili, City Manager
PO Box 20000
Las Cruces, NM 88001
575-541-2000

The parties shall submit to each other in writing and changes to contact information, within five calendar days of the change. The writing may be delivered by one of the following methods: First class United States mail, postage prepaid, email (with proof of delivery maintained by the sending party), facsimile transmission (with proof of delivery maintained by the sending party) or hand-delivered, with a delivery receipt maintained by the sending party.

12: Governing Law.

This Agreement is governed by and is to be construed in accordance with the laws of the State of New Mexico.

13. Authority.

If the city of Las Cruces is other than a natural person, the individual(s) signing this Agreement on behalf of the city of Las Cruces represents and warrants that he or she has the power and authority to bind the contractor, and that no further action, resolution, or approval from the city of Las Cruces is necessary to enter into a binding contract.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date of signature by the DFA Contracts Review Bureau below.

By: _____ Date: 11/3/23
City of Las Cruces

By: _____ Date: 10-25-23
City of Las Cruces Legal Counsel-Certifying Legal Staff

By: _____ Date: 11/15/2023
EDD's Chief Financial Officer

By: _____ Date: 11/15/2023
EDD's Cabinet Secretary

By: _____ Date: 11/15/2023
EDD's Legal Counsel-Certifying Legal Staff

REIMBURSING AGENCY: Department of Finance and Administration
Business Unit: 341

APPROPRIATION RECIPIENT: CITY OF LAS CRUCES
APPROPRIATION NUMBER: 23-ZH9196
APPROPRIATION AMOUNT: $225,000.00
REVERSION DATE: June 30, 2024

APPROPRIATION LANGUAGE
TWO HUNDRED TWENTY-FIVE THOUSAND ($225,000.00) to Las Cruces for the expansion of mental health services and building equipment expenses for the supportive transitional housing for vulnerable, high risk and high need population. Funds unexpended by June 30, 2024, will be reverted to the State of New Mexico's general fund.

APPROPRIATION REIMBURSEMENT
The appropriation funds will be disbursed through a reimbursement process. The Appropriation Recipient will submit to the Reimbursing Agency the Exhibit A: Request for Payment form along with supporting document(s) that evidence the expenses to be reimbursed. The Reimbursing Agency will review these documents to ensure all expenses to be reimbursed reflect the intent and purpose of the appropriation language. All expenditures for which the Appropriation Recipient requests reimbursement must occur prior to the reversion date. The latest date the Appropriation Recipient may submit a Request for Payment is July 15, 2024. With the submission of the final Exhibit A: Request for Payment, the Appropriation Recipient must include a completed Exhibit B: Final Report form in order to receive the final reimbursement.

CERTIFICATION
I hereby certify that CITY OF LAS CRUCES

1. Will only use the appropriation funds to carry out and/or perform activities described in appropriation language.
2. Will comply with State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the project.
3. Ensures that the appropriation funds only benefit entities in accordance with applicable law, including, but not limited to Article IX, Section 14 of the Constitution of the State of New Mexico, "Anti-Donation Clause."
4. Will follow the procedure described in "Appropriation Reimbursement" for reimbursement of appropriated funds.

If o Pili, City Manager — 11/7/23
Appropriation Recipient Representative — Date

Leeann DeMouche, Finance Director — 11/6/23
Appropriation Recipient CFO — Date

APPROVAL
In in accordance with the authority conferred on the Department of Finance & Administration by the statute appropriating these funds, I hereby approve this certification for appropriation number 23-ZH9196 in the amount of $225,000.00.

DocuSigned by: Wesley Billingsley — 11/13/2023
D801C24BB85B4E9... — Date
Wesley Billingsley
Director, Local Government Division

STATE OF NEW MEXICO
SB192 Junior Appropriation
Request for Payment Form
Exhibit A

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____
B. Address: _____
(Complete Mailing, including Suite, if applicable)
_____
City, State, Zip
C. Contact Name/Phone #: _____
D. Grant No: _____
E. Project Title: _____
F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____
B. Grant Amount: $ 0.00
C. AIPP Amount *(If Applicable)*: $ 0.00
D. Funds Requested to Date: $ 0.00
E. Amount Requested this Payment: $ 0.00
F. Reversion Amount (If *Applicable*): $ 0.00
G. Grant Balance: $ 0.00
H. ☐ GF
I. ☐ Final Request for Payment (*if Applicable*)

III. ☐ **Fiscal Year :** 2024 (July 1, 2023-June 30, 2024)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

DocuSign Envelope ID: F67B0796-A052-4504-B85B-246193AE5229

REIMBURSING AGENCY: Department of Finance and Administration

Business Unit: 341

STATE OF NEW MEXICO
SB192 Junior Appropriation
Final Report Form
Exhibit B

Appropriation Recipient: _____

Appropriation Number: _____

Use of Appropriation Funds	**Amount**
Personnel Expenses	$ 0.00
Other Operating Expenses	$ 0.00
Capital Expenses	$ 0.00
Other	$ 0.00
Total Amount of Appropriation Funds Expended	$ 0.00

Narrative *Describe the outcomes, results, benefit, and or uses of the appropriation funds*

Signature: Jacqueline Rubalcava

Email: jrubalcava@las-cruces.org

Signature: Natalie Green (Nov 3, 2023 10:34 MDT)

Email: ngreen@lascruces.gov

ATTACHMENT "E"

City of Las Cruces

MEMORANDUM

To: Ifo Pili, City Manager

From: Cynthia Alamillo, Interim Grants Manager **Initials: CA**

Date: November 15, 2023 **File #:** 24-65

Subject: Request for Signature – OVC FY23 Byrne Discretionary Community Project Funding Grant Award Acceptance – Project L.I.G.H.T – O-OVC-2023-171581

Please sign below to indicate your acceptance of the FFY23 Byrne Discretionary Community Project Grant funded by the US Department of Justice, Office for Victims of Crime, for the Las Cruces Fire Department, Project L.I.G.H.T..

The CLCFD was awarded $485,000.00 to fund Project L.I.G.H.T. as part of the Consolidated Appropriations Act, 2023 (Public Law 117-328) sponsored by Senators Ben R. Lujan and Martin Heinrich. This funding will expire on April 30, 2025.

Please return to the Grants office by November 22, 2023. If there are any questions, please feel free to contact me at 541-2430.

Attachment: OVC Project L.I.G.H.T. Award Package

_____ _____

Ifo Pili, City Manager Date

cc: Jacqueline Rubalcava, Budget & Grant Administrator **Initials:** Nov 15, 2023

cc: Jason Smith, Fire Chief **Initials:** JLS Nov 15, 2023

cc: Linda A. Samples, City Attorney **Initials:**

Department of Justice (DOJ)

Office of Justice Programs

Office for Victims of Crime

Washington, D.C. 20531

Name and Address of Recipient:	CITY OF LAS CRUCES 700 N MAIN ST
City, State and Zip:	LAS CRUCES, NM 88001
Recipient UEI:	J3ZLWA2K1X47
Project Title: City of Las Cruces Project L.I.G.H.T.	**Award Number:** 15POVC-23-GG-00255-BRND
Solicitation Title: OVC FY 23 Invited to Apply — Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program	
Federal Award Amount: $485,000.00	**Federal Award Date:** 8/10/23
Awarding Agency:	Office of Justice Programs Office for Victims of Crime
Funding Instrument Type:	Grant
Opportunity Category: E **Assistance Listing:** 16.753 - Congressionally Recommended Awards	
Project Period Start Date: 5/1/23	**Project Period End Date:** 4/30/24
Budget Period Start Date: 5/1/23	**Budget Period End Date**: 4/30/24

Project Description:

Project LIGHT is a recent initiative that the City of Las Cruces has begun through L.C.F.D. The need for the mental health crisis response is a national and local issue. Within the City of Las Cruces, there were over 1,000 responses from the Las Cruces Police Department to mental health issues in 2022. Additionally, the Las Cruces Fire Department responded to over 850 calls for welfare checks and suicide during the same timeframe. A new resource is needed to respond to the need of our communities. The community's need led to the concept of renewing mental crisis response through a new approach that builds on the high performance of responders within the 911 system. The program took shape and grew from the Mobile Integrated Health program, L.C.P.D. Crisis Intervention Team, and the Opioid Overdose Outreach (Triple O) program that was funded from a sub-recipient grant from the State of New Mexico as a portion of a SAMHSA Triple O award. Today, the City of Las Cruces is proud to have a response team that is comprised of a Licensed Master Social Worker and Firefighter Paramedic to respond to mental crisis calls.

Award Letter

August 10, 2023

Dear Ifo Pili,

On behalf of Attorney General Merrick B. Garland, it is my pleasure to inform you the Office of Justice Programs (OJP) has approved the application submitted by CITY OF LAS CRUCES for an award under the funding opportunity entitled 2023 OVC FY 23 Invited to Apply — Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program. The approved award amount is $485,000.
Review the Award Instrument below carefully and familiarize yourself with all conditions and requirements before accepting your award. The Award Instrument includes the Award Offer (Award Information, Project Information, Financial Information, and Award Conditions) and Award Acceptance. For COPS Office and OVW funding the Award Offer also includes any Other Award Documents.

Please note that award requirements include not only the conditions and limitations set forth in the Award Offer, but also compliance with assurances and certifications that relate to conduct during the period of performance for the award. These requirements encompass financial, administrative, and programmatic matters, as well as other important matters (e.g., specific restrictions on use of funds). Therefore, all key staff should receive the award conditions, the assurances and certifications, and the application as approved by OJP, so that they understand the award requirements. Information on all pertinent award requirements also must be provided to any subrecipient of the award.

Should you accept the award and then fail to comply with an award requirement, DOJ will pursue appropriate remedies for non-compliance, which may include termination of the award and/or a requirement to repay award funds.

Prior to accepting the award, your Entity Administrator must assign a Financial Manager, Grant Award Administrator, and Authorized Representative(s) in the Justice Grants System (JustGrants). The Entity Administrator will need to ensure the assigned Authorized Representative(s) is current and has the legal authority to accept awards and bind the entity to the award terms and conditions. To accept the award, the Authorized Representative(s) must accept all parts of the Award Offer in the Justice Grants System (JustGrants), including by executing the required declaration and certification, within 45 days from the award date.

To access your funds, you will need to enroll in the Automated Standard Application for Payments (ASAP) system, if you haven’t already completed the enrollment process in ASAP. The Entity Administrator should have already received an email from ASAP to initiate this process.

Congratulations, and we look forward to working with you.

Maureen Henneberg
Deputy Assistant Attorney General

Office for Civil Rights Notice for All Recipients

The Office for Civil Rights (OCR), Office of Justice Programs (OJP), U.S. Department of Justice (DOJ) has been delegated the responsibility for ensuring that recipients of federal financial assistance from the OJP, the Office of Community Oriented Policing Services (COPS), and the Office on Violence Against Women (OVW) are not engaged in discrimination prohibited by law. Several federal civil rights laws, such as Title VI of the Civil Rights Act of 1964 and Section 504 of the Rehabilitation Act of 1973, require recipients of federal financial assistance to give assurances that they will comply with those laws. Taken together, these civil rights laws prohibit recipients of federal financial assistance from DOJ from discriminating in services and employment because of race, color, national origin, religion, disability, sex, and, for grants authorized under the Violence Against Women Act, sexual orientation and gender identity. Recipients are also prohibited from discriminating in services because of age. For a complete review of these civil rights laws and nondiscrimination requirements, in connection with DOJ awards, see https://ojp.gov/funding/Explore/LegalOverview/CivilRightsRequirements.htm.

Under the delegation of authority, the OCR investigates allegations of discrimination against recipients from individuals, entities, or groups. In addition, the OCR conducts limited compliance reviews and audits based on regulatory criteria.

These reviews and audits permit the OCR to evaluate whether recipients of financial assistance from the Department are providing services in a nondiscriminatory manner to their service population or have employment practices that meet equal-opportunity standards.

If you are a recipient of grant awards under the Omnibus Crime Control and Safe Streets Act or the Juvenile Justice and Delinquency Prevention Act and your agency is part of a criminal justice system, there are two additional obligations that may apply in connection with the awards: (1) complying with the regulation relating to Equal Employment Opportunity Programs (EEOPs); and (2) submitting findings of discrimination to OCR. For additional information regarding the EEOP requirement, see 28 CFR Part 42, subpart E, and for additional information regarding requirements when there is an adverse finding, see 28 C.F.R. §§ 42.204(c), .205(c)(5).

The OCR is available to help you and your organization meet the civil rights requirements that are associated with DOJ grant funding. If you would like the OCR to assist you in fulfilling your organization's civil rights or nondiscrimination responsibilities as a recipient of federal financial assistance, please do not hesitate to contact the OCR at askOCR@ojp.usdoj.gov.

Memorandum Regarding NEPA

NEPA Letter Type

OJP - Categorical Exclusion

NEPA Letter

None of the following activities will be conducted whether under the Office of Justice Programs federal action or a related third party action:

(1) New construction

(2) Any renovation or remodeling of a property located in an environmentally or historically sensitive area, including property (a) listed on or eligible for listing on the National Register of Historic Places, or (b) located within a 100-year flood plain, a wetland, or habitat for an endangered species

(3) A renovation that will change the basic prior use of a facility or significantly change its size

(4) Research and technology whose anticipated and future application could be expected to have an effect on the environment

(5) Implementation of a program involving the use of chemicals (including the

identification, seizure, or closure of clandestine methamphetamine laboratories)

Additionally, the proposed action is neither a phase nor a segment of a project that when reviewed in its entirety would not meet the criteria for a categorical exclusion.

Consequently, the subject federal action meets the Office of Justice Programs' criteria for a categorical exclusion as contained in paragraph 4(b) of Appendix D to Part 61 of Title 28 of the Code of Federal Regulations.

Questions about this determination may be directed to your grant manager or Zoe French, Environmental Coordinator for the Office for Victims of Crime.

NEPA Coordinator

First Name	Middle Name	Last Name
Zoe	E	French

Award Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Recipient Information

Recipient Name
CITY OF LAS CRUCES

UEI
J3ZLWA2K1X47

Street 1
700 N MAIN ST

Street 2

City
LAS CRUCES

State/U.S. Territory
New Mexico

Zip/Postal Code
88001

Country
United States

County/Parish

Province

Award Details

Federal Award Date
8/10/23

Award Type
Initial

Award Number
15POVC-23-GG-00255-BRND

Supplement Number
00

Federal Award Amount
$485,000.00

Funding Instrument Type
Grant

Assistance Listing Number	Assistance Listings Program Title
16.753	Congressionally Recommended Awards

Statutory Authority

Consolidated Appropriations Act, 2023, Pub. L. No. 117-328, 136 Stat. 4459, 4529

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Project Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

Solicitation Title

2023 OVC FY 23 Invited to Apply — Byrne Discretionary Community Project Funding/Byrne Discretionary Grants Program

Awarding Agency

OJP

Program Office

OVC

Application Number

GRANT13826871

Grant Manager Name

Stacy Phillips

Phone Number

202-307-9030

E-mail Address

Stacy.Phillips2@usdoj.gov

Project Title

City of Las Cruces Project L.I.G.H.T.

Performance Period Start Date

05/01/2023

Performance Period End Date

04/30/2024

Budget Period Start Date

05/01/2023

Budget Period End Date

04/30/2024

Project Description

Project LIGHT is a recent initiative that the City of Las Cruces has begun through L.C.F.D. The need for the mental health crisis response is a national and local issue. Within the City of Las Cruces, there were over 1,000 responses from the Las Cruces Police Department to mental health issues in 2022. Additionally, the Las Cruces Fire Department responded to over 850 calls for welfare checks and suicide during the same timeframe. A new resource is needed to respond to the need of our communities. The community's need led to the concept of renewing mental crisis response through a new approach that builds on the high performance of responders within the 911 system. The program took shape and grew from the Mobile Integrated Health program, L.C.P.D. Crisis Intervention Team, and the Opioid Overdose Outreach (Triple O) program that was funded from a sub-recipient grant from the State of New Mexico as a portion of a SAMHSA Triple O award. Today, the City of Las Cruces is proud to have a response team that is comprised of a Licensed Master Social Worker and Firefighter Paramedic to respond to mental crisis calls.

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Financial Information

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

A financial analysis of budgeted costs has been completed. Costs under this award appear reasonable, allowable, and consistent with existing guidelines. Exceptions / Adjustments are noted below.

Year 1	Total
Personnel	
$314,444	$314,444
Fringe Benefits	
$134,161	$134,161
Travel	
$10,560	$10,560
Equipment	
$25,000	$25,000
Supplies	
$0	$0
Construction	
$0	$0
SubAwards	
$0	$0
Procurement Contracts	
$0	$0
Other Costs	
$835	$835
Total Direct Costs	
$485,000	$485,000
Indirect Costs	
$0	$0

Total Project Costs

$485,000 $485,000

Spacer

Federal

Non-Federal

Year1

$485,000

$0

Spacer

$485,000

$0

Budget Totals

	Total	Percentage
Total Project Cost	$485,000	
Federal Funds	$485,000	100.00~symbolPlaceholder~
Non-Federal Amount	$0	0.00~symbolPlaceholder~
Match Amount	$0	0.00~symbolPlaceholder~
Program Income	$ 0	

0.00~symbolPlaceholder~

Empty Space

Please note: After completing this budget detail summary, please confirm that the following final values entered in this section are identical to those entered in the corresponding estimated cost section of the Standard Applicant Information. Specifically, the following must be equivalent. If they are not, you will not be able to submit this application until they are updated to be equivalent.

Standard Applicant Information	Equals	Budget Summary
Total Estimated Funding	=	Total Project Costs
Federal Estimated Funding (federal share)	=	Federal Funds
Applicant Estimated Funding (non-federal share)	=	Match Amount
Program Income Estimated Funding	=	Program Income Amount

Budget Category
Personnel
Fringe Benefits
Travel
Equipment
Supplies
Construction
SubAwards
Procurement Contracts
Other Costs
Indirect Costs

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Conditions

This award is offered subject to the conditions or limitations set forth in the Award Information, Project Information, Financial Information, and Award Conditions.

1

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 38

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 38 (as may be applicable from time to time), specifically including any applicable requirements regarding written notice to program beneficiaries and prospective program beneficiaries.

Currently, among other things, 28 C.F.R. Part 38 includes rules that prohibit specific forms of discrimination on the basis of religion, a religious belief, a refusal to hold a religious belief, or refusal to attend or participate in a religious practice. Part 38, currently, also sets out rules and requirements that pertain to recipient and subrecipient ("subgrantee") organizations that engage in or conduct explicitly religious activities, as well as rules and requirements that pertain to recipients and subrecipients that are faith-based or religious organizations.

The text of 28 C.F.R. Part 38 is available via the Electronic Code of Federal Regulations (currently accessible at https://www.ecfr.gov/cgi-bin/ECFR?page=browse), by browsing to Title 28-Judicial Administration, Chapter 1, Part 38, under e-CFR "current" data.

2

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 42

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 42, specifically including any applicable requirements in Subpart E of 28 C.F.R. Part 42 that relate to an

equal employment opportunity program.

3

Applicability of Part 200 Uniform Requirements

The Uniform Administrative Requirements, Cost Principles, and Audit Requirements in 2 C.F.R. Part 200, as adopted and supplemented by DOJ in 2 C.F.R. Part 2800 (together, the "Part 200 Uniform Requirements") apply to this FY 2022 award from OJP.

The Part 200 Uniform Requirements were first adopted by DOJ on December 26, 2014. If this FY 2022 award supplements funds previously awarded by OJP under the same award number (e.g., funds awarded during or before December 2014), the Part 200 Uniform Requirements apply with respect to all funds under that award number (regardless of the award date, and regardless of whether derived from the initial award or a supplemental award) that are obligated on or after the acceptance date of this FY 2022 award.

For more information and resources on the Part 200 Uniform Requirements as they relate to OJP awards and subawards ("subgrants"), see the OJP website at https://ojp.gov/funding/Part200UniformRequirements.htm.

Record retention and access: Records pertinent to the award that the recipient (and any subrecipient ("subgrantee") at any tier) must retain -- typically for a period of 3 years from the date of submission of the final expenditure report (SF 425), unless a different retention period applies -- and to which the recipient (and any subrecipient ("subgrantee") at any tier) must provide access, include performance measurement information, in addition to the financial records, supporting documents, statistical records, and other pertinent records indicated at 2 C.F.R. 200.334.

In the event that an award-related question arises from documents or other materials prepared or distributed by OJP that may appear to conflict with, or differ in some way from, the provisions of the Part 200 Uniform Requirements, the recipient is to contact OJP promptly for clarification.

4

Effect of failure to address audit issues

The recipient understands and agrees that the DOJ awarding agency (OJP or OVW, as appropriate) may withhold award funds, or may impose other related requirements, if (as determined by the DOJ awarding agency) the recipient does not satisfactorily and promptly address outstanding issues from audits required by the Part 200 Uniform Requirements (or by the terms of this award), or other outstanding issues that arise in connection with audits, investigations, or reviews of DOJ awards.

5

Requirements of the award; remedies for non-compliance or for materially false statements

The conditions of this award are material requirements of the award. Compliance with any assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance also is a material requirement of this award.

Limited Exceptions. In certain special circumstances, the U.S. Department of Justice ("DOJ") may determine that it will not enforce, or enforce only in part, one or more requirements otherwise applicable to the award. Any such exceptions regarding enforcement, including any such exceptions made during the period of performance, are (or will be during the period of performance) set out through the Office of Justice Programs ("OJP") webpage entitled "Legal Notices: Special circumstances as to particular award conditions" (ojp.gov/funding/Explore/LegalNotices-AwardReqts.htm), and incorporated by reference into the award.

By signing and accepting this award on behalf of the recipient, the authorized recipient official accepts all material requirements of the award, and specifically adopts, as if personally executed by the authorized recipient official, all assurances or certifications submitted by or on behalf of the recipient that relate to conduct during the period of performance.

Failure to comply with one or more award requirements -- whether a condition set out in full below, a condition

incorporated by reference below, or an assurance or certification related to conduct during the award period -- may result in OJP taking appropriate action with respect to the recipient and the award. Among other things, the OJP may withhold award funds, disallow costs, or suspend or terminate the award. DOJ, including OJP, also may take other legal action as appropriate.

Any materially false, fictitious, or fraudulent statement to the federal government related to this award (or concealment or omission of a material fact) may be the subject of criminal prosecution (including under 18 U.S.C. 1001 and/or 1621, and/or 34 U.S.C. 10271-10273), and also may lead to imposition of civil penalties and administrative remedies for false claims or otherwise (including under 31 U.S.C. 3729-3730 and 3801-3812).

Should any provision of a requirement of this award be held to be invalid or unenforceable by its terms, that provision shall first be applied with a limited construction so as to give it the maximum effect permitted by law. Should it be held, instead, that the provision is utterly invalid or -unenforceable, such provision shall be deemed severable from this award.

6

Employment eligibility verification for hiring under the award

1. The recipient (and any subrecipient at any tier) must--

A. Ensure that, as part of the hiring process for any position within the United States that is or will be funded (in whole or in part) with award funds, the recipient (or any subrecipient) properly verifies the employment eligibility of the individual who is being hired, consistent with the provisions of 8 U.S.C. 1324a(a)(1).

B. Notify all persons associated with the recipient (or any subrecipient) who are or will be involved in activities under this award of both--

(1) this award requirement for verification of employment eligibility, and

(2) the associated provisions in 8 U.S.C. 1324a(a)(1) that, generally speaking, make it unlawful, in the United States, to hire (or recruit for employment) certain aliens.

C. Provide training (to the extent necessary) to those persons required by this condition to be notified of the award requirement for employment eligibility verification and of the associated provisions of 8 U.S.C. 1324a(a)(1).

D. As part of the recordkeeping for the award (including pursuant to the Part 200 Uniform Requirements), maintain records of all employment eligibility verifications pertinent to compliance with this award condition in accordance with Form I-9 record retention requirements, as well as records of all pertinent notifications and trainings.

2. Monitoring

The recipient's monitoring responsibilities include monitoring of subrecipient compliance with this condition.

3. Allowable costs

To the extent that such costs are not reimbursed under any other federal program, award funds may be obligated for the reasonable, necessary, and allocable costs (if any) of actions designed to ensure compliance with this condition.

4. Rules of construction

A. Staff involved in the hiring process

For purposes of this condition, persons "who are or will be involved in activities under this award" specifically includes (without limitation) any and all recipient (or any subrecipient) officials or other staff who are or will be involved in the hiring process with respect to a position that is or will be funded (in whole or in part) with award funds.

B. Employment eligibility confirmation with E-Verify

For purposes of satisfying the requirement of this condition regarding verification of employment eligibility, the recipient

(or any subrecipient) may choose to participate in, and use, E-Verify (www.e-verify.gov), provided an appropriate person authorized to act on behalf of the recipient (or subrecipient) uses E-Verify (and follows the proper E-Verify procedures, including in the event of a "Tentative Nonconfirmation" or a "Final Nonconfirmation") to confirm employment eligibility for each hiring for a position in the United States that is or will be funded (in whole or in part) with award funds.

C. "United States" specifically includes the District of Columbia, Puerto Rico, Guam, the Virgin Islands of the United States, and the Commonwealth of the Northern Mariana Islands.

D. Nothing in this condition shall be understood to authorize or require any recipient, any subrecipient at any tier, or any person or other entity, to violate any federal law, including any applicable civil rights or nondiscrimination law.

E. Nothing in this condition, including in paragraph 4.B., shall be understood to relieve any recipient, any subrecipient at any tier, or any person or other entity, of any obligation otherwise imposed by law, including 8 U.S.C. 1324a(a)(1).

Questions about E-Verify should be directed to DHS. For more information about E-Verify visit the E-Verify website (https://www.e-verify.gov/) or email E-Verify at E-Verify@dhs.gov. E-Verify employer agents can email E-Verify at E-VerifyEmployerAgent@dhs.gov.

Questions about the meaning or scope of this condition should be directed to OJP, before award acceptance.

7

OJP Training Guiding Principles

Any training or training materials that the recipient -- or any subrecipient ("subgrantee") at any tier -- develops or delivers with OJP award funds must adhere to the OJP Training Guiding Principles for Grantees and Subgrantees, available at https://www.ojp.gov/funding/implement/training-guiding-principles-grantees-and-subgrantees.

8

Requirements related to "de minimis" indirect cost rate

A recipient that is eligible under the Part 200 Uniform Requirements and other applicable law to use the "de minimis" indirect cost rate described in 2 C.F.R. 200.414(f), and that elects to use the "de minimis" indirect cost rate, must advise OJP in writing of both its eligibility and its election, and must comply with all associated requirements in the Part 200 Uniform Requirements. The "de minimis" rate may be applied only to modified total direct costs (MTDC) as defined by the Part 200 Uniform Requirements.

9

Determination of suitability to interact with participating minors

SCOPE. This condition applies to this award if it is indicated -- in the application for the award (as approved by DOJ)(or in the application for any subaward, at any tier), the DOJ funding announcement (solicitation), or an associated federal statute -- that a purpose of some or all of the activities to be carried out under the award (whether by the recipient, or a subrecipient at any tier) is to benefit a set of individuals under 18 years of age.

The recipient, and any subrecipient at any tier, must make determinations of suitability before certain individuals may interact with participating minors. This requirement applies regardless of an individual's employment status.

The details of this requirement are posted on the OJP web site at https://ojp.gov/funding/Explore/Interact-Minors.htm (Award condition: Determination of suitability required, in advance, for certain individuals who may interact with participating minors), and are incorporated by reference here.

10

Compliance with general appropriations-law restrictions on the use of federal funds (FY 2022)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable restrictions on the use of federal funds set out in federal appropriations statutes. Pertinent restrictions, including from various "general

provisions" in the Consolidated Appropriations Act, 2022, are set out at https://www.ojp.gov/funding/Explore/FY22AppropriationsRestrictions.htm, and are incorporated by reference here.

Should a question arise as to whether a particular use of federal funds by a recipient (or a subrecipient) would or might fall within the scope of an appropriations-law restriction, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

11

Compliance with DOJ regulations pertaining to civil rights and nondiscrimination - 28 C.F.R. Part 54

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements of 28 C.F.R. Part 54, which relates to nondiscrimination on the basis of sex in certain "education programs."

12

Potential imposition of additional requirements

The recipient agrees to comply with any additional requirements that may be imposed by the DOJ awarding agency (OJP or OVW, as appropriate) during the period of performance for this award, if the recipient is designated as "high-risk" for purposes of the DOJ high-risk grantee list.

13

Required training for Grant Award Administrator and Financial Manager

The Grant Award Administrator and all Financial Managers for this award must have successfully completed an "OJP financial management and grant administration training" by 120 days after the date of the recipient's acceptance of the award. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

In the event that either the Grant Award Administrator or a Financial Manager for this award changes during the period of performance, the new Grant Award Administrator or Financial Manager must have successfully completed an "OJP financial management and grant administration training" by 120 calendar days after the date the Entity Administrator enters updated Grant Award Administrator or Financial Manager information in JustGrants. Successful completion of such a training on or after October 15, 2020, will satisfy this condition.

A list of OJP trainings that OJP will consider "OJP financial management and grant administration training" for purposes of this condition is available at https://onlinegfmt.training.ojp.gov/. All trainings that satisfy this condition include a session on grant fraud prevention and detection.

The recipient should anticipate that OJP will immediately withhold ("freeze") award funds if the recipient fails to comply with this condition. The recipient's failure to comply also may lead OJP to impose additional appropriate conditions on this award.

14

Compliance with 41 U.S.C. 4712 (including prohibitions on reprisal; notice to employees)

The recipient (and any subrecipient at any tier) must comply with, and is subject to, all applicable provisions of 41 U.S.C. 4712, including all applicable provisions that prohibit, under specified circumstances, discrimination against an employee as reprisal for the employee's disclosure of information related to gross mismanagement of a federal grant, a gross waste of federal funds, an abuse of authority relating to a federal grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal grant.

The recipient also must inform its employees, in writing (and in the predominant native language of the workforce), of employee rights and remedies under 41 U.S.C. 4712.

Should a question arise as to the applicability of the provisions of 41 U.S.C. 4712 to this award, the recipient is to contact the DOJ awarding agency (OJP or OVW, as appropriate) for guidance.

15

Requirement to report actual or imminent breach of personally identifiable information (PII)

The recipient (and any "subrecipient" at any tier) must have written procedures in place to respond in the event of an actual or imminent "breach" (OMB M-17-12) if it (or a subrecipient) -- (1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of "Personally Identifiable Information (PII)" (2 CFR 200.1) within the scope of an OJP grant-funded program or activity, or (2) uses or operates a "Federal information system" (OMB Circular A-130). The recipient's breach procedures must include a requirement to report actual or imminent breach of PII to an OJP Program Manager no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

16

Compliance with applicable rules regarding approval, planning, and reporting of conferences, meetings, trainings, and other events

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable laws, regulations, policies, and official DOJ guidance (including specific cost limits, prior approval and reporting requirements, where applicable) governing the use of federal funds for expenses related to conferences (as that term is defined by DOJ), including the provision of food and/or beverages at such conferences, and costs of attendance at such conferences.

Information on the pertinent DOJ definition of conferences and the rules applicable to this award appears in the DOJ Grants Financial Guide (currently, as section 3.10 of "Postaward Requirements" in the "DOJ Grants Financial Guide").

17

Requirement for data on performance and effectiveness under the award

The recipient must collect and maintain data that measure the performance and effectiveness of work under this award. The data must be provided to OJP in the manner (including within the timeframes) specified by OJP in the program solicitation or other applicable written guidance. Data collection supports compliance with the Government Performance and Results Act (GPRA) and the GPRA Modernization Act of 2010, and other applicable laws.

18

Requirement to disclose whether recipient is designated "high risk" by a federal grant-making agency outside of DOJ

If the recipient is designated "high risk" by a federal grant-making agency outside of DOJ, currently or at any time during the course of the period of performance under this award, the recipient must disclose that fact and certain related information to OJP by email at OJP.ComplianceReporting@ojp.usdoj.gov. For purposes of this disclosure, high risk includes any status under which a federal awarding agency provides additional oversight due to the recipient's past performance, or other programmatic or financial concerns with the recipient. The recipient's disclosure must include the following: 1. The federal awarding agency that currently designates the recipient high risk, 2. The date the recipient was designated high risk, 3. The high-risk point of contact at that federal awarding agency (name, phone number, and email address), and 4. The reasons for the high-risk status, as set out by the federal awarding agency.

19

Compliance with DOJ Grants Financial Guide

References to the DOJ Grants Financial Guide are to the DOJ Grants Financial Guide as posted on the OJP website (currently, the "DOJ Grants Financial Guide" available at https://ojp.gov/financialguide/DOJ/index.htm), including any updated version that may be posted during the period of performance. The recipient agrees to comply with the DOJ Grants Financial Guide.

20

Encouragement of policies to ban text messaging while driving

Pursuant to Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," 74 Fed. Reg. 51225 (October 1, 2009), DOJ encourages recipients and subrecipients ("subgrantees") to adopt and enforce policies

banning employees from text messaging while driving any vehicle during the course of performing work funded by this award, and to establish workplace safety policies and conduct education, awareness, and other outreach to decrease crashes caused by distracted drivers.

21

Restrictions and certifications regarding non-disclosure agreements and related matters

No recipient or subrecipient ("subgrantee") under this award, or entity that receives a procurement contract or subcontract with any funds under this award, may require any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood by the agency making this award, to contravene requirements applicable to Standard Form 312 (which relates to classified information), Form 4414 (which relates to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

1. In accepting this award, the recipient--

a. represents that it neither requires nor has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

b. certifies that, if it learns or is notified that it is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

2. If the recipient does or is authorized under this award to make subawards ("subgrants"), procurement contracts, or both--

a. it represents that--

(1) it has determined that no other entity that the recipient's application proposes may or will receive award funds (whether through a subaward ("subgrant"), procurement contract, or subcontract under a procurement contract) either requires or has required internal confidentiality agreements or statements from employees or contractors that currently prohibit or otherwise currently restrict (or purport to prohibit or restrict) employees or contractors from reporting waste, fraud, or abuse as described above; and

(2) it has made appropriate inquiry, or otherwise has an adequate factual basis, to support this representation; and

b. it certifies that, if it learns or is notified that any subrecipient, contractor, or subcontractor entity that receives funds under this award is or has been requiring its employees or contractors to execute agreements or statements that prohibit or otherwise restrict (or purport to prohibit or restrict), reporting of waste, fraud, or abuse as described above, it will immediately stop any further obligations of award funds to or by that entity, will provide prompt written notification to the federal agency making this award, and will resume (or permit resumption of) such obligations only if expressly authorized to do so by that agency.

22

Reclassification of various statutory provisions to a new Title 34 of the United States Code

On September 1, 2017, various statutory provisions previously codified elsewhere in the U.S. Code were editorially reclassified (that is, moved and renumbered) to a new Title 34, entitled "Crime Control and Law Enforcement." The reclassification encompassed a number of statutory provisions pertinent to OJP awards (that is, OJP grants and cooperative agreements), including many provisions previously codified in Title 42 of the U.S. Code.

Effective as of September 1, 2017, any reference in this award document to a statutory provision that has been reclassified to the new Title 34 of the U.S. Code is to be read as a reference to that statutory provision as reclassified to Title 34. This rule of construction specifically includes references set out in award conditions, references set out in material incorporated by reference through award conditions, and references set out in other award requirements.

23

Specific post-award approval required to use a noncompetitive approach in any procurement contract that would exceed $250,000

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements to obtain specific advance approval to use a noncompetitive approach in any procurement contract that would exceed the Simplified Acquisition Threshold (currently, $250,000). This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a procurement "contract" (and therefore does not consider a subaward).

The details of the requirement for advance approval to use a noncompetitive approach in a procurement contract under an OJP award are posted on the OJP web site at https://ojp.gov/funding/Explore/NoncompetitiveProcurement.htm (Award condition: Specific post-award approval required to use a noncompetitive approach in a procurement contract (if contract would exceed $250,000)), and are incorporated by reference here.

24

Requirements pertaining to prohibited conduct related to trafficking in persons (including reporting requirements and OJP authority to terminate award)

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements (including requirements to report allegations) pertaining to prohibited conduct related to the trafficking of persons, whether on the part of recipients, subrecipients ("subgrantees"), or individuals defined (for purposes of this condition) as "employees" of the recipient or of any subrecipient.

The details of the recipient's obligations related to prohibited conduct related to trafficking in persons are posted on the OJP web site at https://ojp.gov/funding/Explore/ProhibitedConduct-Trafficking.htm (Award condition: Prohibited conduct by recipients and subrecipients related to trafficking in persons (including reporting requirements and OJP authority to terminate award)), and are incorporated by reference here.

25

Requirement to report potentially duplicative funding

If the recipient currently has other active awards of federal funds, or if the recipient receives any other award of federal funds during the period of performance for this award, the recipient promptly must determine whether funds from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items for which funds are provided under this award. If so, the recipient must promptly notify the DOJ awarding agency (OJP or OVW, as appropriate) in writing of the potential duplication, and, if so requested by the DOJ awarding agency, must seek a budget-modification or change-of-project-scope Grant Award Modification (GAM) to eliminate any inappropriate duplication of funding.

26

Reporting potential fraud, waste, and abuse, and similar misconduct

The recipient, and any subrecipients ("subgrantees") at any tier, must promptly refer to the DOJ Office of the Inspector General (OIG) any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has, in connection with funds under this award-- (1) submitted a claim that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct.

Potential fraud, waste, abuse, or misconduct involving or relating to funds under this award should be reported to the OIG by--(1) online submission accessible via the OIG webpage at https://oig.justice.gov/hotline/contact-grants.htm (select "Submit Report Online"); (2) mail directed to: U.S. Department of Justice, Office of the Inspector General,

Investigations Division, ATTN: Grantee Reporting, 950 Pennsylvania Ave., NW, Washington, DC 20530; and/or (3) by facsimile directed to the DOJ OIG Investigations Division (Attn: Grantee Reporting) at (202) 616-9881 (fax).

Additional information is available from the DOJ OIG website at https://oig.justice.gov/hotline.

27

All subawards ("subgrants") must have specific federal authorization

The recipient, and any subrecipient ("subgrantee") at any tier, must comply with all applicable requirements for authorization of any subaward. This condition applies to agreements that -- for purposes of federal grants administrative requirements -- OJP considers a "subaward" (and therefore does not consider a procurement "contract").

The details of the requirement for authorization of any subaward are posted on the OJP web site at https://ojp.gov/funding/Explore/SubawardAuthorization.htm (Award condition: All subawards ("subgrants") must have specific federal authorization), and are incorporated by reference here.

28

Requirements related to System for Award Management and Universal Identifier Requirements

The recipient must comply with applicable requirements regarding the System for Award Management (SAM), currently accessible at https://www.sam.gov/. This includes applicable requirements regarding registration with SAM, as well as maintaining the currency of information in SAM.

The recipient also must comply with applicable restrictions on subawards ("subgrants") to first-tier subrecipients (first-tier "subgrantees"), including restrictions on subawards to entities that do not acquire and provide (to the recipient) the unique entity identifier required for SAM registration.

The details of the recipient's obligations related to SAM and to unique entity identifiers are posted on the OJP web site at https://ojp.gov/funding/Explore/SAM.htm (Award condition: System for Award Management (SAM) and Universal Identifier Requirements), and are incorporated by reference here.

This condition does not apply to an award to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

29

Restrictions on "lobbying"

In general, as a matter of federal law, federal funds awarded by OJP may not be used by the recipient, or any subrecipient ("subgrantee") at any tier, either directly or indirectly, to support or oppose the enactment, repeal, modification, or adoption of any law, regulation, or policy, at any level of government. See 18 U.S.C. 1913. (There may be exceptions if an applicable federal statute specifically authorizes certain activities that otherwise would be barred by law.)

Another federal law generally prohibits federal funds awarded by OJP from being used by the recipient, or any subrecipient at any tier, to pay any person to influence (or attempt to influence) a federal agency, a Member of Congress, or Congress (or an official or employee of any of them) with respect to the awarding of a federal grant or cooperative agreement, subgrant, contract, subcontract, or loan, or with respect to actions such as renewing, extending, or modifying any such award. See 31 U.S.C. 1352. Certain exceptions to this law apply, including an exception that applies to Indian tribes and tribal organizations.

Should any question arise as to whether a particular use of federal funds by a recipient (or subrecipient) would or might fall within the scope of these prohibitions, the recipient is to contact OJP for guidance, and may not proceed without the express prior written approval of OJP.

30

Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards

Consistent with Executive Order 14074, “Advancing Effective, Accountable Policing and Criminal Justice Practices To Enhance Public Trust and Public Safety,” OJP has prohibited the use of federal funds under this award for purchases or transfers of specified equipment by law enforcement agencies. In addition, OJP requires the recipient, and any subrecipient (“subgrantee”) at any tier, to put in place specified controls prior to using federal funds under this award to acquire or transfer any property identified on the “controlled equipment” list. The details of the requirement are posted on the OJP web site at https://www.ojp.gov/funding/explore/prohibited-and-controlled-equipment (Award condition: Compliance with restrictions on the use of federal funds--prohibited and controlled equipment under OJP awards), and are incorporated by reference here.

31

The recipient agrees to submit a final report at the end of this award documenting all relevant project activities during the entire period of support under this award. This report will include detailed information about the project(s) funded, including, but not limited to, information about how the funds were actually used for each purpose area, data to support statements of progress, and data concerning individual results and outcomes of funded projects reflecting project successes and impacts. The final report is due no later than 120 days following the close of this award period or the expiration of any extension periods. This report will be submitted to the Office of Justice Programs, on-line through the Internet at https://justgrants.usdoj.gov/

32

The recipient agrees that it will submit quarterly financial status reports (the SF 425 Federal Financial Report) to OJP in JustGrants, no later than the deadlines set out in the DOJ Financial Guide and the JustGrants guidance (typically 30 days after the end of each calendar quarter). Delinquent reports may lead to funds being frozen and other remedies.

33

The recipient shall submit semiannual performance reports. Performance reports shall be submitted within 30 days after the end of the reporting periods, which are June 30 and December 31, for the life of the award. These reports will be submitted to the Office of Justice Programs, on-line through the Internet at https://justgrants.usdoj.gov

34

FFATA reporting: Subawards and executive compensation

The recipient must comply with applicable requirements to report first-tier subawards ("subgrants") of $30,000 or more and, in certain circumstances, to report the names and total compensation of the five most highly compensated executives of the recipient and first-tier subrecipients (first-tier "subgrantees") of award funds. The details of recipient obligations, which derive from the Federal Funding Accountability and Transparency Act of 2006 (FFATA), are posted on the OJP web site at https://ojp.gov/funding/Explore/FFATA.htm (Award condition: Reporting Subawards and Executive Compensation), and are incorporated by reference here.

This condition, including its reporting requirement, does not apply to-- (1) an award of less than $30,000, or (2) an award made to an individual who received the award as a natural person (i.e., unrelated to any business or non-profit organization that he or she may own or operate in his or her name).

35

Limit on use of grant funds for grantees' employees' salaries

With respect to this award, federal funds may not be used to pay cash compensation (salary plus bonuses) to any employee of the award recipient at a rate that exceeds 110% of the maximum annual salary payable to a member of the federal government's Senior Executive Service (SES) at an agency with a Certified SES Performance Appraisal System for that year. (An award recipient may compensate an employee at a higher rate, provided the amount in excess of this compensation limitation is paid with non-federal funds.)

This limitation on compensation rates allowable under this award may be waived on an individual basis at the discretion of the OJP official indicated in the program announcement under which this award is made.

36

As of the first day of the period of performance for the award, the recipient may choose to incur project costs using non-federal funds, but any such project costs are incurred at the recipient's risk until, at a minimum, all applicable withholding conditions are removed by OJP (via an Award Condition Modification (ACM)).

Except to the extent (if any) that an award condition expressly precludes reimbursement of project costs incurred "at-risk," if and when the recipient makes a valid acceptance of this award and OJP removes each applicable withholding condition through an Award Condition Modification (ACM), the recipient is authorized to reimburse itself for project costs incurred "at-risk" earlier during the period of performance (such as project costs incurred prior to award acceptance or prior to removal of an applicable withholding condition), provided that those project costs otherwise are allowable costs under the award.

37

Withholding of funds – Financial Capability Questionnaire Submission. The recipient may not obligate, expend, or draw down any award funds until-- (1) it has submitted a Financial Capability Questionnaire (FCQ) and, if required by OJP, written policies and procedures to address FCQ issues identified; and (2) OJP has issued an Award Condition Modification (ACM) to modify or remove this condition.

38

The recipient (and any "subrecipient" at any tier) must have written policies and procedures in place that address how it will maintain the confidentiality of victims' names, addresses, telephone numbers, or any other identifying information, including how this information will be protected when there is information sharing between partners. In addition, the recipient must submit a signed, written certification that data privacy and sharing protocols comport with the confidentiality and privacy rights and obligations of federal law or the grantee jurisdiction's laws, court rules, or rules of professional conduct applicable to the work performed by the recipient. The recipient agrees to provide to OJP all documentation as required for grant monitoring purposes.

[ ]
I have read and understand the information presented in this section of the Federal Award Instrument.

Award Acceptance

Declaration and Certification to the U.S. Department of Justice as to Acceptance

By checking the declaration and certification box below, I--

A. Declare to the U.S. Department of Justice (DOJ), under penalty of perjury, that I have authority to make this declaration and certification on behalf of the applicant.

B. Certify to DOJ, under penalty of perjury, on behalf of myself and the applicant, to the best of my knowledge and belief, that the following are true as of the date of this award acceptance: (1) I have conducted or there was conducted (including by applicant's legal counsel as appropriate and made available to me) a diligent review of all terms and conditions of, and all supporting materials submitted in connection with, this award, including any assurances and certifications (including anything submitted in connection therewith by a person on behalf of the applicant before, after, or at the time of the application submission and any materials that accompany this acceptance and certification); and (2) I have the legal authority to accept this award on behalf of the applicant.

C. Accept this award on behalf of the applicant.

D. Declare the following to DOJ, under penalty of perjury, on behalf of myself and the applicant: (1) I understand that, in taking (or not taking) any action pursuant to this declaration and certification, DOJ will rely upon this declaration and certification as a material representation; and (2) I understand that any materially false, fictitious, or fraudulent information or statement in this declaration and certification (or concealment or omission of a material fact as to either) may be the subject of criminal prosecution (including under 18 U.S.C. §§ 1001 and/or 1621, and/or 34 U.S.C. §§ 10271-10273), and also may subject me and the applicant to civil penalties and administrative remedies under the

federal False Claims Act (including under 31 U.S.C. §§ 3729-3730 and/or §§ 3801-3812) or otherwise.

Agency Approval

Title of Approving Official	Name of Approving Official	Signed Date And Time
Deputy Assistant Attorney General	Maureen Henneberg	7/27/23 5:08 PM

Authorized Representative

Entity Acceptance

Title of Authorized Entity Official
City Manager

Signed Date And Time

Request for signature for acceptance of Project L.I.G.H.T. grant

Final Audit Report 2023-11-15

Created:	2023-11-15
By:	Candice Moreno Aguilera (canmoreno@lascruces.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAA2CkGHSO0B5PYY68sbxH7eNgCYQyRj8eA

"Request for signature for acceptance of Project L.I.G.H.T. grant " History

Document created by Candice Moreno Aguilera (canmoreno@lascruces.gov)
2023-11-15 - 8:00:22 PM GMT

Document emailed to Jacqueline Rubalcava (jrubalcava@lascruces.gov) for signature
2023-11-15 - 8:02:07 PM GMT

Email viewed by Jacqueline Rubalcava (jrubalcava@lascruces.gov)
2023-11-15 - 10:09:44 PM GMT

Document e-signed by Jacqueline Rubalcava (jrubalcava@lascruces.gov)
Signature Date: 2023-11-15 - 10:26:11 PM GMT - Time Source: server

Document emailed to jasmith@las-cruces.org for signature
2023-11-15 - 10:26:13 PM GMT

Email viewed by jasmith@las-cruces.org
2023-11-15 - 10:55:24 PM GMT

Signer jasmith@las-cruces.org entered name at signing as JLS
2023-11-15 - 11:08:23 PM GMT

Document e-signed by JLS (jasmith@las-cruces.org)
Signature Date: 2023-11-15 - 11:08:25 PM GMT - Time Source: server

Agreement completed.
2023-11-15 - 11:08:25 PM GMT

ATTACHMENT "F"

REIMBURSING AGENCY: Department of Finance and Administration

Business Unit: 341

RECIPIENT:

City of Las Cruces

APPROPRIATION NUMBER:	TOTAL ALLOCATION AMOUNT:	REVERSION DATE:
23-ZH5048-40	**$2,625,000.00**	**June 30, 2024**

ALLOCATION PURPOSE

Two Million Six Hundred and Twenty Five Thousand Dollars and Zero Cents over three years to hire law enforcement/support positions. The first allocations will be disbursed at 100% within 5 business days of acceptance of this agreement to include approval of the local governing body.

ALLOCATION DISBURSEMENT

The allocated funds will be disbursed 100% up to $1,500,000 the first year, 50% up to $750,000 the second year, and 25% up to $375,000 the third year. The Allocation Recipient will submit to the Department of Finance & Administration this signed document and evidence of approval of the local governing body. Disbursements of funds will be made within 5 business days of receipt of the signed agreement and evidence of approval of the local governing body.

Funds for the first disbursement must be expended from July 1, 2023, through June 30, 2024; the second 50% disbursement will be made in August 2024 to be expended by June 30, 2025; and the last disbursement of 25% will be made in August 2025 to be expended by June 30, 2026. Any amount not expended in each of the three years will be returned to the State of New Mexico, Department of Finance and Administration in the year that it is scheduled for reversion. All expenditures must occur prior to the reversion date.

The Allocation Recipient agrees to submit quarterly reports using Exhibit A, Law Enforcement Recruitment Report, providing updates on the hiring of law enforcement/support positions.

CERTIFICATION

I hereby certify that the **City of Las Cruces**

1. Will only use the allocated funds to carry out and/or perform activities described in allocation language.
2. Will follow the procedure described in "Allocation Reporting" of allocated funds.

Local Law Enforcement Agency — Date: 9/22/2023

Ifo Pili, City Manager

Authorized Local Governing Body Authority — Date: 10/11/23

APPROVAL

In accordance with the authority conferred on the Department of Finance & Administration by the statute appropriating these funds, I hereby approve this certification for appropriation number **23-ZH5048-40** in the amount of **$2,625,000.00**.

Wesley Billingsley
Director, Local Government Division — Date

REIMBURSING AGENCY: Department of Finance and Administration

Business Unit: 341

STATE OF NEW MEXICO
Law Enforcement Recruitment Fund
Quarterly Report Form
Exhibit A

Allocation Recipient:	
Appropriation Number:	

Provide names of individuals hired and their hire date:	**Title of Position**	**Vacant Position Salary:**	**New Position Salary:**
Total Amount of Appropriation Funds Expended this Quarter:		**Total: $**	**Total: $**

Add extra lines as applicable.

Narrative: (Provide description of next steps to fill any remaining vacant positions. Examples: hiring event or outreach using social media.)

Signature: Jaquelin Rubalcava

Email: jrubalcava@las-cruces.org

Signature: Jeremy Story

Email: jstory@las-cruces.org

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 227**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2981
- APPROPRIATION AMOUNT: $100,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 227
- ONE HUNDRED THOUSAND ($100,000.00),
- to plan, design, construct, equip and improve fire station 5, including parking lot improvements, purchase and installation of a generator and removal and replacement of bay doors, in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE HUNDRED THOUSAND $100,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals ONE HUNDRED THOUSAND $100,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

---

[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

10/11/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

Wesley Billingsley

By: Wesley Billingsley

Its: Division Director

11/2/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Jaquelin Rubalcava
Email: jrubalcava@las-cruces.org

Signature: David Sedillo
David Sedillo (Sep 20, 2023 10:43 MDT)
Email: dsedillo@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

CITY OF LAS CRUCES

MEMORANDUM

To: Ifo Pili, City Manager

From: Cynthia Alamillo, Interim Grants Manager **Initials:** CA

Date: September 12, 2023 **File#:** GAP #24-036

Subject: Request for Signature on Grant Agreement 23-H2981 for the Las Cruces Fire Station 5 Improvement

Please sign the attached Grant Agreement from the New Mexico Department of Finance and Administration (NMDFA) for the 2023 Capital Outlay appropriation 23-H2981 in the amount of $100,000 for the Las Cruces Fire Station 5 Improvement.

The funding is to plan, design, construct, equip and improve fire station 5, including parking lot improvements, purchase and installation of a generator and removal and replacement of bay doors, in Las Cruces in Dona Ana County. This appropriation has a reversion date of June 30, 2027.

Please return to the Grants Administration Program by Tuesday September 26, 2023. This will allow the Grants Administration to return the agreement to DFA in a timely manner; and get the grant agreement on the Council agenda. If there are any questions, please feel free to contact me at 541-2430.

REVIEWED:

Ifo Pili, City Manager — Date: 10/11/23

Attachments: 23-H2981 NM DFA Agreement

CC: Jacqueline Rubalcava, Budget & Grants Administrator **Initials:** Sep 20, 2023

CC: David Sedillo, Department Director Public Works **Initials:** Sep 20, 2023

CC: Linda A. Samples, City Attorney **Initials:**

CC: Sonya L. Delgado, Assistant City Manager **Initials:**

ATTACHMENT "H"

Contract Number: D20033
Vendor Number: 0000054342
Control Number: C1233324

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 58, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID H3324 NMDOT Control Number C1233324 **$250,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 58, Two Hundred Fifty Thousand Dollars and No Cents ($250,000), to acquire rights of way and to plan, design, construct and install improvements to the intersection of Telshor boulevard and Spruce avenue, including associated infrastructure and utilities, in Las Cruces in Dona Ana county.

The Grantee's total reimbursements shall not exceed Two Hundred Fifty Thousand Dollars and No Cents $250,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and No Cents ($ 0.00), which equals Two Hundred Fifty Thousand Dollars and No Cents (**$250,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Las Cruces

Name: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Cynthia Alamillo
Title: Interim Grant Manager
Address: 700 N. Main St, Las Cruces, NM 88001
Email: calamillo@lascruces.gov
Telephone: 575-541-2430

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2027 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in

Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the

subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the

requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces
Entity Name

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

9/12/23
Date

DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Mallery Manzanares
83F307B82C81449...
By:

Its: Cabinet Secretary or Designee

11/3/2023
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
593C7CA1DD434D1...
By: Aaron Frankland or Designee

Its: Deputy General Counsel

8/28/2023
Date

DocuSign Envelope ID: BCEE4AC5-B252-41BC-A117-170F13175DD4

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date	Division Project Manager Date

DocuSign Envelope ID: BCEE4AC5-B252-41BC-A117-170F13175DD4

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

DocuSign Envelope ID: BCEE4AC5-B252-41BC-A117-170F13175DD4

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

DocuSign Envelope ID: BCEE4AC5-B252-41BC-A117-170F13175DD4

RESOLUTION 24-037

A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, the City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session: 23-H3322, 23-H3323, 23-H3324 and 23-H3325; and

WHEREAS, these NMDOT Capital Appropriations have a reversion date of June 30, 2027; and

WHEREAS, the State of NM Department of Transportation requires an approved resolution for all grant agreements or amended grant agreements being submitted for funding.

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

(I)

THAT the City accepts the awards in the NMDOT agreements 23-H3322, 23-H3323, 23-H3324 and 23-H3325 from the 2023 Legislative Session Capital Outlay Appropriations for the City and they are hereby approved and have priority standing.

(II)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

24-037

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	October 16, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Fiscal Management	**Line of Business:**	Grants Administration Program

Title: **A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).**

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

PURPOSE(S) OF ACTION:

To accept multiple 2023 Legislative Capital Appropriation Agreements.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City.

The City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session:

Appropriation# 23-H3322 in the amount of $560,000 to plan, design, construct, and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes at the Las Cruces International Airport in Las Cruces, Dona Ana County.

Appropriation# 23-H3323 in the amount of $595,000 to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana County.

Appropriation# 23-H3324 in the amount of $250,000 to acquire rights of way and to plan, design, construct, and install improvements to the intersection of Telshor Boulevard and Spruce Avenue, including associated infrastructure and utilities in Las Cruces, Dona Ana County.

Appropriation# 23-H3325 in the amount of $520,000 to acquire rights of way and to plan, design, construct and improve University Avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure, in Las Cruces in Dona Ana County.

These capital appropriations have a reversion date of June 30, 2027.

The State of NM Department of Transportation requires that all grant agreements or amended grant agreements being submitted for funding include a resolution approved by the City Council, making NMDOT projects a priority for the City.

SUPPORT INFORMATION:

ATTACHMENT "A" CLC 23-H3322 Agreement
ATTACHMENT "B" CLC - 23-H3323 Agreement
ATTACHMENT "C" CLC - 23-H3324 Agreement
ATTACHMENT "D" CLC - 23-H3325 Agreement

PLAN(S):

None

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 NMDOT Legislative Capital Appropriation funding for 23-H3322, 23-H3323, 23-H3324 and 23-H3325.
2. Vote "No"; this will deny NMDOT funding and result in a loss of funds.
3. Vote to "Amend"; this will require further direction from staff.
4. Vote to "Table"; this will result in a loss of funds needed to complete city projects.

DocuSign Envelope ID: BFEF55A4-FB3B-457E-AD3E-B2A1CF8CCA73

ATTACHMENT "I"

Contract Number: D17046/1
Vendor Number: 0000054342
Control Number: C1182631

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
SECOND AMENDMENT TO
FUND 89200 CAPITAL APPROPRIATION PROJECT

THIS ~~FIRST~~ SECOND AMENDMENT is made and entered into as of this 26th day of June, 2023, by and between the Department of Transportation, P.O. Box 1149, Room 126, Santa Fe, New Mexico 87504-1149, hereinafter called the "Department" and City of Las Cruces, hereinafter called the "Grantee". This Amendment shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, the Department and the Grantee entered into a Capital Appropriation Project Agreement, Control Number C1182631, Contract Number D17046 on October 22, 2018; and,

WHEREAS, in the Laws of 2018, Chapter 80, Section 32, Sub Section 29, the Legislature made an appropriation to the Department, funds from which the Department made available to the Grantee under Contract Number D17046; and,

WHEREAS, in the Laws of 2021, Chapter 139, HB 296, Section 31, the Legislature reauthorized or re-appropriated funding, under Contract Number D17046 and extended the expenditure period and purpose; and,

WHEREAS, in the Laws of 2023, Chapter 203, SB309, Section 102, the Legislature reauthorized or re-appropriated funding, under Contract Number D17046 and extended the expenditure period; and,

WHEREAS, Article VII allows the parties to alter the Agreement by written consent of both parties; and,

WHEREAS, the Department and the Grantee want to amend the Agreement; and,

WHEREAS, pursuant to NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

1. Article I(A) is deleted and replaced with the following:

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID F4029, NMDOT Control Number C1182631, **$418,842**
APPROPRIATION REVERSION DATE: 6/30/2023
Laws of 2021, Chapter 1, HB 296, Section 31, Four Hundred Eighteen Thousand Eight Hundred Forty Two Dollars and No Cents (**$418,842**), to plan, design, construct, purchase and install park improvements, landscaping and drainage improvements to street medians in Las Cruces in Dona Ana county. The time of expenditure is extended through fiscal year 2023.

The funding identified above was reauthorized or re-appropriated during the 2023 Legislative Session to extend the time of expenditure with the following new appropriation ID and reversion date.

DFA Appropriation ID H4100, NMDOT Control Number C1182631
APPROPRIATION REVERSION DATE: 6/30/2025
Laws of 2023, Chapter 203, SB309, Section 102.

The Grantee's total reimbursements shall not exceed the appropriation amount Four Hundred Eighteen Thousand Eight Hundred Forty Two Dollars and No Cents, $418,842, (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, $0.00, which equals Four Hundred Eighteen Thousand Eight Hundred Forty Two Dollars and No Cents, $418,842, (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

DocuSign Envelope ID: BFEF55A4-FB3B-457E-AD3E-B2A1CF8CCA73

2. Article IV(A) is deleted and replaced with the following:

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2025 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

All other obligations set forth in the Original Agreement shall remain in full force and effect unless expressly amended or modified by this Second Amendment.

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

6/7/23.
Date

DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Mallery Marsanaris

Cabinet Secretary or Designee

6/26/2023
Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:

By: Aaron Frankland

6/5/2023
Date

DocuSign Envelope ID: BFEF55A4-FB3B-457E-AD3E-B2A1CF8CCA73

23-H4100 Reauthorization Median Improvements

Final Audit Report 2023-06-06

Created:	2023-06-06
By:	Elizabeth Gonzales (suegonzales@las-cruces.org)
Status:	Approved
Transaction ID:	CBJCHBCAABAALKZq_UkIC76GG5ts57gj7lWMoYxc2SnK

"23-H4100 Reauthorization Median Improvements" History

Document created by Elizabeth Gonzales (suegonzales@las-cruces.org)
2023-06-06 - 5:13:48 PM GMT

Document emailed to Jacqueline Rubalcava (jrubalcava@las-cruces.org) for approval
2023-06-06 - 5:14:31 PM GMT

Email viewed by Jacqueline Rubalcava (jrubalcava@las-cruces.org)
2023-06-06 - 6:17:42 PM GMT

Document approved by Jacqueline Rubalcava (jrubalcava@las-cruces.org)
Approval Date: 2023-06-06 - 6:18:47 PM GMT - Time Source: server

Document emailed to rnunez@las-cruces.org for approval
2023-06-06 - 6:18:48 PM GMT

Email viewed by rnunez@las-cruces.org
2023-06-06 - 9:47:39 PM GMT

Signer rnunez@las-cruces.org entered name at signing as Robert L Nunez
2023-06-06 - 9:48:05 PM GMT

Document approved by Robert L Nunez (munez@las-cruces.org)
Approval Date: 2023-06-06 - 9:48:07 PM GMT - Time Source: server

Agreement completed.
2023-06-06 - 9:48:07 PM GMT

Adobe Acrobat Sign

DocuSign Envelope ID: BFEF55A4-FB3B-457E-AD3E-B2A1CF8CCA73

RESOLUTION 23-140

A RESOLUTION TO ACCEPT REAUTHORIZED GRANTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION 2023 LEGISLATIVE CAPITAL OUTLAY FOR THE LAS CRUCES INTERNATIONAL AIRPORT AND PARKS AND RECREATION MEDIAN IMPROVEMENTS AND TO MAKE THESE PROJECTS A PRIORITY FOR THE CITY.

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the NM State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, the City of Las Cruces submitted a reauthorization for the Las Cruces International Airport during the 2023 Legislative Session to add language to install utility lines at the airport as part of the total project; and

WHEREAS, the City of Las Cruces submitted a reauthorization for the Median Improvements managed by the Parks and Recreation Department to allow for additional time needed to complete the project. The project now contains a reversion date of June 30, 2025; and

WHEREAS, the State of New Mexico Department of Transportation requires that all grant agreements or amended grant agreements being submitted for funding include a resolution approved by the City Council, making NMDOT projects a priority for the City.

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

(I)

THAT the City accepts the reauthorized awards as attached in Exhibits "A" and "B" and it is hereby approved and has priority standing.

(II)

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

DONE AND APPROVED this 20 day of June 2023

DocuSign Envelope ID: BFEF55A4-FB3B-457E-AD3E-B2A1CF8CCA73

APPROVED

Mayor

ATTEST:

Christine Rivera
City Clerk

Moved by: Tessa Abeyta

Seconded by: Becky Corran

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

DocuSign Envelope ID: BFEF55A4-FB3B-457E-AD3E-B2A1CF8CCA73

23-140

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	June 20, 2023
Drafter:	Susan Gonzales	**Department:**	Financial Services
Program:	Grant Administration	**Line of Business:**	Fiscal Management
Title:	**A RESOLUTION TO ACCEPT REAUTHORIZED GRANTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION 2023 LEGISLATIVE CAPITAL OUTLAY FOR THE LAS CRUCES INTERNATIONAL AIRPORT AND PARKS AND RECREATION MEDIAN IMPROVEMENTS AND TO MAKE THESE PROJECTS A PRIORITY FOR THE CITY.**		

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

PURPOSE(S) OF ACTION:

Approve NMDOT Reauthorized Funding for 23-H4098 - Las Cruces International Airport and 23-H4100 Parks and Recreation Median Improvements.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City. If the legal language for a project requires change or a project is nearing its reversion date and additional time is needed, the City has the option to request for a reauthorization of the appropriation.

The City of Las Cruces was granted appropriation 20-E2829 in 2020 to plan, design, construct, and renovate taxi lanes at the Las Cruces International Airport. The project required the installation of utility lines that were not authorized under the appropriation. A reauthorization was submitted during the 2023 Legislative Session to add language to install utility lines at the airport as part of the total project; 23-H4098 reflects this change.

Additionally, the City of Las Cruces was granted appropriation 21-F4029 during the 2021 Legislative Session in the amount of $418,842 for Median Improvements managed by the Parks and Recreation Department. The project required additional time to complete and a reauthorization was submitted to allow for the additional time needed. This is the second reauthorization request for this project and contains a new reversion date of June 30, 2025; 23-H4100 reflects this change.

The State of NM Department of Transportation requires that all grant agreements or amended grant agreements being submitted for funding include a resolution approved by the City Council, making NMDOT projects a priority for the City.

SUPPORT INFORMATION:

Exhibit A: 23-H4098 Grant Agreement Signed
Exhibit B: 23-H4100 Grant Agreement signed

PLAN(S):
None

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 NMDOT Reauthorized funding for 23-H4098 - Las Cruces International Airport and 23-H4100 Parks and Recreation Median Improvements.
2. Vote "No"; this will deny NMDOT Reauthorized funding for 23-H4098 - Las Cruces International Airport and 23-H4100 Parks and Recreation Median Improvements resulting in a loss of funds.
3. Vote to "Amend"; this will require further direction to staff.
4. Vote to "Table"; this will surpass the NMDOT deadline of June 26, 2023 and result in a loss of funds needed to complete city projects.

DocuSign Envelope ID: F7D45EC8-4D45-41BD-B8C2-BE807D8BB944
Agenda Item #8.1
DocuSign Envelope ID: B8B7C73E-A627-46C4-AA06-C4ADD78816B1

Contract Number: D20045
Vendor Number: 0000054342
Control Number: C1233325

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 59, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID H3325 NMDOT Control Number C1233325 **$520,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 59, Five Hundred Twenty Thousand Dollars and No Cents ($520,000), to acquire rights of way and to plan, design, construct and improve University avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure, in Las Cruces in Dona Ana county;.

The Grantee's total reimbursements shall not exceed Five Hundred Twenty Thousand Dollars and No Cents $520,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if applicable, Zero Dollars and No Cents ($ 0.00), which equals Five Hundred Twenty Thousand Dollars and No Cents (**$520,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

---

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or
b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Cynthia Alamillo
Title: Interim Grant Manager
Address: 700 N. Main St Las Cruces, NM 88001
Email: grants@lascruces.gov
Telephone: 575-541-2430

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2027 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

DocuSign Envelope ID: F7D45EC8-4D45-41BD-B8C2-BE807D8BB944
Agenda Item #8.1
DocuSign Envelope ID: 8B871173E-A627-46C4-AA06-C4ADD78816B1

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the

SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/26/23

Date

DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Mallery Manzanares
83F307B82C81449...

By:

Its: Cabinet Secretary or Designee

11/3/2023

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
593C7CA1DD434D1...

By: Aaron Frankland or Designee

Its: Deputy General Counsel

9/20/2023

Date

DocuSign Envelope ID: F7D45EC8-4D45-41BD-B8C2-BE807D8BB944
Agenda Item #8.1
DocuSign Envelope ID: B8B7173E-A627-46C4-AA06-C4ADD78816B1

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my know ledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance w ith Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law , I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance w ith Article IX, Sec. 14 of the New Mexico Constitution know n as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date	Division Project Manager Date

DocuSign Envelope ID: F7D45EC8-4D45-41BD-B8C2-BE807D8BB944
Agenda Item #8.1
DocuSign Envelope ID: 58B7C73E-A627-46C4-AA06-C4ADD78816B1

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

DocuSign Envelope ID: F7D45EC8-4D45-41BD-B8C2-BE807D8BB944
Agenda Item #8.1.
DocuSign Envelope ID: 3B7173E-A627-46C4-AA06-C4ADD78816B1

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

RESOLUTION 24-037

A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, the City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session: 23-H3322, 23-H3323, 23-H3324 and 23-H3325; and

WHEREAS, these NMDOT Capital Appropriations have a reversion date of June 30, 2027; and

WHEREAS, the State of NM Department of Transportation requires an approved resolution for all grant agreements or amended grant agreements being submitted for funding.

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

(I)

THAT the City accepts the awards in the NMDOT agreements 23-H3322, 23-H3323, 23-H3324 and 23-H3325 from the 2023 Legislative Session Capital Outlay Appropriations for the City and they are hereby approved and have priority standing.

(II)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

24-037

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	October 16, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Fiscal Management	**Line of Business:**	Grants Administration Program

Title: **A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).**

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

PURPOSE(S) OF ACTION:

To accept multiple 2023 Legislative Capital Appropriation Agreements.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City.

The City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session:

Appropriation# 23-H3322 in the amount of $560,000 to plan, design, construct, and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes at the Las Cruces International Airport in Las Cruces, Dona Ana County.

Appropriation# 23-H3323 in the amount of $595,000 to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana County.

Appropriation# 23-H3324 in the amount of $250,000 to acquire rights of way and to plan, design, construct, and install improvements to the intersection of Telshor Boulevard and Spruce Avenue, including associated infrastructure and utilities in Las Cruces, Dona Ana County.

Appropriation# 23-H3325 in the amount of $520,000 to acquire rights of way and to plan, design, construct and improve University Avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure, in Las Cruces in Dona Ana County.

These capital appropriations have a reversion date of June 30, 2027.

The State of NM Department of Transportation requires that all grant agreements or amended grant agreements being submitted for funding include a resolution approved by the City Council, making NMDOT projects a priority for the City.

SUPPORT INFORMATION:

ATTACHMENT "A" CLC 23-H3322 Agreement
ATTACHMENT "B" CLC - 23-H3323 Agreement
ATTACHMENT "C" CLC - 23-H3324 Agreement
ATTACHMENT "D" CLC - 23-H3325 Agreement

PLAN(S):

None

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 NMDOT Legislative Capital Appropriation funding for 23-H3322, 23-H3323, 23-H3324 and 23-H3325.
2. Vote "No"; this will deny NMDOT funding and result in a loss of funds.
3. Vote to "Amend"; this will require further direction from staff.
4. Vote to "Table"; this will result in a loss of funds needed to complete city projects.

ATTACHMENT "K"

Contract Number: D20032
Vendor Number: 0000054342
Control Number: C1233323

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 57, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID H3323 NMDOT Control Number C1233323 **$595,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 57, Five Hundred Ninety Five Thousand Dollars and No Cents ($595,000), to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana county;.

The Grantee's total reimbursements shall not exceed Five Hundred Ninety Five Thousand Dollars and No Cents $595,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP

amount")[1], if applicable, Zero Dollars and No Cents ($ 0.00), which equals Five Hundred Ninety Five Thousand Dollars and No Cents (**$595,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

---

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

a. must be approved by the applicable oversight entity (if any) in accordance with law; or
b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**
b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Las Crucess
Name: Cynthia Alamillo
Title: Interim Grant Manager
Address: 700 N. Main Street Las Cruces, NM 88001
Email: grants@lascruces.gov
Telephone: 575-541-2430

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2027 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded

from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well

as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the

SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

10/2/23.

Date

DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Mallery Manzanares
83F307B82C81449...

By:

Its: Cabinet Secretary or Designee

11/3/2023

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
C93C7CA1BD434B1...

By: Aaron Frankland or Designee

Its: Deputy General Counsel

9/20/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City State Zip

C. Phone No: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

_____	_____
Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
_____	_____
Printed Name	Printed Name
Date: _____	Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

_____		_____	
Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

DocuSign Envelope ID: 2B25ADB0-B8EC-4095-8881-4771AF7D7BED

RESOLUTION 24-037

A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, the City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session: 23-H3322, 23-H3323, 23-H3324 and 23-H3325; and

WHEREAS, these NMDOT Capital Appropriations have a reversion date of June 30, 2027; and

WHEREAS, the State of NM Department of Transportation requires an approved resolution for all grant agreements or amended grant agreements being submitted for funding.

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

(I)

THAT the City accepts the awards in the NMDOT agreements 23-H3322, 23-H3323, 23-H3324 and 23-H3325 from the 2023 Legislative Session Capital Outlay Appropriations for the City and they are hereby approved and have priority standing.

(II)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

24-037

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	October 16, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Fiscal Management	**Line of Business:**	Grants Administration Program

Title: **A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).**

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

PURPOSE(S) OF ACTION:

To accept multiple 2023 Legislative Capital Appropriation Agreements.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City.

The City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session:

Appropriation# 23-H3322 in the amount of $560,000 to plan, design, construct, and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes at the Las Cruces International Airport in Las Cruces, Dona Ana County.

Appropriation# 23-H3323 in the amount of $595,000 to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana County.

Appropriation# 23-H3324 in the amount of $250,000 to acquire rights of way and to plan, design, construct, and install improvements to the intersection of Telshor Boulevard and Spruce Avenue, including associated infrastructure and utilities in Las Cruces, Dona Ana County.

Appropriation# 23-H3325 in the amount of $520,000 to acquire rights of way and to plan, design, construct and improve University Avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure, in Las Cruces in Dona Ana County.

These capital appropriations have a reversion date of June 30, 2027.

The State of NM Department of Transportation requires that all grant agreements or amended grant agreements being submitted for funding include a resolution approved by the City Council, making NMDOT projects a priority for the City.

SUPPORT INFORMATION:

ATTACHMENT "A" CLC 23-H3322 Agreement
ATTACHMENT "B" CLC - 23-H3323 Agreement
ATTACHMENT "C" CLC - 23-H3324 Agreement
ATTACHMENT "D" CLC - 23-H3325 Agreement

PLAN(S):

None

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 NMDOT Legislative Capital Appropriation funding for 23-H3322, 23-H3323, 23-H3324 and 23-H3325.
2. Vote "No"; this will deny NMDOT funding and result in a loss of funds.
3. Vote to "Amend"; this will require further direction from staff.
4. Vote to "Table"; this will result in a loss of funds needed to complete city projects.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by the Department of Finance and Administration, State of New Mexico, acting through the Local Government Division, Bataan Memorial Building, Room 202, Santa Fe New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **City of Las Cruces**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2023, Chapter 203, Section 97, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation;

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

23-H4095 $796,714.20 APPROPRIATION REVERSION DATE: 30-JUN-2025
Laws of 2023, Chapter 203, Section 97, Seven Hundred Ninety Six Thousand Seven Hundred Fourteen Dollars and Twenty cents ($796,714.20), to The time of expenditure for the local government division project in Subsection 192 of Section 34 of Chapter 277 of Laws 2019 to acquire rights of way and to plan, design, construct, improve, purchase and install signage, street lighting and infrastructure in the arts and cultural district in Las Cruces in Dona Ana county is extended through fiscal year 2025.

The Grantee's total reimbursements shall not exceed Seven Hundred Ninety Six Thousand Seven Hundred Fourteen Dollars and Twenty cents $796,714.20 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[45], if applicable, Zero Dollars and Zero Cents ($0.00), which equals Seven Hundred Ninety Six Thousand Seven Hundred Fourteen Dollars and Twenty cents ($796,714.20) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." [OPTIONAL LANGUAGE: "Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict.] The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[46] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

[45] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[46] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee:	City of Las Cruces
Name:	Ifo Pili
Title:	City Manager
Address:	700 N. Main St. Las Cruces NM 88001
Email:	ipili@las-cruces.org
Telephone:	575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee:	City of Las Cruces
Name:	Leeann DeMouche
Title:	Chief Financial Officer
Address:	700 N. Main St. Las Cruces NM 88001
Email:	ldeMouche@las-cruces.org
Telephone:	575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department:	DFA/Local Government Division
Name:	Daniel Catanach
Title:	Program Manager
Address:	Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email:	DanielN.Catanach@dfa.nm.gov
Telephone:	505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2025,** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or
(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
(iii) Termination for violation of the terms of this Agreement; or
(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or

potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the

Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the **City of Las Cruces** may immediately terminate this Agreement by giving Contractor written notice of such termination. The **City of Las Cruces's** decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the **City of Las Cruces** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New

Mexico in the event of immediate or Early Termination of this Agreement by the **City of Las Cruces** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the **City of Las Cruces** may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the **City of Las Cruces** only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

10/11/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley
[illegible]

By: Wesley Billingsley

Its: Division Director

11/2/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A.	Payment Request No.	
B.	Grant Amount:	$ 0.00
C.	AIPP Amount *(If Applicable)*:	$ 0.00
D.	Funds Requested to Date:	$ 0.00
E.	Amount Requested this Payment:	$ 0.00
F.	Reversion Amount (*If Applicable*):	$ 0.00
G.	Grant Balance:	$ 0.00

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year :

2024 (July 1, 2023-June 30, 2024)

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Printed Name

Date: _____

Grantee Representative

Printed Name

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Jacqueline Rubalcava
Email: jrubalcava@las-cruces.org

Signature: Elizabeth Teeters
Elizabeth Teeters (Sep 12, 2023 09:34 MDT)
Email: eteeters@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, Project Manager

FROM: Grantee Entity: _____

Grantee ●fficial Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: $ 0.00

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: Project Manager

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

H4095 Agreement Packet

Final Audit Report 2023-09-12

Created:	2023-09-07
By:	Velia Alvarez (velalvarez@las-cruces.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAAYrUS5StXijGcnzREO2zlMxWEwQ0xkJDa

"H4095 Agreement Packet" History

Document created by Velia Alvarez (velalvarez@las-cruces.org)
2023-09-07 - 8:40:58 PM GMT

Document emailed to Jacqueline Rubalcava (jrubalcava@las-cruces.org) for signature
2023-09-07 - 8:43:11 PM GMT

Document e-signed by Jacqueline Rubalcava (jrubalcava@las-cruces.org)
Signature Date: 2023-09-11 - 8:52:02 PM GMT - Time Source: server

Document emailed to eteeters@las-cruces.org for signature
2023-09-11 - 8:52:05 PM GMT

Email viewed by eteeters@las-cruces.org
2023-09-11 - 9:51:22 PM GMT

Signer eteeters@las-cruces.org entered name at signing as Elizabeth Teeters
2023-09-12 - 3:34:21 PM GMT

Document e-signed by Elizabeth Teeters (eteeters@las-cruces.org)
Signature Date: 2023-09-12 - 3:34:23 PM GMT - Time Source: server

Agreement completed.
2023-09-12 - 3:34:23 PM GMT

Adobe Acrobat Sign

CITY OF LAS CRUCES

MEMORANDUM

To: Ifo Pili, City Manager

From: Cynthia Alamillo, Interim Grants Manager **Initials:** CA

Date: September 7, 2023 **File#:** GAP #24-023

Subject: Request for Signature on Grant Agreement 23-H4095 for the Arts and Cultural District Improvements

Please sign the attached Grant Agreement from the New Mexico Department of Finance and Administration (NMDFA) for the 2023 Capital Outlay appropriation 23-H4095 in the amount of $796,714.20 for the Arts and Cultural District Improvements.

This appropriation reauthorizes 19-D2993 for an extension of time to acquire rights of way and to plan, design, construct, improve, purchase and install signage, street lighting and infrastructure in the Arts and Cultural District in Las Cruces in Dona Ana County. This appropriation has a reversion date of June 30, 2025.

Please return to the Grants Administration Program by Friday September 21, 2023. If there are any questions, please feel free to contact me at 541-2430.

REVIEWED:

Ifo Pili, City Manager — Date: 10/11/23

Attachments: 23-4095 NM DFA Agreement

CC: Jacqueline Rubalcava, Budget & Grants Administrator **Initials:** JR Sep 11, 2023

CC: Elizabeth Teeters, Department Director Economic Development **Initials:** ET Sep 12, 2023

CC: Linda Samples, City Attorney **Initials:** LS

CC: Ikani Taumoepeau, Assistant City Manager **Initials:** IT

ATTACHMENT "M"

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 225**, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2979
- APPROPRIATION AMOUNT: $1,025,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 225
- ONE MILLION TWENTY-FIVE THOUSAND ($1,025,000.00),
- to plan, design, construct, equip, purchase and install improvements and infrastructure in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE MILLION TWENTY-FIVE THOUSAND $1,025,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ZERO $0.00, which equals ONE MILLION TWENTY-FIVE THOUSAND $1,025,000.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

10/4/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

DocuSigned by:
Wesley Billingsley

By: Wesley Billingsley

Its: Division Director

11/2/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (*If Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Jaquel R Rubalcava
Email: jrubalcava@las-cruces.org

Signature: David Sedillo
David Sedillo (Sep 19, 2023 08:49 MDT)
Email: dsedillo@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

STATE OF NEW MEXICO
DEPARTMENT OF FINANCE AND ADMINISTRATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is made and entered into by and between the Department of Finance and Administration, State of New Mexico, Bataan Memorial Building, Room 202, Santa Fe, New Mexico, 87501 hereinafter called the "Department" or abbreviation such as "DFA/LGD", and **CITY OF LAS CRUCES**, hereinafter called the "Grantee". This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the **Laws of 2023, Chapter 199, Section 28, Paragraph 232,** the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to Sections 9-6-5 and 9-6-5.1 NMSA 1978, the Secretary of the Department of Finance and Administration has the power and the authority to (i) maintain long-range estimates and plans for capital projects and develop standards for measuring the need for, and utility of, proposed projects; (ii) contract for, receive and utilize any grants or other financial assistance made available by the United States government or by any other source, public or private; (iii) provide planning and funding assistance to units of local government, council of government organizations, Indian tribal governments situated within New Mexico, and to nonprofit entities having for their purpose local, regional or community betterment; (iv) incident to any such programs, may enter into contracts and agreements with such units of local government, council of government organizations, Indian tribal governments, nonprofit entities and the federal government; and (v) delegate such authority to the Local Government Division as being necessary and appropriate to such delegation.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

- 23-H2986
- APPROPRIATION AMOUNT: $1,150,000.00
- APPROPRIATION REVERSION DATE: June 30, 2027
- Laws of 2023, Chapter 199, Section 28, Paragraph 232
- ONE MILLION ONE HUNDRED FIFTY THOUSAND ($1,150,000.00),
- to plan, design, construct, renovate, purchase, equip, furnish and install improvements to a section of the building for the Mesilla Valley community of hope offices in Las Cruces in Dona Ana county;

The Grantee's total reimbursements shall not exceed ONE MILLION ONE HUNDRED FIFTY THOUSAND $1,150,000.00 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount"), if applicable, ELEVEN THOUSAND FIVE HUNDRED $11,500.00, which equals ONE MILLION ONE HUNDRED THIRTY-EIGHT THOUSAND FIVE HUNDRED $1,138,500.00 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

i. Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

ii. The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

iii. The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

iv. The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

v. In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

a. must be approved by the applicable oversight entity (if any) in accordance with law; or

b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

vi. Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

---

[1]The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2]"Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Ifo Pili
Title: City Manager
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ipili@las-cruces.org
Telephone: 575-541-2076

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: CITY OF LAS CRUCES
Name: Leeann DeMouche
Title: Chief Financial Officer
Address: 700 N. Main St., Las Cruces, NM 88001-1120
Email: ldeMouche@las-cruces.org
Telephone: 575-541-2080

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: DFA/Local Government Division
Name: Daniel Catanach
Title: Program Manager
Address: Bataan Memorial Bldg. Rm 202, Santa Fe, NM 87501
Email: danieln.catanach@dfa.nm.gov
Telephone: 505-231-6090

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on **June 30, 2027** the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.
B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are not expended and an expenditure has not occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement Early Termination includes:

i. Termination due to completion of the Project before the Reversion Date; or
ii. Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
iii. Termination for violation of the terms of this Agreement; or
iv. Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:
   i. The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
   ii. The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
   iii. The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month, that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

i. request such additional information regarding the Project as it deems necessary; and
ii. conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project. Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:
   i. The Grantee must submit a Request for Payment; and
   ii. Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
   iii. In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:
   i. Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
   ii. Twenty (20) days from date of Early Termination; or
   iii. Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

i. The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

ii. The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

iii. The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

iv. The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

v. The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

i. The Grantee has the legal authority to receive and expend the Project's funds.

ii. This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

iii. This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

iv. The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

v. The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

vi. The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or

indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

vii. No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, **CITY OF LAS CRUCES** may immediately terminate this Agreement by giving Contractor written notice of such termination. **CITY OF LAS CRUCES**'s decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against **CITY OF LAS CRUCES** or the Department of Finance and Administration, Local Government Division (DFA/LGD) or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the **CITY OF LAS CRUCES** or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a DFA/LGD Grant Agreement. Should the DFA/LGD early terminate the grant agreement, the CITY OF LAS CRUCES may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the CITY OF LAS CRUCES only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:
   1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
   2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
   3. timely submit all required financial reports to its budgetary oversight agency (if any); and
   4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:
   1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
   2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
   3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
   4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

10/4/23

Date

DEPARTMENT OF FINANCE AND ADMINISTRATION
LOCAL GOVERNMENT DIVISION

Wesley Billingsley

By: Wesley Billingsley

Its: Division Director

11/2/2023

Date

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I. Grantee Information

(Make sure information is complete & accurate)

A. Grantee: _____

B. Address: _____

(Complete Mailing, including Suite, if applicable)

_____

City, State, Zip

C. Contact Name/Phone #: _____

D. Grant No: _____

E. Project Title: _____

F. Grant Expiration Date: _____

II. Payment Computation

A. Payment Request No. _____

B. Grant Amount: _____

C. AIPP Amount *(If Applicable)*: _____

D. Funds Requested to Date: _____

E. Amount Requested this Payment: _____

F. Reversion Amount (If *Applicable*): _____

G. Grant Balance: _____

H. ☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)

I. ☐ Final Request for Payment (*if Applicable*)

III. Fiscal Year : _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ Reporting Certification:

I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ Compliance Certification:

Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer
or **Fiscal Agent** (*if applicable*)

Grantee Representative

Printed Name

Printed Name

Date: _____

Date: _____

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer Date

Division Project Manager Date

Signature: Jaquela Rubalcava

Email: jrubalcava@las-cruces.org

Signature: David Sedillo
David Sedillo (Oct 3, 2023 16:44 MDT)

Email: dsedillo@las-cruces.org

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee # _____

DATE: _____

TO: Department Representative: _____, _____

FROM: Grantee Entity: _____

Grantee Official Representative: _____

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: _____

Grant Termination Date: _____

As the designated representative of the Department for Grant Agreement number _____ entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: _____

Third Party Obligation Amount: _____

Vendor or Contractor: _____

Third Party Obligation Amount: _____

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): _____

The Amount of this Notice of Obligation: _____

The Total Amount of all Previously Issued Notices of Obligation: _____

The Total Amount of all Notices of Obligation to Date: _____

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: _____

Title: _____

Signature: _____

Date: _____

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

DocuSign Envelope ID: 3CE8D426-66DD-413A-BB6D-617B85811326

ATTACHMENT "O"

Contract Number: D20031
Vendor Number: 0000054342
Control Number: C1233322

STATE OF NEW MEXICO
DEPARTMENT OF TRANSPORTATION
FUND 93100 CAPITAL APPROPRIATION PROJECT

THIS AGREEMENT is between the Department of Transportation, hereinafter called the "Department" or abbreviation such as "NMDOT", and City of Las Cruces, hereinafter called the "Grantee". This Agreement is effective as of the date of the last party to sign it on the signature page below.

RECITALS

WHEREAS, in the Laws of 2023, HB505, Chapter 199, Section 33, Subsection 56, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, pursuant to the NMSA 1978, Section 67-3-28, as amended, and State Highway Commission Policy No. 44, the Department has the authority to enter into this Grant Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

DFA Appropriation ID H3322 NMDOT Control Number C1233322 **$560,000**
APPROPRIATION REVERSION DATE: 6/30/2027
Laws of 2023, Chapter 199, Section 33, Subsection 56, Five Hundred Sixty Thousand Dollars and No Cents ($560,000), to plan, design, construct and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes, at the Las Cruces international airport in Las Cruces in Dona Ana county.

The Grantee's total reimbursements shall not exceed Five Hundred Sixty Thousand Dollars and No Cents $560,000 (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")[1], if

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

applicable, Zero Dollars and No Cents ($ 0.00), which equals Five Hundred Sixty Thousand Dollars and No Cents (**$560,000**) (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." Optional Attachment A sets forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If Optional Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
   a. must be approved by the applicable oversight entity (if any) in accordance with law; or
   b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: City of Las Cruces

Name: Amy Bassford
Title: Grants and Contracts Manager
Address: P.O. Box 20000, Las Cruces, New Mexico 88004
Email: abassford@las-cruces.org
Telephone: 575-541-2281

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: City of Las Cruces
Name: Cynthia Alamillo
Title: Interim Grant Manager
Address: 700 N. Main St, Las Cruces, NM 88001
Email: calamillo@lascruces.gov
Telephone: 575-541-2430

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Department of Transportation District 1 Office
Name: Debra Hudson
Title: Capital Outlay District Coordinator
Address: 2912 East Pine Street, Deming, NM 88030
Email: DebraA.Hudson@dot.nm.gov
Telephone: 575-640-2779

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on 6/30/2027 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date

particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in

Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the

DocuSign Envelope ID: 3CE8D426-66DD-413A-BB6D-617B85811326
DocuSign Envelope ID: 4BB67D71-D6FD-49C1-872D-4235903A205C

subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces or the Department of Transportation or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a Department of Transportation Grant Agreement. Should the Department of Transportation early terminate the grant agreement, the City of Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the

DocuSign Envelope ID: 3CE8D426-66DD-413A-BB6D-617B85811326
DocuSign Envelope ID: 4DB7477-D6FD-49C1-872D-4235903A205C

requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

DocuSign Envelope ID: 3CE8D426-66DD-413A-BB6D-617B85811326
DocuSign Envelope ID: 45B64D71-D6FD-49C1-872D-4235903A205C

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili

(Type or Print Name)

Its: City Manager

(Type or Print Title)

9/18/23

Date

DEPARTMENT OF TRANSPORTATION

DocuSigned by:
Mallery Manzanares
83F307B82C81449...

By:

Its: Cabinet Secretary or Designee

11/3/2023

Date

REVIEWED AND APPROVED AS TO FORM AND LEGAL SUFFICIENCY BY THE DEPARTMENT'S OFFICE OF GENERAL COUNSEL

DocuSigned by:
Christine Schwamberger
593C7CA1DD434D1...

By: Aaron Frankland or Designee

Its: Deputy General Counsel

8/28/2023

Date

DocuSign Envelope ID: 3CE8D426-66DD-413A-BB6D-617B85811326
DocuSign Envelope ID: 45B67D71-D6FD-49C1-872D-4235903A205C

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I.	**Grantee Information**			**II.**	**Payment Computation**	
	(Make sure information is complete & accurate)			A.	Payment Request No.	
A.	Grantee:			B.	Grant Amount:	
B.	Address:			C.	AIPP Amount *(If Applicable)*:	
	(Complete Mailing, including Suite, if applicable)			D.	Funds Requested to Date:	
				E.	Amount Requested this Payment:	
				F.	Reversion Amount (If *Applicable*):	
	City	State	Zip	G.	Grant Balance:	
C.	Phone No:			H.	☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)	
D.	Grant No:			I.	☐ Final Request for Payment (*if Applicable*)	
E.	Project Title:					
F.	Grant Expiration Date:					

III. **Fiscal Year :** _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date:	Date:

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

DocuSign Envelope ID: 3CE8D426-66DD-413A-BB6D-617B85811326
DocuSign Envelope ID: 4006D071-D6FD-49C1-872D-4235903A205C

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

DocuSign Envelope ID: 3CE8D426-66DD-413A-BB6D-617B85811326
DocuSign Envelope ID: 45B64D71-D6FD-49C1-872D-4235903A205C

NMDOT ATTACHEMNT A

The City of Las Cruces shall agree to comply with the following Provisions:

1. Assume the lead role for the Project.
2. Be responsible for all applicable design, environmental and archaeological clearances, and right-of-way acquisition, in accordance with current local, state, federal laws, Uniform Relocation Act, and current design practices and specifications.
3. Be responsible for project development, project construction, construction management, and testing.
4. Utilize the Project Control Number in all correspondence and submittals to the Department.
5. Adopt a written resolution of support for the Project, including as applicable an assumption of ownership, liability, and maintenance responsibility for the scope, or related amenities and required funding to support the Project.
6. Complete the Project using current American Public Works Association (APWA) specifications, implemented Grantee's design standards and specifications, or Department specifications.
7. Use Rental Rate Blue Book rates, if not provided in the Department established equipment rates, in the implementation of this Project. Any equipment rates not found in the Department established rates shall be reimbursed at the Blue Book rates.

The City of Las Cruces shall agree to comply with the following Lighting and Signal Provisions as applicable:

1. After subject signal system(s) has/have been constructed, make provisions for and provide, at its own expense, all electrical energy, routine maintenance such as lamp replacement, emergency shutdown in case of accidental damage or equipment failure and make any repairs necessary due to accidental damage to, or equipment failure of, the signal head and poles.
2. In the event that accidental damage or equipment failure should occur, provide for equipment shut down/or emergency traffic control as needed. In addition, should the accidental damage or equipment failure involve the Controller (and cabinet) or the loop detection system, promptly notify the Traffic Technical Support Bureau of the Department.
3. In the event that the traffic signal should be rendered completely inoperable as a result of accidental damage, secure the intersection with stop signs at all approach legs until such time as the traffic signal is made operable.
4. Make ample future provisions in its budget each year for the cost of maintaining and providing energy to the traffic signals and telephone service to the signal system and intersection lighting.
5. At its own expense, maintain the signal controller and control equipment (the "Controller") including and maintenance of the machine vision vehicle detection system with cameras and emergency vehicle pre-empt system and repair or replace the Controller in the event the Controller and/or cabinet is damaged or there is an equipment failure.
6. After the installation of the roadway lighting system, if any, provide any and all utilities, maintenance, and such other items as may be necessary of continued satisfactory operation of said subject lighting system.
7. Make all timing adjustments to the Signal Control equipment and review the Signal System(s) for efficient and satisfactory operation.
8. Obtain approval from the Department for all signal equipment prior to installation.
9. Require the construction contractor to name the Department and the Grantee as an additional insured in the construction contractor's general liability policy.
10. Enter into a Signalization and Lighting Agreement with the Department's Traffic Technical Support Bureau as required.

RESOLUTION 24-037

A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, the City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session: 23-H3322, 23-H3323, 23-H3324 and 23-H3325; and

WHEREAS, these NMDOT Capital Appropriations have a reversion date of June 30, 2027; and

WHEREAS, the State of NM Department of Transportation requires an approved resolution for all grant agreements or amended grant agreements being submitted for funding.

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

(I)

THAT the City accepts the awards in the NMDOT agreements 23-H3322, 23-H3323, 23-H3324 and 23-H3325 from the 2023 Legislative Session Capital Outlay Appropriations for the City and they are hereby approved and have priority standing.

(II)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

24-037

Type of Action:
☒ **Resolution**
☐ **Ordinance**
☐ **TIDD Resolution**

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	October 16, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Fiscal Management	**Line of Business:**	Grants Administration Program

Title: **A RESOLUTION TO ACCEPT 2023 LEGISLATIVE CAPITAL APPROPRIATION AGREEMENTS FROM THE NEW MEXICO DEPARTMENT OF TRANSPORTATION (NMDOT).**

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

PURPOSE(S) OF ACTION:

To accept multiple 2023 Legislative Capital Appropriation Agreements.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City.

The City of Las Cruces was granted the following NMDOT Capital Appropriations during the 2023 Legislative Session:

Appropriation# 23-H3322 in the amount of $560,000 to plan, design, construct, and improve runways, including crack seal, surface seal, pavement pulverizing and overlay processes at the Las Cruces International Airport in Las Cruces, Dona Ana County.

Appropriation# 23-H3323 in the amount of $595,000 to acquire rights of way and to plan, design, construct and install street improvements, including pavement replacement, curb and gutter, sidewalks, accessibility and code compliance, drainage, street lights, signage, striping and related infrastructure and utilities, within the Lift Up area boundaries in Las Cruces in Dona Ana County.

Appropriation# 23-H3324 in the amount of $250,000 to acquire rights of way and to plan, design, construct, and install improvements to the intersection of Telshor Boulevard and Spruce Avenue, including associated infrastructure and utilities in Las Cruces, Dona Ana County.

Appropriation# 23-H3325 in the amount of $520,000 to acquire rights of way and to plan, design, construct and improve University Avenue and connecting streets, including lighting, landscaping, wayfinding, bicycle and pedestrian improvements, accessibility and code compliance, transit stops and shelters and associated infrastructure, in Las Cruces in Dona Ana County.

These capital appropriations have a reversion date of June 30, 2027.

The State of NM Department of Transportation requires that all grant agreements or amended grant agreements being submitted for funding include a resolution approved by the City Council, making NMDOT projects a priority for the City.

SUPPORT INFORMATION:

ATTACHMENT "A" CLC 23-H3322 Agreement
ATTACHMENT "B" CLC - 23-H3323 Agreement
ATTACHMENT "C" CLC - 23-H3324 Agreement
ATTACHMENT "D" CLC - 23-H3325 Agreement

PLAN(S):

None

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 NMDOT Legislative Capital Appropriation funding for 23-H3322, 23-H3323, 23-H3324 and 23-H3325.
2. Vote "No"; this will deny NMDOT funding and result in a loss of funds.
3. Vote to "Amend"; this will require further direction from staff.
4. Vote to "Table"; this will result in a loss of funds needed to complete city projects.

STATE OF NEW MEXICO
DEPARTMENT OF ENVIRONMENT
FUND 93100 CAPITAL APPROPRIATION PROJECT
***23*19 LAS CRUCES SEPTIC SYSTEMS REPLACEMENT AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL**
SAP 23-H4099-GFR

THIS AGREEMENT between the New Mexico Environment Department hereinafter called the "Department" or NMED, and City of Las Cruces, hereinafter called the "Grantee" becomes effective on the date signed by the NMED.

RECITALS

WHEREAS, in the Laws of 2023, Chapter 203, Section 101, Subsection , the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, NMED is empowered pursuant to Section 74-1-6 B, NMSA 1978 to contract in its own name.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

SAP 23-H4099-GFR $662,046.42 APPROPRIATION REVERSION DATE: June 30, 2025

Laws of 2023, Chapter 203, Section 101, Subsection , Six Hundred Sixty Two Thousand Forty Six Dollars And Forty Two Cents, ($662,046.42), for:

The department of environment project in Subsection 30 of Section 26 of Chapter 277 of Laws 2019 to plan, design and construct phase 2 and 3 septic systems replacements and improvements in Las Cruces in Dona Ana county may include improvements to related infrastructure and utilities. The time of expenditure is extended through fiscal year 2025.

The Grantee's total reimbursements shall not exceed Six Hundred Sixty Two Thousand Forty Six Dollars And Forty Two Cents, $662,046.42 (the "Appropriation Amount") minus the allocation for Art in Public Places

("AIPP amount")[1], if applicable, No Dollars, $0.00, which equals Six Hundred Sixty Two Thousand Forty Six Dollars And Forty Two Cents, $662,046.42 (the "Adjusted Appropriation Amount").

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." The Special Conditions Attachment may set forth additional or more stringent requirements and conditions, which are incorporated by this reference as if set forth fully herein. If the Special Conditions Attachment imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of the Attachment shall prevail, in the event of irreconcilable conflict. The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse[2] Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

(i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and

(ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and

(iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and

(iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and

(v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:

[1] The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars ($200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars ($100,000)." Section 13-4A-4 NMSA 1978.

[2] "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

a. must be approved by the applicable oversight entity (if any) in accordance with law; or
b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and

(vi) The Grantee's submission of documentation of all Third-Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:

a. The Grantee shall submit to the Department one copy of all Third-Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party **but prior to execution by the Grantee.**

b. Grantee acknowledges and agrees that if it chooses to enter into a Third-Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.

c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.

d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third-Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

For all matters related to this Agreement, the Grantee designates their official representative(s) or successor, in their Signatory Resolution, as required in Article X. B. (v). The official representative will be the contact and signatory for all disbursements and Notices of Obligation.

If applicable, the Grantee designates an Alternative Fiscal Agent in the Signatory Resolution as required in Article X. B. (v), and in the Alternative

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

NMED Program Administrator
Name: Bertha Aragon
Email: bertha.aragon@env.nm.gov
Telephone: 505-670-3615

NMED Project Manager
Name: Steven Deal
Email: steven.deal@env.nm.gov
Telephone: 505-670-2926

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2025 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are ***not*** expended and an expenditure has ***not*** occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. **Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement**

Early Termination includes:

(i) Termination due to completion of the Project before the Reversion Date; or

(ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or

(iii) Termination for violation of the terms of this Agreement; or

(iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. **Early Termination Before Reversion Date Due to Non-appropriation**

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. **Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination**

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

(i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and

(ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and

(iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report quarterly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (Budget & Formulation Management System). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Quarterly reports shall be due on the last day of the month that is 30 days prior to the end of the quarter following execution of this Agreement by the Department and ending during the quarter of the submission of the final request for reimbursement for the Project, or the following quarter.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

(i) request such additional information regarding the Project as it deems necessary; and

(ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

(i) The Grantee must submit a Request for Payment; and

(ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.

(iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. **Deadlines**

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

(i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was ~~a~~approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or

(ii) Twenty (20) days from date of Early Termination; or

(iii) **Twenty (20) days from the Reversion Date**.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

A. The following general conditions and restrictions are applicable to the Project:

(i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).

(ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars ($60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.

(iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."

(iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.

(v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.

B. The Grantee hereby represents and warrants the following:

(i) The Grantee has the legal authority to receive and expend the Project's funds.

(ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.

(iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.

(iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.

(v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.

(vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.

(vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the Las Cruces may immediately terminate this Agreement by giving Contractor written notice of such termination. The Las Cruces's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the Las Cruces or the New Mexico Environment Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the Las Cruces or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under a New Mexico Environment Department Grant Agreement. Should the NMED early terminate the grant agreement, the Las Cruces may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the Las Cruces only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;

2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);

3. timely submit all required financial reports to its budgetary oversight agency (if any); and

4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;

2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;

3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or

4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. [OPTIONAL IF THE APPROPRIATION IS FUNDED BY SEVERANCE TAX BONDS OR GENERAL OBLIGATION BONDS] SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

Authorization Page
*23*19 LAS CRUCES SEPTIC SYSTEMS REPLACEMENT AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL SAP 23-H4099-GFR

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE

Signature of Official with Authority to Bind Grantee

City of Las Cruces
Entity Name

By: Ifo Pili
(Type or Print Name)

Its: City Manager
(Type or Print Title)

11/1/25
Date

New Mexico Environment Department

Judith L Kahl Digitally signed by Judith L Kahl
Date: 2023.11.13 14:55:04 -07'00'

Judith L. Kahl, P.E., Bureau Chief, NMED Construction Programs Bureau
Signed pursuant to the March 24, 2023 Secretary of Environment Delegation Order

SAMPLE

STATE OF NEW MEXICO
CAPITAL GRANT PROJECT
Request for Payment Form
Exhibit 1

I.	**Grantee Information**	**II.**	**Payment Computation**
	(Make sure information is complete & accurate)	A.	Payment Request No.
A.	Grantee:	B.	Grant Amount:
B.	Address:	C.	AIPP Amount *(If Applicable)*:
	(Complete Mailing, including Suite, if applicable)	D.	Funds Requested to Date:
		E.	Amount Requested this Payment:
		F.	Reversion Amount (I*f Applicable*):
	City State Zip	G.	Grant Balance:
C.	Phone No:	H.	☐ GF ☐ GOB ☐ STB (*attach wire if first draw*)
D.	Grant No:	I.	☐ Final Request for Payment (*if Applicable*)
E.	Project Title:		
F.	Grant Expiration Date:		

III. **Fiscal Year :** _____

(The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)

IV. ☐ **Reporting Certification:** I hereby certify to the best of my know ledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance w ith Article VIII of the Capital Outlay Grant Agreement.

V. ☐ **Compliance Certification:** Under penalty of law , I hereby certify to the best of my know ledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance w ith Article IX, Sec. 14 of the New Mexico Constitution know n as the "anti donation" clause.

Grantee Fiscal Officer or **Fiscal Agent** (*if applicable*)	**Grantee Representative**
Printed Name	Printed Name
Date:	Date:

(State Agency Use Only)

Vendor Code: _____ **Fund No.:** _____ **Loc No.:** _____

I certify that the State Agency financial and vendor file information agree with the above submitted information.

Division Fiscal Officer	Date	Division Project Manager	Date

NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
SAMPLE EXHIBIT 2

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [_____]

TO: Department Representative: [_____,_____]
FROM: Grantee: [_____]
Grantee Official Representative: [_____]

SUBJECT: Notice of Obligation to Reimburse Grantee
Grant Number: [_____]
Grant Termination Date: [_____]

As the designated representative of the Department for Grant Agreement number [_____] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

Vendor or Contractor: [_____]
Third Party Obligation Amount: [_____]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [_____]
The Amount of this Notice of Obligation: [_____]
The Total Amount of all Previously Issued Notices of Obligation: [_____]
The Total Amount of all Notices of Obligation to Date: [_____]
Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [_____]
Title: [_____]
Signature: [_____]
Date: [_____]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.

New Mexico Environment Department (NMED)
Capital Appropriations Certification Document
Article IX. A. (ii) and (iii)
Project *23*19 LAS CRUCES SEPTIC SYSTEMS REPLACEMENT AND IMPROVEMENTS--EXPAND PURPOSE--EXTEND TIME--GENERAL SAP 23-H4099-GFR
Grantee Las Cruces
Payment Request No_____

I certify that payment to all vendors on the above referenced payment request were paid no more than five (5) days after receiving reimbursement from NMED.

Official Representative, Signed Name, Printed Name, Date

TECHNICAL REQUIREMENTS
NEW MEXICO ENVIRONMENT DEPARTMENT
CAPITAL OUTLAY

ARTICLE 1 REVIEW

Upon execution of the grant agreement, the Grantee will follow the procedures listed below unless waived in writing by the New Mexico Environment Department (NMED) (payment may be withheld if any of these procedures are not followed by the Grantee).

A. The Grantee must submit copies to NMED of all executed contracts entered into by the Grantee and related to the project, for review and, if appropriate, approval. Only approved eligible expenditures incurred **after** the effective date of the Grant Agreement shall be reimbursed or paid from these funds.

B. If these grant funds are to be used for engineering and/or other professional services, the hiring process for engineering services and/or other professional services must be performed in compliance with the New Mexico Procurement Code [Sections 13-1-21 et seq. NMSA 1978]. If engineering fees exceed $60,000, excluding gross receipt taxes, the Grantee is required to contact the Professional Technical Advisory Board (PTAB) for assistance in the preparation of the Request for Proposals (RFP) package. (PTAB: phone (505) 888-6161 and e-mail ptab@acecnm.org.)

C. If these grant funds are used for engineering and/or other professional services, the Grantee must submit a copy of any executed engineering agreement and/or other professional services contract so a notice of obligation can be prepared and issued. If the Grantee's staff will be used to prepare the design, a letter certifying that must be submitted to NMED for the project record. The grantee has the option of using the NMED engineering agreement. In any case all engineering agreements must include the non-appropriation and termination clauses required by DFA in all agreements funded by capital outlay.

D. A preliminary engineering report (PER), technical memorandum, or study by a registered New Mexico Professional Engineer may be required.

E. If the grant funds are to be used for engineering design or for construction, the Grantee must submit all plans, specifications, bid documents, and engineer's construction cost estimate, for the project (prepared and sealed by a licensed and registered New Mexico Professional Engineer) to NMED **before** the project is advertised for construction bids, along with a letter **from the Grantee** stating that they have reviewed and accepted the plans and specifications. If required, the Grantee must also submit the plans and specifications to the appropriate regulatory agency for review and approval and provide a copy of the approval letter from the regulatory agency. Upon receipt of these documents the NMED will issue a letter confirming receipt of the required documents and informing the Grantee to proceed with advertising the project for construction bids.

F. A site certificate must be submitted prior to project bid advertisement that certifies all necessary easements, rights-of-way, and/or property upon or through which the project is being constructed have been obtained. The Site Certificate must be signed by an attorney, engineer, surveyor, or title abstractor.

G. If grant funds are to be used for the purchase or acquisition of real property as a part of this project and within the project period, the Grantee will submit documentation of the acquisition to NMED, including a legal description of the property, the date the property will be acquired, evidence of clear title, and an appraisal report prepared by a qualified appraiser selected through applicable procurement procedures.

H. The Grantee will submit the proof of advertisement, recommendation of award, bid tabulation, complete bid submittal of the selected contractor, any addenda issued, and funding analysis listing all funds that will pay for construction to NMED prior to award of the construction contract, along with a letter from the Grantee stating they concur with the recommendation of award to the selected contractor and price and confirming that the Grantee has sufficient funds for construction.

I. The Grantee will submit the notice of the award, the notice of a pre-construction conference, a copy of the executed construction contract documents (including payment and performance bonds), and the notice to proceed to NMED. NMED will prepare and issue the notice of obligation for the construction cost making the grant funds available for reimbursement of construction costs. The selected contractor will be required to post a performance and payment bond in accordance with requirements of Section 13-4-18 NMSA 1978.

J. The Grantee will provide a full-time construction inspector during construction of the project unless NMED determines that part time inspection is adequate for the project. This must be requested and approved by NMED prior to the start of construction.

K. All daily construction inspection reports shall be made available to the NMED upon request.

L. Notwithstanding the inspections performed by the Grantee and its engineer, NMED will have the right to examine all installations comprising the project, including materials delivered and stored on-site for use on the project. Such examinations will not be considered an inspection for compliance with contract plans but will be a general NMED review as described in Article 2 below.

M. If applicable, the Grantee (or the system owner) will employ qualified utility operators and will comply with all provisions of the New Mexico Utility Operators Certification Act, Section 61-33-1 et seq. NMSA 1978.

N. NMED will reimburse the grantee its actual costs when NMED determines, in its sole discretion, that expenditures were appropriate under the terms of the Agreement and that the expenditures were properly documented.

ARTICLE 2 NMED OVERSIGHT

NMED inspection, review and oversight is only for purposes of compliance with applicable state grant requirements, procedures, statutes, and regulations. NMED approval will not be interpreted as a warranty or guarantee of any kind. Responsibility for the design of the project will lie solely with the engineer of record. All defects and their correction will be the responsibility of the Grantee and its contractors and engineers or consultants. Any questions raised by NMED during its inspections and reviews shall be resolved exclusively by the Grantee. The Grantee and its contractors and engineers or consultants will remain responsible for the completion and success of the project. No action by NMED shall relieve the

owner, engineer, or contractor of legal responsibilities for the overall integrity of the project, adequacy of the design, safety, or compliance with all applicable regulations.

ARTICLE 3 CLOSEOUT

A. The project will not be considered complete until the work as defined in this agreement has been fully performed, and finally and unconditionally accepted by the Grantee and the engineer of record.

B. If the grant funds are used for purchase of equipment, final payment will be made after receipt of the equipment and equipment title, if applicable. Appraisal reports are required for the purchase of used equipment.

C. If the grant funds are used for construction, final payment will be made after the final inspection has been conducted by NMED and the following items, unless waived by NMED, have been provided to NMED, and have been reviewed and approved by NMED:

i. A certificate of substantial completion including punch list items.

ii. A final certified construction pay request prepared by the Grantee's project engineer and approved by the Grantee.

iii. A written consent of the surety, if any, to final payment.

iv. Complete and legally effective releases or waivers (satisfactory to the Grantee) of all liens arising out of the contract documents and the labor services performed and the materials and equipment furnished there under. In lieu thereof and as approved by the Grantee, contractor(s) may furnish receipts or releases in full; an affidavit of contractor that the releases and receipts include labor, services, materials, and equipment for which a lien could be filed and that all payrolls, material and equipment bills, and other indebtedness connected with the work for which the Grantee or its property might in any way be responsible, have been paid or otherwise satisfied.

v. Certification letter by the Grantee and contractor that the Labor Standards Contract Provisions have been met.

vi. Certification letter of project acceptance by the Grantee and the Grantee’s project engineer stating that work has been satisfactorily completed and the construction contractor has fulfilled all of the obligations required under the contract documents with the Grantee, or if payment and materials performance bonds are "called", an acceptance close-out settlement to the Grantee and contractors will be submitted to NMED.

vii. Certification letter from the Grantee confirming receipt and acceptance of the record drawings and operation and maintenance manuals.

Rev. May 2023

NEW MEXICO ENVIRONMENT DEPARTMENT
CONSTRUCTION PROGRAMS BUREAU

NMED DISBURSEMENT REQUEST

SPECIAL APPROPRIATIONS PROGRAM (SAP)

A. NAME OF ENTITY

C. DISBURSEMENT REQUEST NUMBER

B. PROJECT NUMBER

D. GRANT AMOUNT

	PREVIOUS EXPENDITURES		CURRENT EXPENDITURES		CUMULATIVE		FUNDS REMAINING	
	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS	NMED PROGRAM	OTHER FUNDS
Engineer Fees								
Other Professional								
Service Fees								
Inspection Fees								
Property Acquisition								
Construction Cost								
Planning Cost								
Equipment								
Other Costs (specify)								
Contingencies								
TOTAL								

Article IX.A. (iii). By checking this box you are stating that payment has NOT been paid to the vendors associated with this request. Upon receipt of payment from NMED, certification of payment will be sent within 10 days from the date of receiving reimbursement.

Article IX. A. (ii). By checking this box you are certifying that the vendors associated with this request have been paid.

Certification: Under penalty of law, I certify that all the above expenditures are true and correct and are for appropriate purposes in accordance with the terms and conditions of the pertinent Loan/Grant Agreement; that all of the above expenses are properly documented, and are actual invoices; that payment has not been received; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti-donation" clause.

Signature of Official Representative:	Typed or Printed Name:	Phone:	Date:
X			
Signature of Fiscal Agent if appliable:	Typed or Printed Name:	Phone:	Date:
X			

RESOLUTION 24-036

A RESOLUTION TO ACCEPT THE REAUTHORIZED GRANT AGREEMENT SAP 23-H4099-GFR FROM THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT AND DESIGNATE THE AUTHORIZED SIGNER, OFFICIAL REPRESENTATIVES, AND DESIGNATED AGENT OF THIS AGREEMENT.

The City Council is informed that:

WHEREAS, the City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City; and

WHEREAS, a reauthorization was submitted and approved during the 2023 Legislative Session on the 2019 appropriation 19-D2457 to expand the purpose and extend the time of expenditure. Appropriation SAP 23-H4099-GFR reflects this change.

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

(I)

THAT The City Manager or successor is authorized to sign the agreement for this project.

(II)

THAT Utilities Department Director, Financial Services Director or successors are the official representatives authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements.

(III)

THAT The Budget and Grant Administrator or successor is the Budget and Formulation Management (BFM) contact who is designated to update the DFA database quarterly.

(IV)

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

DONE AND APPROVED this 16 day of October 2023

APPROVED

Mayor

ATTEST:

City Clerk

Moved by: Becki Graham

Seconded by: Johana Bencomo

AYES Kasandra Gandara, Ken Miyagishima, Yvonne Flores, Johana Bencomo, Becki Graham, Becky Corran, Tessa Abeyta

NAYS

Name of Grantee: City of Las Cruces Project Number: SAP 23-H4099-GFR

Authorized to Sign the Agreement	
Name	Ifo Pili
Title	City Manager
Signature	
Address	700 N. Main Street Las Cruces, NM 88001
Email	grants@lascruces.gov
Phone	575-541-2270
Official Representatives authorized to sign Disbursement Requests and All Other Documents	
Name	Leeann DeMouche
Title	Financial Services Director
Signature	Leeann DeMouche
Address	700 N. Main Street Las Cruces, NM 88001
Email	ldemouche@lascruces.gov
Phone	575-541-2080
Alternate Official Representative; To sign Disbursement Requests and All Other Documents, Requirement and Act as the Project Contact	
Name	Adrienne Widmer
Title	Director of Utilities
Signature	~~for ALW 11/6/23~~ 11/13/23
Address	680 N. Motel Blvd
Email	awidmer@lascruces.gov
Phone	575-528-3524
Designated Agent or Employee that will update DFA Database Quarterly	
Name	Jacqueline Rubalcava
Title	Budget and Grant Administrator
Signature	Jacqueline Rubalcava
Address	700 N. Main Street Las Cruces, NM 88001
Email	jrubalcava@lascruces.gov
Phone	575-541-2188
If required, Fiscal Agent approved to sign Disbursement Requests	
Name	
Title	
Signature	
Address	
Email	
Phone	

24-036

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

City Council Action and Executive Summary

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:		**Adopted:**	October 16, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Grants Administration Program	**Line of Business:**	Fiscal Management

Title: **A RESOLUTION TO ACCEPT THE REAUTHORIZED GRANT AGREEMENT SAP 23-H4099-GFR FROM THE STATE OF NEW MEXICO ENVIRONMENT DEPARTMENT AND DESIGNATE THE AUTHORIZED SIGNER, OFFICIAL REPRESENTATIVES, AND DESIGNATED AGENT OF THIS AGREEMENT.**

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

PURPOSE(S) OF ACTION:

To accept a reauthorized grant agreement and designate authorized signers.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces requests funding on an annual basis from the New Mexico State Legislature to complete capital outlay projects throughout the City.

The City of Las Cruces was granted the following reauthorization from the State of New Mexico Environment Department during the 2023 Legislative Session:

Appropriation# SAP 23-H4099-GFR for the Las Cruces Septic Systems Replacement and Improvements which is a reauthorization of Appropriation# 19-D2457 and has been reauthorized to expand the purpose to plan, design, and construct phase 2 and 3 septic systems replacements and improvements in Las Cruces, Dona Ana County and may include improvements to related infrastructure and utilities. The time of expenditure is extended through fiscal year 2025.

The City Manager or successor is authorized to sign the agreement for this project. Utilities Department Director or Financial Services Director or successors are the official representatives authorized to sign all other documents necessary to fulfill the Grant Agreement and the requirements. The Budget and Grant Administrator or successor is the Budget and Formulation Management (BFM) contact who is designated to update the DFA database quarterly.

SUPPORT INFORMATION:

ATTACHMENT "A" GrantAgreement_SAP 23-H4099-GFR_08-30-2023 (1) (1)

PLAN(S):

None, Elevate Las Cruces

3053; Council Bill 24-011

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ N/A		
1st Reading:	December 4, 2023	**Adopted:**	December 18, 2023
Drafter:	Adam Ochoa	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **AN ORDINANCE APPROVING A ZONE CHANGE FROM R-4 (MULTI-DWELLING HIGH DENSITY – LIMITED RETAIL AND OFFICE) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 0.812 + ACRES AND LOCATED AT 6281 REYNOLDS DRIVE. SUBMITTED BY GABRIEL ORTIZ, REPRESENTATIVE. (23ZO0500124).**

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 Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulations uniformly govern the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity) for a property approximately 0.812 acres in size and located at 6281 Reynolds Drive. The purpose of the proposed zone change is to allow for more opportunities for development of the vacant parcel including a shopping center or storage units.

The property is zoned R-4 (Multi-Dwelling High Density – Limited Retail and Office) which does not permit the proposed commercial land uses. The proposed zone change request will allow for the applicant's potential commercial uses while not eliminating the use of multi-family dwellings. The surrounding neighborhood is primarily single-family and multi-family land uses. There are limited commercial nodes such as a gas station, religious institution, and the East Mesa Recreation Center. Based on the existing neighborhood, the proposed zone change is compatible with the surrounding area, increases commercial services specifically to the residential districts, and would be in harmony with Section 38-2 of the 2001 Zoning Code.

The property is located within a suburban place type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Suburban neighborhoods are intended to provide 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.

On October 24, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request had no opposition from area residents. Staff did receive one phone call supporting the commercial designation as there are several multi-family development sites still available. The Planning and Zoning Commission voted 4-2-0 (one Commissioner vacancy) to recommend approval of the zone district change. Please see Attachment "B" for more information.

SUPPORT INFORMATION:

Exhibit "A" - Site Plan
Exhibit "B" - Findings
Attachment "A" - P&Z Staff Report
Attachment "B" - P&Z Minutes from October 24, 2023

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. The subject property located at 6281 Reynolds Drive will be rezoned from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity).
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current R-4 (Multi-Dwelling High Density and Limited Retail and Office) will remain.
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 3053; COUNCIL BILL 24-011

AN ORDINANCE APPROVING A ZONE CHANGE FROM R-4 (MULTI-DWELLING HIGH DENSITY – LIMITED RETAIL AND OFFICE) TO C-2 (COMMERCIAL MEDIUM INTENSITY) FOR A PROPERTY ENCOMPASSING 0.812 + ACRES AND LOCATED AT 6281 REYNOLDS DRIVE. SUBMITTED BY GABRIEL ORTIZ, REPRESENTATIVE. (23ZO0500124).

The City Council is informed that:

WHEREAS, Gabriel Ortiz, representative, has submitted a request for a zone change from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity); and

WHEREAS, the subject property is approximately 0.812 acres in size, vacant, and the proposed zone change will increase the potential development opportunities; and

WHEREAS, the proposed C-2 (Commercial Medium Intensity) zone is consistent with the Suburban Place Type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals and policies contained therein; and

WHEREAS, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on October 24, 2023, recommended that the zone change request be approved by a vote of 4-2-0 (one Commissioner vacancy).

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 C-2 (Commercial Medium Intensity).

(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)

THATCity 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:

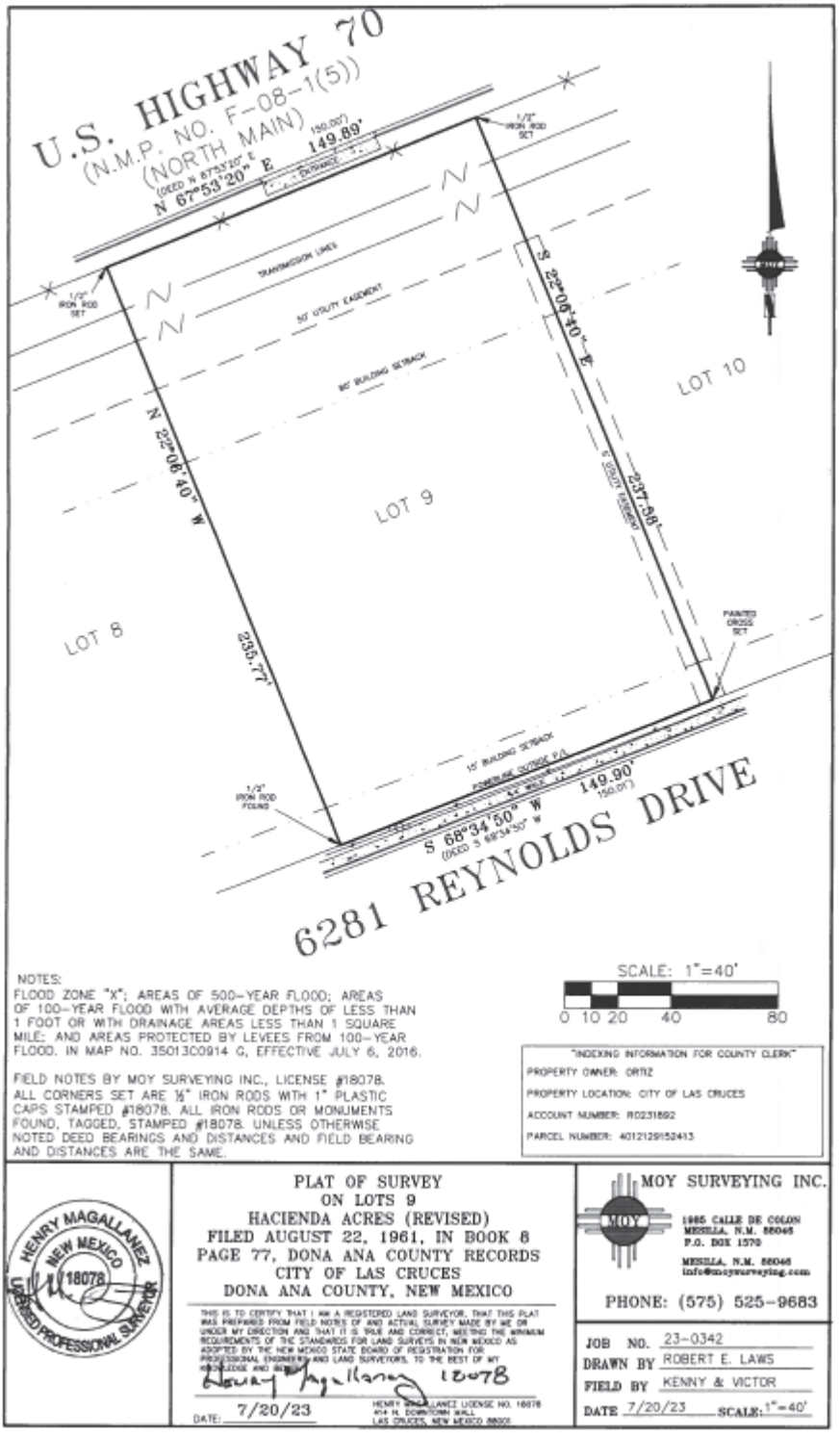
Seconded by:

AYES

NAYS

EXHIBIT "A"

Site Plan:



NOTES:
FLOOD ZONE "X"; AREAS OF 500-YEAR FLOOD; AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD. IN MAP NO. 35013C0914 G, EFFECTIVE JULY 6, 2016.

FIELD NOTES BY MOY SURVEYING INC., LICENSE #18078. ALL CORNERS SET ARE ½" IRON RODS WITH 1" PLASTIC CAPS STAMPED #18078. ALL IRON RODS OR MONUMENTS FOUND, TAGGED, STAMPED #18078. UNLESS OTHERWISE NOTED DEED BEARINGS AND DISTANCES AND FIELD BEARING AND DISTANCES ARE THE SAME.

SCALE: 1"=40'
0 10 20 40 80

"INDEXING INFORMATION FOR COUNTY CLERK"
PROPERTY OWNER: ORTIZ
PROPERTY LOCATION: CITY OF LAS CRUCES
ACCOUNT NUMBER: R0231892
PARCEL NUMBER: 4012128152413

HENRY MAGALLANEZ NEW MEXICO 18078 LICENSED PROFESSIONAL SURVEYOR

PLAT OF SURVEY
ON LOTS 9
HACIENDA ACRES (REVISED)
FILED AUGUST 22, 1961, IN BOOK 8
PAGE 77, DONA ANA COUNTY RECORDS
CITY OF LAS CRUCES
DONA ANA COUNTY, NEW MEXICO

THIS IS TO CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, THAT THIS PLAT WAS PREPARED FROM FIELD NOTES OF AND ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT, MEETING THE MINIMUM REQUIREMENTS OF THE STANDARDS FOR LAND SURVEYS IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Henry Magallanez 18078

DATE: 7/20/23

HENRY MAGALLANEZ LICENSE NO. 18078
414 N. DOWNTOWN MALL
LAS CRUCES, NEW MEXICO 88001

MOY SURVEYING INC.
1985 CALLE DE COLON
MESILLA, N.M. 88046
P.O. BOX 1570
MESILLA, N.M. 88046
info@moysurveying.com
PHONE: (575) 525-9683

JOB NO. 23-0342
DRAWN BY ROBERT E. LAWS
FIELD BY KENNY & VICTOR
DATE 7/20/23 SCALE: 1"=40'

EXHIBIT "B"

Findings:

1. The zone change will allow for the development of vacant property in an established area of the City of Las Cruces (2001 Zoning Code, Section 38-2K).
2. The zone change will allow for multiple commercial uses. (2001 Zoning Code, Section 38-33).
3. The subject property is located on a minor arterial (Bataan Memorial East) and local (Reynolds Road) roadways which allows for commercial land uses.
4. 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).

CITY OF LAS CRUCES

ZONING

Planning & Zoning Commission 10/24/2023

CASE 23ZO0500124: Zone Change

STAFF CONTACT:	Christina Abeyta-Corella, (575) 528-3063, cabeyta@las-cruces.org
OWNER:	Martha E Ortiz
REPRESENTATIVE:	Gabriel Ortiz
DISTRICT:	District #6
SITE ADDRESS:	6281 Reynolds Drive
EXISTING ZONING:	R-4 (Multi-Dwelling High Density and Limited Retail and Office)
REQUEST:	To rezone from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity)
CONCURRENT APPLICATIONS:	N/A
RECOMMENDATION:	Approval

SUMMARY OF REQUEST CASE 23ZO0500124:
The applicant is requesting a zone change from R-4 (Multi-dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity) for a property located at 6281 Reynolds Drive and encompassing approximately .812 acres. The subject property is located south of Bataan Memorial East and north of Reynolds Drive.

SUMMARY OF RECOMMENDATION:
Staff is recommending **Approval** based on the findings listed below:

- The zone change will allow for the development of vacant property in an established area of the City of Las Cruces (2001 Zoning Code, Section 38-2K).
- The zone change will allow for multiple commercial uses. (2001 Zoning Code, Section 38-33).
- The subject property is located on a minor arterial (Bataan Memorial East) and local (Reynolds Road) roadways which allows for commercial land uses.
- 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:
The applicant is seeking a zone change for a property located at 6281 Reynolds Drive from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-2 (Commercial Medium Intensity). The proposed zone change would allow the vacant property to be developed with either a commercial shopping center or mini storage units. The proposed zone change request will not eliminate the existing multi-family land use but provide an opportunity for commercial services in an area where services are not readily available.

LAND USE HISTORY:
The vacant property is located within the Hacienda Acres Subdivision, recorded in 1987.

ZONING DECISION CRITERIA AND POLICIES

POLICY	DOES IT COMPLY?
Neighborhood Character and Compatibility	Yes
Elevate Las Cruces Comprehensive Plan	Yes
Mesilla Valley MPO Thoroughfare Plan	Yes
Purpose and Intent of the Code: Section 38-2	Yes
Criteria for Decisions: Section 2-382	Yes
New Mexico Case Law	Yes

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
The surrounding area contains a mixture of land uses included single-family, multi-family, and commercial. The City of Las Cruces East Mesa Recreation Center is located to the west side of the property and a religious institution is located on the east. Given the development pattern described, there should be no adverse impact to the surrounding neighborhood in terms of character and compatibility.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

- Goal CE-3 - Centers and corridors: Support community growth through concentrated development at activity centers an along key corridor.
  - Policy CE-3.1: Promote the development of mixed-use centers to support surrounding neighborhoods and serve as focal points for community life.
  - Policy CE-3.2: Allow for a mix of development type and intensity along major throughfares that reflect surrounding urban, suburban, and rural contexts.
- Goal CE-4 – Complete neighborhoods: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
  - Policy CE-4.2 – Incorporate employment and shopping nodes into new and redeveloping neighborhoods to provide residents with convenient access to services.
- Goal CP-2 – Economic Equality: Generate employment opportunities that create economic security for all residents.
  - Policy CP-2.2: Support efforts to connect vulnerable populations to job opportunities.

- Action CP-2.2.2: Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.

The property is located on a suburban place type overlay as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. Suburban neighborhoods are intended to provide 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.

COMPLIANCE WITH MPO THOROUGHFARE PLAN:
Bataan Memorial East is classified as a minor arterial roadway and Reynolds Drive is classified as a local roadway by the Mesilla Valley Metropolitan Planning Organization (MPO) and the Elevate Las Cruces Comprehensive Plan. Commercial land uses are supported along designated thoroughfares due to the capacity of the roadway.

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.
B. Encourage innovations in land development and redevelopment.
C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
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.

The City of Las Cruces determined the proposed zone change would not adversely impact the surrounding area and would be in harmony with Section 38-2 of the 2001 Zoning Code.

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

The Planning and Zoning Commission shall review the comprehensive plan, and other applicable plans and codes and determine whether the request will:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;

- Impairment of the public health, safety or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

Based on reviews of applicable codes and policies, City Staff did not identify any issues associated with the proposed zone change and associated variance. The proposed land uses should not unreasonably contradict the purpose and intent of the zoning code, nor establish spot zoning.

NEW MEXICO CASE LAW:

1. There was an error when the existing zoning map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or
3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other applicable City master plan(s), even though criterion (1) or (2) above do not apply because
    a. there is a public need for a change of the kind in question, and
    b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

The neighborhood has a variety of land uses including single-family, multi-family, institutional, and commercial which is not out of character with the proposed use being requested by the applicant.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is zoned R-4 and approximately 0.812 acres in size. R-4 allows for limited office and retail uses with a residential component. The property is currently undeveloped.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

The proposed zone change will allow the property owner to utilize the vacant parcel for a variety of uses. The property has the potential to be developed with multi-family, commercial or even mixed use. Any development on the property will be required to follow all applicable building, fire, and zoning codes.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas and sewer are available and will not be negatively impacted by the zone change request. Bataan Memorial East and Reynolds Drive provide adequate paved access to the property. Development of this lot will require the installation of sidewalks for the entire length of the lot along Bataan Memorial and Reynolds Drive closing some of the existing sidewalk gaps within the area.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT: Notification letters were mailed to property owners within 500 feet on October 6, 2023. Staff has received no public input for the proposed zone change request.

STAFF COMMENTS:
No reviewing department had any negative comments and there have been no objections to the proposed rezoning.

ATTACHMENTS:
1. Zoning Map
2. Aerial Map
3. Legal Site Plan
4. Department Review Comments

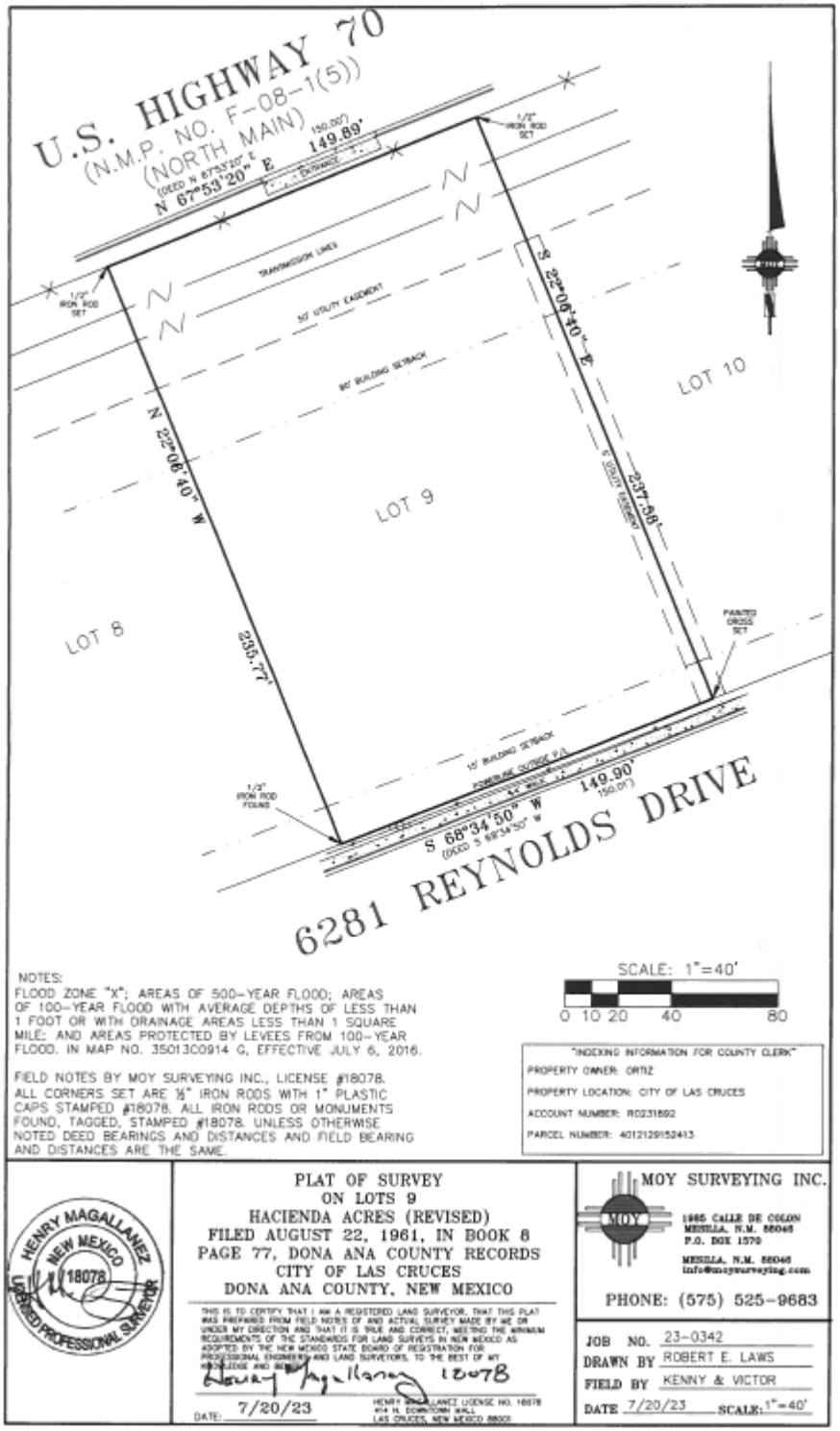
ATTACHMENT 1
Zoning Map



ATTACHMENT 2
Aerial Map



ATTACHMENT 3
Legal Site Plan



NOTES:
FLOOD ZONE "X"; AREAS OF 500-YEAR FLOOD; AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD. IN MAP NO. 35013C0914 G, EFFECTIVE JULY 6, 2016.

FIELD NOTES BY MOY SURVEYING INC., LICENSE #18078. ALL CORNERS SET ARE ½" IRON RODS WITH 1" PLASTIC CAPS STAMPED #18078. ALL IRON RODS OR MONUMENTS FOUND, TAGGED, STAMPED #18078. UNLESS OTHERWISE NOTED DEED BEARINGS AND DISTANCES AND FIELD BEARING AND DISTANCES ARE THE SAME.

SCALE: 1"=40'
0 10 20 40 80

"INDEXING INFORMATION FOR COUNTY CLERK"
PROPERTY OWNER: ORTIZ
PROPERTY LOCATION: CITY OF LAS CRUCES
ACCOUNT NUMBER: R0231892
PARCEL NUMBER: 4012128152413

HENRY MAGALLANEZ NEW MEXICO 18078 LICENSED PROFESSIONAL SURVEYOR

PLAT OF SURVEY
ON LOTS 9
HACIENDA ACRES (REVISED)
FILED AUGUST 22, 1961, IN BOOK 8
PAGE 77, DONA ANA COUNTY RECORDS
CITY OF LAS CRUCES
DONA ANA COUNTY, NEW MEXICO

THIS IS TO CERTIFY THAT I AM A REGISTERED LAND SURVEYOR, THAT THIS PLAT WAS PREPARED FROM FIELD NOTES OF AND ACTUAL SURVEY MADE BY ME OR UNDER MY DIRECTION AND THAT IT IS TRUE AND CORRECT, MEETING THE MINIMUM REQUIREMENTS OF THE STANDARDS FOR LAND SURVEYS IN NEW MEXICO AS ADOPTED BY THE NEW MEXICO STATE BOARD OF REGISTRATION FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS, TO THE BEST OF MY KNOWLEDGE AND BELIEF. Henry Magallanez 18078

DATE: 7/20/23

HENRY MAGALLANEZ LICENSE NO. 18078
414 N. DOWNTOWN MALL
LAS CRUCES, NEW MEXICO 88001

MOY SURVEYING INC.
1985 CALLE DE COLON
MESILLA, N.M. 88046
P.O. BOX 1570
MESILLA, N.M. 88046
info@moysurveying.com
PHONE: (575) 525-9683

JOB NO. 23-0342
DRAWN BY ROBERT E. LAWS
FIELD BY KENNY & VICTOR
DATE 7/20/23 SCALE: 1"=40'

ATTACHMENT 4
Department Review Comments

Department: Planning

Status: Approved with Contingencies – Final Action determined by City Council

Department: Traffic Engineering

Status: Not required

Department: Engineering

Status: Not required

Department: Utility Engineering

STATUS: Approved

Department: Fire

Status: Approved

Department: Parks and Recreation

Status: Approved

Department: City MPO
Status: Approved

CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
October 24, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Joaquin Acosta, Member
Connor Murray, Member
Vanessa Porter, Member

STAFF PRESENT:

David Weir, Deputy Director Community Planning
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Sara Gonzales, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, Planner
Brad Douglas, Deputy City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening, folks. It is 6:00 p.m. on October 24th. We'll go ahead and call this meeting of the Planning and Zoning Commission to order.

2. CONFLICT OF INTEREST

Kaiser: Do we have any conflicts of interest from the Commissioners tonight? All right. Seeing none.

3. APPROVAL OF MINUTES – September 26, 2023

Kaiser: Are there any comments on the minutes from the September 26th meeting? None. Can I get a motion to approve?

Bennett: I make a motion to approve the September 26th meeting.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Board Member Porter.

Murray: Abstain.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

4. POSTPONEMENTS

Kaiser: Okay. I don't think there's any postponements tonight. Is that correct?

Ochoa: No, sir. None tonight.

Kaiser: All right.

5. ACCEPTANCE OF THE AGENDA

Kaiser: So before we go to the acceptance of the agenda, I'd like to pull item 7.1 and 7.2 from the consent agenda tonight for discussion. So we will make those our first order of business. So with that change can I get a motion to accept the agenda?

Bennett: I make a motion to accept the agenda.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Board Member Porter.

Murray: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

6. PUBLIC PARTICIPATION

Kaiser: Okay. Going to public participation. Is there anybody in the audience tonight who wishes to speak on an item that is not on tonight's agenda please raise your hand? Okay. Seeing none.

We'll go ahead and move forward. So there's no additional items of the consent agenda so we will go ahead and start.

7. OLD BUSINESS

Kaiser: And there's also no old business.

8. CONSENT AGENDA

7.1 Case # 23CS0500158: Moved to New Business.

Kaiser: So we'll go ahead and start with item 7.1. And if staff has a presentation, I'll be happy to entertain that.

Castillo: Good evening, Commission. Staff has created a presentation. If you guys want to hear it, we can. If you would just like to ask any questions about the development, we can also do that as well.

Kaiser: I think I'd prefer a presentation mainly because some of the attachments made it really difficult to sort of reconcile what was in the staff report versus what's on those attachments so a presentation would be great.

Castillo: Sounds good. So this is John Castillo for the record. Tonight, we have all the Organ Mountain Plaza master plan. It's currently located on the northwest corner of Bataan Memorial West and McGuffey Street. The address is 4299 Bataan Memorial West. It's located within Council District 5. It encompasses 9.525 acres. The current zoning designation is a stacked zoning of M-1, M-2 and C-3, which is our industrial standard and commercial high intensity.

As the property sits right now, it's currently a vacant, undeveloped parcel of land. As you can see from the aerial image, the highlighted part is what we're looking at right now. Here is the zoning of the tract of land and these are some street views. It is quite a stretch of land so it was hard to get a lot of pictures in there.

So the master plan proposes a multiphase, nonresidential development. It's going to propose anywhere between 20 to 30 lots for commercial and industrial land uses. The subject property is to be developed in phases utilizing either the alternate summary subdivision process or the preliminary plat process. If the developer wishes to use alternate summary subdivision process, the 9.525 acre parcel will get divided into various lot sizes, meeting either the C-3 development standards or the M-1/M-2 development standards. If they wish to go through forward with the preliminary plat, he can develop in phases either as one single lot or individual lots. Here's an image of the proposed master plan. The item down here at the bottom is what we're looking at.

Public input was sent to all relevant agencies and departments. All of them supported the proposed master plan. Notice was sent to surrounding properties within 500 feet. Staff did receive a couple of phone calls regarding development on the master planned area and just general questions regarding the property as a whole as well as the master planned area.

This went before our Development Review Committee or DRC, which was conducting a meeting on October 4th. The DRC reviews subdivisions from an infrastructure, utilities, and improvement standpoint. There was discussion regarding the proposed access points along Bataan Memorial West and NMDOT's approval of those access points. Based on that discussion staff gave a unanimous approval as a recommendation.

Today staff recommends approval as well as DRC recommending approval based on the following findings. The proposed master plan meets the objectives of a master plan as required by the subdivision code based on relevant City staff review. The proposed master plan complies with all requirements of the 2001 Zoning Code as amended as well as the City of Las Cruces' designs standards. The proposed master plan also fulfills the

intent and purpose of Elevate Las Cruces Comprehensive Plan. It also meets the purpose and intent requirements of Section 38-2 of the Zoning Code as well as the Section 2-382 of the Las Cruces Municipal Code. And DRC also gave their recommendation of approval on October 4th.

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

Kaiser: Thank you. I certainly have some questions but I'll turn to my colleagues first. Does anyone have any questions or comments? So I think my first question is I think you kind of alluded to it just now but it was in the staff report. It says there's 20, the development would allow for 20 to 30 lots in phases but that does not appear to be shown anywhere in the I guess proposed master plan in attachment three, so I'm just wondering if you could clarify what that is? And what that looks like?

Castillo: Mr. Chair, Commission. Speaking with the developer they would be utilizing, like I said before, either the alternate summary subdivision. So based on land uses that would go in, they would parcel out the tract of land into various sized lot sizes which could range anywhere between 20 to 30 lots on the property based on land uses and what the proposed use is going to require.

Kaiser: Okay. So I guess I'm confused as to what is the plan. What are we, I mean I see one giant tract of land that you're saying could be split up in an infinite number of ways depending on what the developer chooses to do in the future, but we're being asked to approve a master plan. What's the plan?

Castillo: Mr. Chair, Commission. So the master plan for the property is to look at the overall utility infrastructure that would be on the property as well as propose any type of infrastructure regarding roadways. They are going to be using shared access points between all of it. I'm going to let Sara speak real quick.

Gonzales: Mr. Chair and Commission. Sara Gonzales with Community Development. The process for a master plan is basically used for developers in order to create an administrative process for subdividing the land. Property is already zoned, it just allows the applicant to come forth and utilize basically the alternate summary process to say this person may need an acre in size.

If we go and develop each piece, they would have to come back to P&Z every time they cut out a portion. So the master plan is used in order to alleviate that process because it already meets the intent of the code and it meets the zoning. So this process is just allowing them to have it zoned and master planned in a way to where they can come in and now utilize the administrative process.

Kaiser: Okay. Thank you for that clarification. I guess along those lines there, let's see. Let me find it on my page here. Yes, here we go. So the purpose of a master plan process is to advance the goals and objectives of the City's Comprehensive Plan and to address a variety of environmental and social issues that are being proposed in the development. So could you speak to what some of those issues might be? And how this master plan addresses them?

Castillo: Mr. Chair, Commission. Keeping in line with Elevate Las Cruces, the southern half of Bataan Memorial East is considered a regional commercial zone. I don't believe it's a part of a mixed use corridor but it is a major thoroughfare within our City. So keeping with that this would enhance that regional commercial corridor moving forward to the north creating a buffer between any type of residential development.

It also provides once again depending on the type of use that goes in, it can fill the need for any type of food desert that maybe there or provide some other kind of amenity to the neighborhood.

Kaiser: Okay. Thank you. All right. I don't have any further questions. I'm just sort of struggling with we're being asked to approve a master plan but there's no plan. But I don't know if that's a flaw in the process or the requirements in the code but it's one lot. We're saying that they can develop it you know 50 different ways to Sunday but we don't what. We're just giving them the go ahead to go ahead and do that. And as long as it adheres to the master plan then they're good to go but I just don't know what the plan is. So I don't know what we can do about it here tonight but that's just a concern I have, so I appreciate it. Thank you.

Are there any other questions or comments from the Commission? No. All right. Going to the public. Is there anybody in the public who wishes to comment on this item? All right. Seeing none. I'll come back to the Commission. If there's no other comments or questions looking for a motion to approve.

Bennett: I make a motion to approve 7.1.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Smith.

Smith: I vote yes based on staff recommendation.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation.

Baum: Board Member Porter.

Porter: I vote yes based on staff recommendations and Elevate Las Cruces.

Baum: Board Member Bennett.

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

Baum: Chair Kaiser.

Kaiser: No, based on the fact that I just I don't have enough information. I don't know what I'm approving as part of this master plan.

Baum: Passes five to one.

7.2 Case # 23ZO0500124: Moved to New Business

Kaiser: Okay. Moving onto item 7.2. This is a zone change request from R-4 to C-2 at 6281 Reynolds Drive. Go ahead, staff. If you have a presentation.

Ochoa: Good evening, Commission. Adam Ochoa with Community Development. I'm actually covering this case for another staff that couldn't make it tonight unfortunately. So bear with me when I go through this for you all and I'll try to answer as many questions as I can to clarify for you all.

So currently the property is zoned R-4 which stands for multi dwelling, high density and limited retail and office. The property encompasses roughly 0.812 acres and is currently undeveloped. Surrounding area which is kind of, we go a little forward first, the southern portion if you will, of Bataan Memorial here between I believe what is Dunn and Porter to the west. It's surrounded commercial properties to the west which are owned by the City to be utilized for the East Mesa campus that's to be developed in the future. Religious institutions, single-family uses, multifamily uses as well. And then vacant multifamily development as well right along that area of Reynolds.

This area is categorized by Elevate Las Cruces and it is suburban place type which actually does encourage that variety of uses, multifamily, single-family, and different ranges of densities. Commercial nodes, if you will, to support those and multifamily zoning as well.

Again, you're showing here the subject property here. Right next to what is that vacant commercial area that is currently zoned by the City of Las Cruces. A little further west you can see the East Mesa Complex there. Highlighted property here, religious institution to the east, multifamily, vacant commercial property that's all City owned, and just a sea of what is large lots, single-family residential lots to the south.

The applicant is proposing to rezone the subject property to C-2 which is commercial medium intensity property. It only requires a C-2 zone designation because it doesn't require a C-3 commercial high intensity because the lot isn't large enough to require that. It will allow for the development of either a commercial shopping center as what the applicant is really trying to propose or possibly a ministorage unit facility as well. A zone change will not eliminate the existing multifamily land use as we all know commercial does allow for multifamily and allows that flexibility if that is wanted in the future at a higher density as well. Here's just a quick site plan of that vacant piece of property. Bataan Memorial to the north. Reynolds to the south.

So when staff analyzed the proposed zone change, we did see no real health, safety, or welfare issues associated with the zone change. The proposed zoning district would provide the capability for, I guess the surrounding area kind of utilize actual commercial area. I don't know if you all had a chance to drive it out there. There's really limited commercial uses, service uses, in this area. So staff saw that this is something that is supported by Elevate Las Cruces and the suburban place type adding this additional commercial property on the actual commercial zoning on the property.

Showing here kind of what I reiterated. To get to any services in the area, it's a limited access highway as we all know. The State of New Mexico, we love our limited access highways. So to get to any type of services, there is a small commercial node here or commercial use, if you will, gas station right on the corner on the north side. But then you'd have to come all the way down to Mesa Grande to really reach any other type of services of commercial land uses for this area. Really everything to the south is either single-family zoning designations or rural single-family zoning designations so just a large cluster of it in this area.

With that staff does recommend approval for the proposed zone change. We believe that it does meet the intent of the 2001 Zoning Code. A zone change will allow for a multitude of commercial land uses on the subject property. It is located along a minor arterial roadway and a local roadway to the south, but would allow additional commercial uses in the area. And the proposed zone change is supported by Elevate Las Cruces

Comprehensive Plan and meets the purpose and intent of Section 38-2 of the 2001 Zoning Code.

Let's see here. City of Las Cruces staff, we did send required public notice to all surrounding properties. We did receive no input from anybody around the area.

With that, ladies and gentlemen, your options tonight is one, vote "yes" to approve the proposal or recommend approval for the proposed zone change to City Council. Two, to vote "no" and deny, recommend denial for the proposal and change. Of course, reminder, any denial - staff findings are for approval, so any vote for a denial will require new findings of fact. Three, to vote "yes" and amend the proposal and change. And four, table or postpone and direct staff accordingly.

The applicant is here if you have any questions for them. And I stand for questions as well.

Kaiser: Thank you. Before I ask my questions, anyone on the Commission have questions or comments? Commissioner Smith.

Smith: I just want a clarification. So basically, this is just giving them an option to maintain a residential zone and also the opportunity to develop as a commercial zone also?

Ochoa: Commissioner Smith, Chairman Kaiser. Correct. It kind of gives them a little step up in the ability to develop this property. As you know, R-4 you're allowed multifamily high density which basically it's the same density that is allowed also in the proposed C-2 zoning. But on top of that R-4 allows limited office and retail. Very limited office and retail on the property. And it requires certain types of development to occur on there, limited uses. But the C-2 would allow a lot more potential commercial land uses as well. So just opens the options for this property to be developed more than what its current zoning designation allows.

Smith: All right. Thank you.

Ochoa: Yes, sir.

Kaiser: Any other Commissioners have questions? Go ahead.

Porter: I wanted to know so we're approving basically either a storage unit or a shopping center, right, basically, that's kind of what he's requesting, right? I know that he's saying that there's not really any other like shopping centers unless you go around to Mesa Grande and this will put this one at Reynolds. But how would we know what we're approving if we're approving a storage

unit or if we're approving another shopping center which would benefit the community on that spot because that's what the presentation is coming off to me. When would we, like that's no clarification to me right now as in if it's a storage unit or if it's going to actually be something that will be able to provide a little bit more for the residents in that area.

Ochoa: Sure. Commissioner Porter, Chairman Kaiser. Those two uses are just what the applicant is currently looking at potentially developing the property for. But really, it's any C-2 use would be allowed on the property. Anywhere from, like I said before, multifamily to that shopping center, the storage unit facility, and a plethora of other things as well. A standalone restaurant could go there. Offices can go there. Even mixed use development can occur over there as well as long as densities and heights and all other development standards will be met. So those are just two examples of what they're thinking of developing, but it's not really set in stone yet.

Porter: Okay. Thank you.

Ochoa: Yes.

Kaiser: So I have very similar concerns as my colleagues up here. I think my biggest concern is that we're not guaranteed residential units under a C-2 zone, right. I mean the applicant is indicating that that's not their intent. And I have serious reservations about that because we already have limited opportunities to develop something other than single-family residential units in this City.

We've got housing affordability issues and you know this is one, I think it's what, less than an acre in size? So we can sit here and say well it's not that big of a deal, it's less than an acre. But the problem in my mind is that everyone of these is just another chip off the block that we no longer have the opportunity to go develop that into residential units. And so, I'm very concerned that we're going to approve this tonight and they're going to go develop a ministorage unit. That's hugely problematic to me.

Even if they decide to do a commercial center, I still have reservations because under the R-4, you're saying that there is limited retail opportunity there. So my question would be what is the applicant not able to get out of that R-4 zone as far as retail or commercial? I mean could they not get or put in a market that would actually serve the residents of this community?

Ochoa: Mr. Chair. The actual list of permitted commercial are service uses under the R-4 is extremely limited. Top of that it is also limited on square footage as well. So it would extremely restrict how much that property can be developed for any type of commercial use. So even if an office went in there or let's say like you stated like a grocery store, the square footage of it would

be extremely limited than just if we went with the C-2 zoning designation. That's the major difference just extreme constraints. And for instance, we currently had …

Kaiser: Do you have your code by any chance?

Ochoa: Let me get those exact numbers for you. If you give me one minute, sir.

Kaiser: Yes. And while we're waiting. I guess I understand the constraints part and I think that's the whole point, right, is we're trying to get the residential units. We're trying to require that. So I understand that there's constraints on the commercial because what we want to see with R-4 zone is residential. You know, I'd be curious to know you know what the applicants thoughts are as far as the R-4 and what may or may not be possible.

The other concern I have is this is next to the west of it, there's already I think there's a C-3 parcel. So I mean there's opportunity already right there to develop a commercial development. Yes. And I think it was earlier in your presentation you had the zoning on it. Yes, there you go. So it is a C-3 already. So I mean there's opportunity there. So I'm concerned that we would be giving up residential opportunities here.

And then also the location next to the park. I mean it just doesn't make sense to me that we would put in a ministorage unit next to a park. I mean that's a perfect opportunity for residential development. So I have a lot of concerns and I think that pretty much covers the extent for me.

From the use perspective while you're looking. I would mainly be curious about the retail pieces of it, like what they could do?

Ochoa: Mr. Chair. To answer your question. So for instance, retail it's even more limited. It's really just services that would be allowed there. Offices use is what would be allowed there. Accountant's office, professional offices so on and so forth. Limiting maximum of either 35% coverage of the property or 1,500 square feet max of the entire property would be allowed for commercial or I guess really office use, if you will.

On top of that though, I did want to clarify that piece of property to the left is owned by the City of Las Cruces, the vacant commercial property, and that's for the future continued growth of what is the East Mesa Complex out there, sir.

Kaiser: Okay. So our plan to do future park improvements expansions is that …

Ochoa: I believe that's still in the plan. Yes, sir.

Kaiser: Okay. So it would be right next door to a park that's expanding. I mean that seems like a great place to have an apartment complex or some other multifamily development. Any other questions or comments from the Commission? All right. Go ahead and go to public comments. Is there anybody in the audience who wishes to speak on this item tonight? Okay. Seeing none. Coming back to the Commission. If there's no additional comments or questions, looking for a motion to approve.

Bennett: I make a motion to approve 7.2.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Smith.

Smith: I vote yes to approve based on staff recommendation and this is consistent with the purpose and intent of the zoning ordinance.

Baum: Board Member Murray.

Murray: I vote yes based on Elevate Las Cruces and staff recommendation.

Baum: Board Member Porter.

Porter: I vote no due to recent findings.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: No. Based on the potential impact of affordable housing in this community and the inconsistency with policies of Las Cruces.

Baum: Passes four to two.

9.1 **Case No. 23ZO0500091:** A request to approve a Special Use Permit (SUP) to allow a cannabis-based business less than the required 300-foot buffer distance from another cannabis-based business. The subject property is located at 1760 W. Hadley Avenue, encompassing 1.02 ± acres and is

3054; Council Bill 24-012

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☒ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	December 4, 2023	**Adopted:**	December 18, 2023
Drafter:	Chris Faivre	**Department:**	Economic Development
Program:	Business Development	**Line of Business:**	Business Development

Title: **AN ORDINANCE AMENDING ORDINANCE NO. 3028, UPDATING THE PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., TO ADD AN ADDITIONAL $2,800,000 TO GO TOWARDS RENOVATIONS OF MULTIPLE FACILITIES.**

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

PURPOSE(S) OF ACTION:

To amend Ordinance No. 3028 and update the Project Participation Agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On March 20, 2023, the Las Cruces City Council approved Ordinance No. 3028, as the 828 Productions, LLC., Local Economic Development Act (LEDA) Project Ordinance. The ordinance authorized the City Manager to enter into a Project Participation Agreement (PPA) and Intergovernmental Agreement (IGA) which are incorporated into the Ordinance and made a part thereof by reference.

The PPA was based on a preliminary project schedule to designate $897,596 for cinematic infrastructure through capital outlay funds. The purpose of this amendment is to assign the additional $2,800,000 in Hold Harmless funds that the City designated in 2015 for the specific and sole purpose of cinematic infrastructure. These funds cannot be used for any other purpose and must be spent on the establishment of cinematic infrastructure in Las Cruces.

828 Productions, LLC., will be investing approximately $75,000,000 and plans to hire 100 full-time persons. They have purchased multiple facilities within Las Cruces which these funds will be going towards to renovate. Details of the proposed use of the different facilities and a breakdown of renovations can be found in Exhibit "A".

Other than the amount of funds the City will be providing towards the project, all other terms and conditions remain unchanged.

SUPPORT INFORMATION:

Exhibit "A" 828 LEDA Amendment
Attachment "A" LEDA Application
Attachment "B" Executive Summary
Attachment "C" Inter Governmental Agreement
Attachment "D" Project Participation Agreement

PLAN(S):
City Council Strategic Plan, Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: 3,000,000	**AVAILABLE AMOUNT:** 3,000,000	**EXPENDITURE AMOUNT:** 2,800,000

Funding Source(s):
Fund 2100 - Org 20247001 - Obj 721080 - project 23828

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 amendment and authorize the City to provide additional local LEDA funding to 828 Productions, LLC.
2. Vote "No", this will not approve the Ordinance amendment and authorize the City to provide additional local LEDA funding to 828 Productions, LLC.
3. Vote to "Amend", this could delay the Ordinance amendment and would require City Council to provide direction to staff.
4. Vote to "Table", this would delay the Ordinance amendment and require City Council to provide direction to staff.

REFERENCE INFORMATION:
Ordinance No. 3028

ORDINANCE 3054; COUNCIL BILL 24-012

AN ORDINANCE AMENDING ORDINANCE NO. 3028, UPDATING THE PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., TO ADD AN ADDITIONAL $2,800,000 TO GO TOWARDS RENOVATIONS OF MULTIPLE FACILITIES.

The City Council is informed that:

WHEREAS, on March 20, 2023, the Las Cruces City Council approved Ordinance No. 3028, as the 828 Productions, LLC., Local Economic Development Act (LEDA) Project Ordinance; and

WHEREAS, the ordinance authorized the City Manager to enter into a Project Participation Agreement (PPA) and Intergovernmental Agreement (IGA) which are incorporated into the Ordinance and made a part thereof by reference; and

WHEREAS, the PPA was based on a preliminary project schedule to designate $897,596 for cinematic infrastructure through capital outlay funds; and

WHEREAS, the purpose of this amendment is to designate an additional $2,800,000 the City has set aside for cinematic infrastructure; and

WHEREAS, 828 Productions, LLC., will be investing approximately $75,000,000 and plan to hire 100 full-time persons; and

WHEREAS, 828 Productions, LLC., has purchased multiple facilities within Las Cruces which these funds will be going towards to renovate the different facilities tied to cinematic infrastructure.

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

(I)

THAT the City hereby enters into an amended Project Participation Agreement, as shown in Exhibit "A" attached hereto and made part of this Ordinance, with 828 Productions, LLC., subject to the requirements of LEDA and the adopted LEDA Plan of the City, for the additional $2,800,000 in investment in the project.

(II)

THAT other than the amount of funds the City will be providing towards the project, all other terms and conditions remain unchanged.

(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

APPROVED

_____

ATTEST:

_____

Moved by:

Seconded by:

AYES

NAYS

Exhibit A

Amendment to Agreement for LEDA Project as established by City of Las Cruces Ordinance No. 3028 approving the 828 Productions, LLC., Economic Development Project.

On March 20, 2023, the governing body of the City of Las Cruces approved Ordinance No. 3028, as the 828 Productions, LLC., Local Economic Development Act (LEDA) Project Ordinance. The ordinance authorized the City Manager to enter into a Project Participation Agreement (PPA) and Intergovernmental Agreement (IGA) which are incorporated into the Ordinance and made part thereof by reference.

The PPA was based on a preliminary project schedule to designate $897,596 for cinematic infrastructure through capital outlay funds. The purpose of this amendment is to designate an additional $2,800,000 the City has set aside for cinematic infrastructure.

828 Productions, LLC., has purchased multiple facilities within Las Cruces which these funds will be going towards to renovate. A description of each property and their proposed uses can be found in Attachment A. They will be investing approximately $75,000,000 on these facilities and plan to hire 100 full-time persons. The funds designated for this amendment will be put towards the facility improvements, including:

City of Las Cruces LEDA Disbursement Schedule		
Tranche	*Amount of Local Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$1,718,000*	Renovations to 1053 Hayner Ave.**
2	$702,000*	Renovations to 106 S. Miranda**
3	$240,000*	Renovations to 100 S. Church**
4	$138,000*	Renovations to 300 S. Compress**
*For detailed fund breakdown of renovations, please see Cinematic Infrastructure Funds Expenditure List **For a facility breakdown, please see Facility Overview		

Other than the amount of funds the City will be providing towards the project, all other terms and conditions remain unchanged. This amendment is only for the City of Las Cruces' contribution, the State of New Mexico's contribution is unchanged.

Amendment accepted and acknowledged:

_____

Ifo Pili
City of Las Cruces City Manager

_____

Todd Lundbohm, CEO
828 Productions, LLC.

Exhibit A

828 PRODUCTIONS

RE: Jonathon Sepp
106 S. Miranda Las Cruces, NM
575-323-1895

Cinematic Infrastructure Funds Expenditure List

Address	Facility / Facility Type	Cinematic Infrastructure	Additional Details
1053 Hayner Ave.			
	30,000sf Building		
		Consulting	
			Soundstage Management
			Engineering
			Construction
			Fire Safety
		Patch EXT Metal Siding	
			Create "Rat Holes"
			Patch holes
			Metal Art Installation
		Patch EXT Metal Roof	
			Patch Holes
			Exhaust Ports
			Cover Skylights
			Ensure Roof is Waterproof
			Confirm Load Ratings
		INT Floor	
			Repair Cracks
			Resurface and Level
			Install Subfloor
			Confirm Load Ratings
			Ensure Load Ratings Match Needs of Production
		Interior Walls	
			Insulation
			Soundproofing
			Confirm Load Ratings
		INT Seperating Wall	
			Seperate Stage From Mill
			Access Doors
			Sound Proofing
			Insulation
			Additional Doorways
		INT Seperating Wall #2	
			Seperate Mill From Holding Area
			Additional Doorways
		Interior Electric	
			110v Access Through Building
			Transformer Maintenance
			Repair/Install Electrical Panels
		EXT Elephant Door #1	
			Repair Door
			Install New Trim

			Install New Hardware
		EXT Elephant Door #2	
			Repair Door
			Install New Trim
			Install New Hardware
		EXT Elephant Door #3	
			Repair Door
			Install New Trim
			Install New Hardware
		EXT Doors	
			Repair/Replace Doors
			Repair/Replace Hardware
			Upgrade Locks
			Secure Access
		EXT Signage	
			Label & Mark All Entryways
			828 Logo on North and South Side of Building
		EXT Lighting	
			Install Work Lights
			Install Security Lights
		EXT Electric	
			Transformer Maintenance
			Repair/Install Electrical Panels
			Run Power to Lights & Signage
		HVAC	
			Heating & Cooling System/s
			Exhaust
		Plumbing	
			Fire Safety
			EXT Faucets
	40,000sf Building	Patch EXT Metal Siding	
			Patch Holes
			Repair Structural Damage
		Patch EXT Metal Roof	
			Patch Holes
			Ensure Roof is Waterproof
		Entry Ways	
			Close Up Entry Ways
			No Access Signs
	Water Tower		
		Three Sided 828 Logo	
		Signage Lighting	
	Civil Engineering		
		Planning & Design	
		Amador Lot Grading	
		Drainage Throughout Property	
		Parking Lot Maintenance/Repair	
		Parking Additions	
		West Lot Grading	
		North Lot Grading	
		Road Maintenance/Repair	
		Solar Power	
		Above/Below Ground Utilities Maintenance/Repair	
	General Property		

		Planning & Design		
		Concrete/Trash Removal		
		Land Clearing		
		Dirt Work		
		Security		
		Utlilities		
		Safety Measures		
	Fence, Wall, & Gate			
		Planning & Design		
		Fence Extentions		
		Fence Repairs		
		Gate Repairs		
		Additional Gates		
		Signage		
		Lighting/Electric		
		Privacy Walls		
	Consulting			
		Soundstage Management		
		Engineering		
		Construction		
		Fire Safety		
	Lease Reimbursements			
	1053 Hayner Ave. Submission 1a Total:		$	43,000.00
	1053 Hayner Ave. Submission 2a Total:		$	170,000.00
	1053 Hayner Ave. Submission 3a Total:		$	63,000.00
	1053 Hayner Ave. Submission 4a Total:		$	280,000.00
	1053 Hayner Ave. Submission 5a Total:		$	525,000.00
	1053 Hayner Ave. Submission 6a Total:		$	175,000.00
	1053 Hayner Ave. Submission 7a Total:		$	462,000.00
106 S. Miranda				
	General Building			
		Planning & Design		
		HVAC		
			Heating & Cooling System/s	
			Exhaust	
		Solar Power		
			Solar System Installation	
		Cleaning		
			Deep Clean Facility	
		Security		
			Additional Security Cameras	
			Additional Security Sound Devices	
			Key Fob Maintenance/Repairs	
			Alarm System Maintenance/Repairs	
		Internet		
			High Speed Internet Access	
		Landscaping		
			Landscape Improvements	

			Sprinkler Maintenance/Repairs	
			Tree Trimming/Removal	
			Courtyard Wall Repair	
		Asbestos Remediation		
		Signage		
			Interior Signage	
			Exterior Signage	
		Post-Production		
			Post-Production Bays	
			High Speed Internet Access	
			Viewing Center	
		INT Remodel		
			Support Structures	
			Electric	
			Walls/Framing	
			Flooring	
			Doors	
			Furnishing	
			Fire Safety	
		EXT Remodel		
			Electric	
			Curb Appeal	
			Maintenance	
			Paint/Design	
		Utilities		
	Parking Lots			
		Planning & Design		
		Repair/Maintenance		
		Landscaping		
		Plumbing		
		Signage		
		Lighting/Electric		
	Consulting			
	Lease Reimbursements			
		106 S. Miranda Submission 1b Total:	$	63,000.00
		106 S. Miranda Submission 2b Total:	$	90,000.00
		106 S. Miranda Submission 3b Total:	$	45,000.00
		106 S. Miranda Submission 4b Total:	$	28,000.00
		106 S. Miranda Submission 5b Total:	$	345,000.00
		106 S. Miranda Submission 6b Total:	$	45,000.00
		106 S. Miranda Submission 7b Total:	$	86,000.00
100 S. Church				
	General Property			
		Planning & Design		
		Plumbing		
			Fire Safety	
			EXT Faucets	
		Signage		
			Interior Signage	

			Exterior Signage	
		Security		
			Additional Security Cameras	
			Additional Security Sound Devices	
			Key Fob Maintenance/Repairs	
			Alarm System Maintenance/Repairs	
		EXT Maintenance/Repair		
			Create "Rat Holes"	
			Patch holes	
			Maintenance	
			Metal Art Installation	
		INT Remodel		
			Support Structures	
			Electric	
			Walls/Framing	
			Flooring	
			Doors	
			Furnishing	
			Fire Safety	
		Utilities		
		HVAC		
			Heating & Cooling System/s	
			Exhaust	
	Courtyard			
		Planning & Design		
		Remodel		
		Fence Maintenance/Repair		
	Parking Lots			
		Planning & Design		
		Repair/Maintenance		
		Electric/Ligthing		
		Guard Stations		
		Signage		
		Landscaping		
	Consulting			
	Lease Reimbursements			
		100 S. Church Submission 1c Total:	$	30,000.00
		100 S. Church Submission 2c Total:	$	50,000.00
		100 S. Church Submission 3c Total:	$	30,000.00
		100 S. Church Submission 4c Total:	$	40,000.00
		100 S. Church Submission 5c Total:	$	60,000.00
		100 S. Church Submission 6c Total:	$	20,000.00
		100 S. Church Submission 7c Total:	$	10,000.00
300 S. Compress				
	2,900sf Office			
		INT Remodel		
			Planning & Design	

Exhibit A

			Repair/Maintenance
			Electric/Ligthing
			Plumbing
			Fire Safety
			Security
			Flooring
		EXT Maintenance/Repair	
		Signage	
	Fence, Wall, & Gate		
		Planning & Design	
		Fence Extentions	
		Fence Repairs	
		Gate Repairs	
		Additional Gates	
		Signage	
		Lighting/Electric	
		Privacy Walls	
	Gin Building		
		Deep Clean	
		Repair/Maintenance	
		Security	
		Fire Safety	
		Signage	
	General Property		
		Safety	
		Clean	
		Grading	
		Security	
		Utilities	
		Landscaping	
	Lease Reimbursements		
	300 S. Compress Submission 1d Total:		$ 22,000.00
	300 S. Compress Submission 2d Total:		$ 44,000.00
	300 S. Compress Submission 3d Total:		$ 22,000.00
	300 S. Compress Submission 4d Total:		$ 6,000.00
	300 S. Compress Submission 5d Total:		$ 22,000.00
	300 S. Compress Submission 6d Total:		$ 22,000.00
	300 S. Compress Submission 7d Total:		$ -

828 PRODUCTIONS

Facility Overview

106 S. Miranda

Our 106 S. Miranda campus will be the hub of film production in Las Cruces. Internally and externally, this facility will provide the necessary space for administrative office and production support activity, as well as a filming destination and workforce development space.

The administrative office space of a film production company is a microcosm of the creative and collaborative process of filmmaking. It is a space where ideas are born, scripts are developed, budgets are created, and schedules are managed. It is also a space where the nuts and bolts of filmmaking are handled, such as development, sales, legal, and distribution.

The production office space of a film production company is a busy and vibrant place. It is a space where creative ideas are turned into reality, and where the magic of filmmaking happens.

The facility will be divided into several different workspaces, including:

- Executive offices: These are the offices of the company's top executives, such as the producer, director, screenwriter, and showrunner. They are typically spacious and well-appointed, with large desks, comfortable chairs, and plenty of meeting space.
- Production offices: These are the offices of the key members of the production team, such as the production manager, line producer, and various other departments. They are typically smaller and more utilitarian than the executive offices, but they are still comfortable and functional.
- Accounting offices: These are the offices where the finances are handled. They are typically located in a quiet area of the office space, away from the hustle and bustle of the production offices.
- Conference rooms: These are the rooms where meetings are held between executives, producers, and other members of the team. They are typically large enough to accommodate a group of people, and they are equipped with whiteboards, projectors, and other audiovisual equipment.
- Soundstage: This is a flex use space in a pre-existing auditorium where filming, training, and screening will occur.
- Post-Production: 828 Post-Production will supply the film and digital media industry with high-quality post-production and visual effects services, helping them to achieve their creative vision and deliver a finished product that meets or exceeds their expectations.
- Vendor Incubator: 828 Productions will provide space for film-specific vendors to be co-located with many of the 828 divisions and productions based out of this facility.

828 Productions is actively coordinating numerous ways to interact and enhance the film and digital media training available through K-12 and post-secondary education in Las Cruces and Doña Ana County. For post-secondary education, this will include use of our auditorium (sanctuary) for lectures, guest speakers, hands-on exercises, and various other presentation formats. Students in K-12 will have the opportunity to tour our facility and participate in internships through programs like the Doña Ana County Summer Internship. Post-secondary programs in southern New Mexico will have the opportunity to attend lectures, workshops, on-the-job training, and internships at this facility.

1053 Hayner Ave.

1053 Hayner Ave. will be home to 828 Production's first soundstage-specific construction. As we roll out our master plan for a complete overhaul of the site, 828 Productions will fill the construction timeline gap with a unique approach to a soundstage environment that will transition into mill and/or office space as the master plan comes to fruition. 828 Productions has contracted multiple experts to guide our phased approach that will allow us to capture additional production traffic immediately as construction rolls out over the course of multiple years. One of those experts is Rick Clemente, the previous studio operator and pioneer of i25 Studios (now Cinelease Studios), a previous microchip manufacturing facility.

300 S. Compress

As 828 Productions plans to focus the first phase of purpose-built soundstages, office space, and a warehouse retrofit on the 1053 Hayner Ave property, the property at 300 S. Compress will initially focus on ancillary services and needs for the 1053 Hayner Ave property. This will include additional office space, vehicle & trailer parking, vendor support, storage, and various other needs the film production campus may require.

100 S. Church

Located in the heart of Downtown Las Cruces, 100 S. Church will become a beehive of activity for office space tailored to production activity, vendor administrative services, and coworking space. Many of the office-supporting infrastructure listed under 106 S. Miranda will be available here.

The downtown location of the film production's office space provides a number of advantages. First, it is centrally located and easily accessible to clients, partners, and filming locations. Second, it is close to a variety of amenities, such as restaurants, shops, and public transportation. Third, it provides the company with a high-profile presence in the city's business district.

A studio apartment on the second floor will be tailored to hospitality for producers, directors, talent, and various other filmmakers providing them the best access to experience Downtown Las Cruces.

FY22 LEDA Application

Applicant	Todd Lundbohm
Applicant ID	APP-015963
Company Name	~~828 Studio NM, LLC~~ 828 Productions LLC
Email	todd@828productions.com
Status	Submitted
Application Amount	$0.00
Funded/Approved	☐
LEDA Starting Job Count	0
LEDA PPA Job Count Target	335

Contact Information

Question: Legal Company Name

828 Productions LLC

Question: Trade Name (dba)

828 Productions LLC

Question: Project Name

828 Studios

Question: Company Street Address

~~100 South Church Street~~ 106 S Miranda St

Question: Company City

Las Cruces

Question: Company State

NM

Question: Company Zip

~~88001~~ 88005

Question: Phone

2089124075

Question: Website

https://828productions.com/

Question: Primary Contact Person First Name

Todd

Question: Primary Contact Person Last Name

Lundbohm

Question: Federal Tax ID #

83-2900195

Question: NM State Tax and Revenue (CRS) #

03568111000

Question: City/County Business License Registration will be pursued

- [x] Yes
- [ ] No

Question: NAICS Code(s)

512199

Question: DUNS # (preferred but not required)

Applied For

Question: This Business is organized as a:

- [ ] C-Corporation
- [ ] S-Corporation
- [x] LLC
- [ ] Partnership
- [ ] Sole Proprietorship

☐ B-Corporation

Question: Incorporation Papers

828 PRODUCTIONS, LLC - DE - FORMATION.pdf (9/17/2022, 11:10 AM)

Question: Resumes of all principals (owners, partners, directors or officers; required for businesses 1 year or younger)

Todd bio.pdf (9/17/2022, 11:13 AM)
SDenton Bio 12 6 21 v3.pdf (9/17/2022, 11:13 AM)
Mark Andrews Bio.pdf (9/17/2022, 11:13 AM)

Question: Company Contact for Project Administration (if different from above)

Christine Sheppard

Question: Title

Project Coordinator

Question: Telephone

~~5755206905~~ 575-323-1895

Question: Cell Phone

~~5755206905~~ 575-323-1895

Question: Email

csheppard@828productions.com

Project Information

Please include detailed information such as:

• Executive Summary; Business description and history

• Infrastructure Development/Needs

• Market analysis and strategy

• Summary of competition

• Tax Reporting Status

• Effect on Existing Industry and Commerce during and after Construction

- Land Acquisition
- Local Purchasing
- Water Conservation
- Relocation of Individuals or Businesses
- Construction Schedule
    - Target Close Date
    - General Contract Signed
    - Construction Start
    - Construction End
    - New Facility Operational Date
- Operations plan; Organizational chart
- Any document or record that the local governing body, in its sole discretion, deems necessary.

Question: Description of the Proposed Development, its product and its timeline.

828 Productions plans to construct a movie studio in Las Cruces, New Mexico (the “Studio”) as well as provide financing for independent films. Construction on the first phase of the project is anticipated to begin in Q4 of 2022 with an estimated construction period of 18 months. Employees started to be hired in May of 2022 and will continue for initial management employees. Start up hiring for the studio operation will begin six months prior to construction completion. The film financing operations are anticipated to begin in Q4 of 2022/ Q1 of 2023.

Question: Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.

828 Productions plans to construct a movie studio in Las Cruces, New Mexico (the “Studio”) and will be managing the production of films in Las Cruces as well as in other locations. Over 100 employees in the next 6 years will be hired. The first phase of the studio will include 4 sound stages, office space, mill, etc. Funding will be used for construction as well as start-up payroll for an approximate 6 month period that studio operations ramps up.

Question: Business Plan (required for businesses 1 year or younger)

See supporting documentation - studio model with construction costs as well as start-up budget and estimated revenues and expenses.

Question: Supporting Documentation

828 Studios Redevelopment Schedule Rev 09 16 22.pdf (9/29/2022, 3:58 PM)

Financial Information

*Upload sources and uses chart; enter N/A and zero for questions that do not apply to your business

Question: Provide detailed assumptions for your project including three years of projected cash flow income statements. If the applicant has been in business less than one year, you may be requested to provide additional financial information after review.

828 Operating Financials Phase I CONFIDENTIAL Rev 9.10.22.pdf (9/29/2022, 4:01 PM)

Question: Provide financial statements (balance sheet, profit and loss and cash flow) or tax returns for the past three years. Also provide interim statements within 90 days of application date.

828 Productions financial history description.docx (9/17/2022, 11:31 AM)

Question: What is the collateral/security to be pledged to the funds awarded?

- ☐ Letter of Credit
- ☑ Surety Bond
- ☐ Mortgage Security
- ☐ Security Agreement/Escrow
- ☐ Security Agreement/Lien
- ☐ Security Interest/Lien

Question: What is the method of appraisal for stated security (if Security Mortgage or Lien were selected above)?

N/A

Question: What is the equity investment from the applicant?

$1,000,000.00

Question: External Equity Investment Sources

Equity raised from outside investors

Question: External Equity Investment Amount

$25,000,000.00

Question: City/County Funding Source

City of Las Cruces Cinematic Infrastructure funds

Question: City/ County Funding Amount

$897,596.12

Question: Bank Loan Source (financial institution names), type (commercial, USDA, SBA 504, etc.), and stage (applied or approved)

Currently working on initial discussions with banks

Question: Bank Loans Amount Total

$25,000,000.00

Question: Other Loans Source

~~828 Media Capital~~ 828 Affiliates

Question: Other Loans Amount

$20,000,000.00

Question: Other Sources

N/A

Question: Other Sources Amount

$0.00

Question: Total Project Amount (Sum of above)

$71,000,000.00

Question: Supporting financial documentation

LEDA Job Creation Additional Financial Information.pdf (9/30/2022, 1:20 PM)

Company History and Background

Question: How long has the company been in operation, as of the date of application?

828 Productions was formed in 2021 and will begin operations with the beginning of this project 2022

Question: At the time of this application, how many full-time employees do you currently employ? Please provide the most recent Department of Workforce Solutions report below. If no employees, disregard report. Enter 0.

3.00

Question: List owners with more than 20% ownership stake in the company. Additionally, please list principal directors and/or officers.

Owners
Todd Lundbohm

Directors/officers
Stephanie Denton
Mark Andrews

Question: Are owners and/or officers current with financial obligations/payments to the State of New Mexico or any other Federal or State entity? If no, please explain.

Yes

Question: Does the applicant have any loans or other financial obligations on which payments are not current? If yes, please explain.

No

Question: Please identify any financially affiliated/associated companies in which any of the applicant's owners have a 20% stake.

828 Productions, Inc is the only entity associated with 828 Productions LLC. There are other entities that were formed to lend or invest in, movies specifically, that have not been listed. ~~Please let us know if you need a more detailed list of entities.~~

Community Aspects

Question: At the community level, what are the infrastructure needs not yet in place or in process that will affect this project's application?

TBD

Question: What specific incentives are being REQUESTED from the COMMUNITY? Please explain where the applicant is in this process and provide an idea of a timeline for incentives' deployment.

1. Asking for allocation of funds from the EDD. Application is ongoing. We anticipate deployment of funds in Q4 of 2022/Q1 2023
2. Asking for allocation of funds from JTIP. We anticipate deployment of funds in Q4 of 2022/ Q1 2023
3. Asking for allocation of funds from the City of Las Cruces. We anticipate deployment of funds in Q4 of 2022/ Q1 2023

Question: What specific incentives will be PROVIDED from the COMMUNITY?(e.g. parcel of

land, building lease, waiver of fees, utility access/extension)?

City of Las Cruces Cinematic Infrastructure funds, LEDA funds

Job Creation / Performance

Please download the job creation worksheet to work up the required information for this section.

- Job Creation Worksheet

Question: Outline the number and types of jobs to be created.

Additoinal part time jobs (annually) depending on production type

Full Time Jobs - total 100 :

Year Round Management
Year Round Studio Staff
Year Round Studio Crew
Year Round VFX, LED, MoCap & Post Team
Year Round Accounting Team

Question: Outline the proposed pay scale and payroll proposed by the entity.

100 jobs with an average salary of $75,000 per year.

Question: Outline the benefits offered to the employees, including but not limited to health care and retirement.

Permanent employees will be offered PTO, health, dental, and 401(k) with discretionary match.

Question: Outline any efforts being made or proposed by the applicant to hire people within the local employment pool.

We are going to fill as many jobs locally as possible. All efforts will be made to relocate individuals that are needed for employment outside of the local job pool.

Question: Attach job creation worksheet

828 Job Creation Worksheet Final.pdf (9/30/2022, 1:09 PM)

Question: Starting Headcount (from worksheet above)

0.00

Question: Total new jobs to be created Year 1 (from worksheet above)

62.00

Question: Total new payroll Year 1 (from worksheet above)

$4,635,000.00

Question: Total number of new jobs to be created Year 2 (from worksheet above)

28.00

Question: Total new payroll Year 2 (from worksheet above)

$2,295,000.00

Question: Total number of new jobs to be created Year 3 (from worksheet above)

10.00

Question: Total new payroll Year 3 (from worksheet above)

$575,000.00

Economic Impact Analysis

NMEDD will perform an Economic Impact Analysis to address the impact to the local tax base, the school system, etc. using the Economic Impact Datasheet provided by the applicant.

Question: Outline any impacts to the environment, positively or negatively.

The studio will be built as sustainably possible with the smallest carbon footprint feasible. Modern building standards will be used with renewable energy sources utilized where feasible(i.e. solar).

Question: Status of permitting/regulatory matters needed for project.

In process with City of Las Cruces

Attachments

Please download the authorization for examination and release of information template and the example employer quarterly wage and contribution report.

- Authorization for examination and release of information form
- Employer quarterly wage and contribution report example

If you are a new business, please apply for a NM Tax Identification Number here:

http://www.tax.newmexico.gov/Businesses/wage-witholding-tax.aspx

Please download the LEDA Application Affirmation Template here:

LEDA Application Affirmation Template

Click here to view a filled out sample.

Question: New Mexico Economic Development Department authorization for examination and release of information.

FE Authorization for examination and release of information Notarized.pdf (9/30/2022, 1:13 PM)

Question: Latest New Mexico employer's quarterly wage and contribution report submitted to the Department of Workforce Solutions.

LEDA NM Quarterly Wage Report.pdf (9/30/2022, 1:18 PM)

Question: Affirmation and any other supporting documents

FE_2020_LEDA_App_Affirmationpdp.pdf (9/26/2022, 9:21 AM)

Delaware

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "828 PRODUCTIONS, LLC", FILED IN THIS OFFICE ON THE NINETEENTH DAY OF DECEMBER, A.D. 2018, AT 7:52 O`CLOCK P.M.

Jeffrey W. Bullock, Secretary of State

7202282 8100
SR# 20188269978

Authentication: 204150649
Date: 12-20-18

You may verify this certificate online at corp.delaware.gov/authver.shtml

State of Delaware
Secretary of State
Division of Corporations
Delivered 07:52 PM 12/19/2018
FILED 07:52 PM 12/19/2018
SR 20188269978 - File Number 7202282

STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is 828 Productions, LLC.

2. The Registered Office of the limited liability company in the State of Delaware is located at 850 New Burton Road, Suite 201 (street), in the City of Dover, Zip Code 19904. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is COGENCY GLOBAL INC.

By: Morgan Sloane
Authorized Person

Name: Morgan Sloane
Print or Type

Todd Lundbohm is an award-winning filmmaker with broad ranging experience in Development, Production, Postproduction and VFX. He began his career as an Art Director for NXNW Productions, working on several national campaigns before diving headfirst into narrative filmmaking: writing, directing and producing multiple projects, working throughout the US, Mexico, South America and Western Europe. Todd's feature screenplay, MERIDIAN has won numerous awards, as well as recognition from the SXSW Film Festival and Francis Ford Coppola's American Zoetrope writing competition.

As Founder and CEO of 828 Media Capital, Todd has financed projects with a total production spend north of $50 million. 828 is a full-service film finance and production company, whose recent films include millennial murder mystery, ***Helen's Dead***, starring Tyrese Gibson, Anabelle Dexter-Jones, and Emile Hirsch; *Deauville Film Festival Grand Special Prize Nominee* ***The Last Son*** starring Sam Worthington, Colson Baker, Thomas Jane, and Heather Graham; Camille Delmarre's high octane action film, ***Assassin Club***, starring, Henry Golding, Noomi Rapace and Sam Neil; ***The Price We Pay***, from legendary horror director Ryûhei Kitamura, starring Emile Hirsch and Stephen Dorff; Gothic horror ***Raven's Hollow*** starring William Moseley, Melanie Zanetti, Kate Dickie and David Hayman*;* WWII Submarine movie ***Operation Seawolf*** Starring Dolph Lundgren and Frank Grillo; ***The Requin*** starring Alicia Silverstone and James Tupper; and *SXSW Grand Jury Prize winner* ***The Fallout*** starring Jenna Ortega, Maddie Ziegler, Shailene Woodley, and Julie Bowen.

Stephanie Denton is a feature film and television executive who has headed up acquisitions, sales, and distribution divisions for the industry's leading independent film and television companies, including Lionsgate International, Lakeshore Entertainment, Initial Entertainment Group and Bold Films.

Over the last 25 years, Denton has sold over 250 feature films, worked with legendary filmmakers such as Martin Scorsese, Lasse Halstrom, Sam Rami, Mark Pellington, Jon Amiel, Garry Marshall, Peter Howitt, James Mangold, Stephen Merchant, and James Wan to produce and sell high-profile films out of the independent film sector. Noteworthy releases include *THE **AVIATOR, UNFINISHED LIFE, THE GIFT, ARLINGTON ROAD, LAWS OF ATTRACTION, UNDERWORLD, 310 TO YUMA, WAR, HOTEL RWANDA, DAYBREAKERS, RUNAWAY BRIDE, FIGHTING WITH MY FAMILY,*** and the box office record-breaking ***SAW*** franchise.

Denton's steady hand as a film and tv executive was evident in her leadership of the launch of Arc Animation Studios Original I.P. and Sales division during its transition from STARZ Entertainment, and her experience in acquisitions and co-production for WWE Studios in Los Angeles where she drove the company's marketing and production initiative to release brand adjacent content across platforms, and spearheaded a theatrical co-distribution deal in North America with Blumhouse Productions for Festival film favorites, ***OCCULUS***, ***SLIGHT,*** and ***BIRTH OF A DRAGON***.

A few of Denton's premier accomplishments include the development and production of Len Wiseman's hugely successful ***UNDERWORLD*** franchise for Lakeshore Entertainment, sourcing and selling high profile projects such as ***WAR*** starring Jason Statham and Jet Li, and ***DAYBREAKERS*** starring Ethan Hawke for Lionsgate Entertainment. She also closed multi-picture domestic distribution deals with Sony/Screen Gems, Universal Pictures, and Paramount Studios.

Denton began consulting for 828 Media in 2020, assisting with the company's expanding lending portfolio, and has since become a member of the 828 Productions team. Utilizing her extensive relationships in Production and Distribution, Denton's main focus will be sourcing co-production and development opportunities, and securing key distribution alliances in both the Domestic and International markets that will establish 828 Productions as an industry leader in the Indie Film space.

BIOGRAPHY

Mark Andrews

Mark started his career in finance & management consulting but his real passion was for film. This passion was realized in 1995 when he invested in his first feature film '**Mainline Run**'. Three years later he took the plunge and became a full time producer, co-writing and producing the feature film '***Distant Shadow'*** which made more than 4 times its budget**.** This lead to being hired to produce budgets & schedules for the UK's Spice Factory and oversee production on '**Redemption Road**'.

Seeing the opportunities film financing in the United Kingdom offered, Mark co-founded '**Studio Finance**,' a UK Film tax shelter utilizing the UK Government's Section 48 Tax breaks for film production before going on to consult for another film financing group, '**UKFS**' backed by Guernsey based Channel House Trustees. In their three yers of operating, UKFS were responsible for more than $300 million of tax shelter film financing for the UK film industry. It was here acting as a Senior Finance Executive that he oversaw such films as '**Wake of Death,' 'Modigliani,' 'School for Seduction,' 'Out of Season'** and '**Battle of the Brave'** amongst others.

In 2004 Mark moved to Los Angeles where he began consulting for various production companies, investors and independent producers, was Head of Entertainment for Exemplar Capital an East Coast Investment Bank and Law Firm and was instrumental in forming various film financing structures including a $150m film fund.

Some of the projects he has been instrumental in developing or setting up at various companies are Animated Horror '**Down Satan**' in partnership with re-known Horror Author '**Clive Barker'**; Supernatural Thriller **'Indelible'** being Directed by National Film Award Winner '**Howard J Ford'** (The Dead 1&2, Never Let Go); '**Kill the Messenger'** from the creator of (RoboCop), '**Michael Miner,**' and the Epic Western **'The Girl With No Name'** in conjunction with **Co-Op Entertainment** and **LegionM** being directed by '**Tanya Wexler**' (Buffaloed, Jolt).

In 2018 Mark produced the movie '**Dead Water**' starring '**Casper Van Dien**' and '**Judd Nelson,**' released by **Saban** in July 2019.

He currently oversees the development, financing and production operations for 828 Productions a west coast full service film finance and production company where he has executive produced and produced such films as **THE FALLOUT** starring Jenna Ortega, Maddie Ziegler, Shailene Woodley and Julie Bowen, **THE LAST SON** starring Sam Worthington, Colson Baker, Thomas Jane and Heather Graham, **THE PRICE WE PAY**, directed by horror legend Ryûhei Kitamura, starring Emile Hirsch and Stephen Dorff, and the recently wrapped **RAVENS HOLLOW** starring William Moseley, Melanie Zanetti, Kate Dickie and David Hayman.

In summary, Mark is a highly accomplished and seasoned writer, producer & production executive with a proven track record of over twenty years of experience in development, financing, production and distribution. He is a high impact contributor and versatile professional with exceptional business and production acumen who is comfortable working alone or managing hundreds of individuals while ensuring timely completion of project deadlines and remaining on, or under budget.

He holds a National Diploma in Business and Finance from the UK and a Certificate of Achievement for Contract Law from HarvardX University.

Mark lives in Colorado Springs with his wife and dog 'Piper'.

PROJECT OVERVIEW

MON 8/15/22 - MON 11/18/24

% COMPLETE

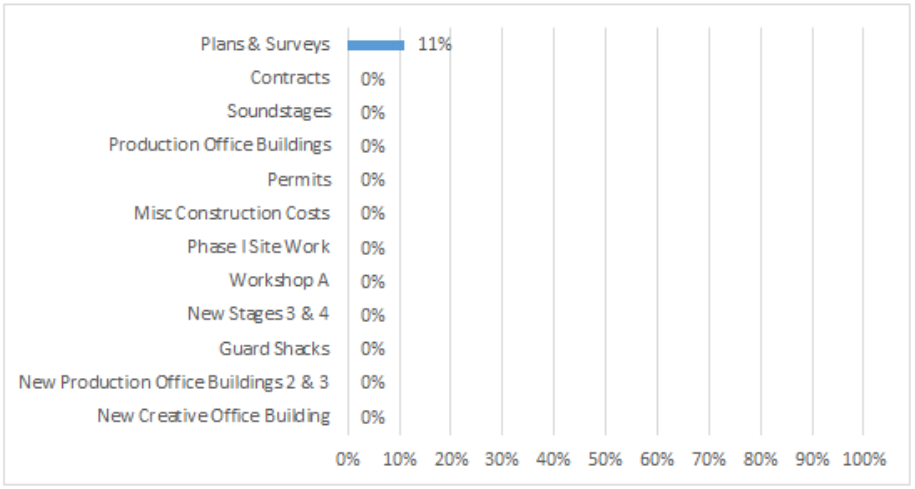
1%

MILESTONES DUE

Milestones that are coming soon.

Name	Finish
Stage 1 COA	Thu 10/26/23
Stage 2 COA	Mon 8/12/24
Workshop A COA	Tue 7/9/24
Stage 3 COA	Fri 12/29/23
Stage 4 COA	Mon 1/8/24

% COMPLETE



LATE TASKS

Tasks that are past due.

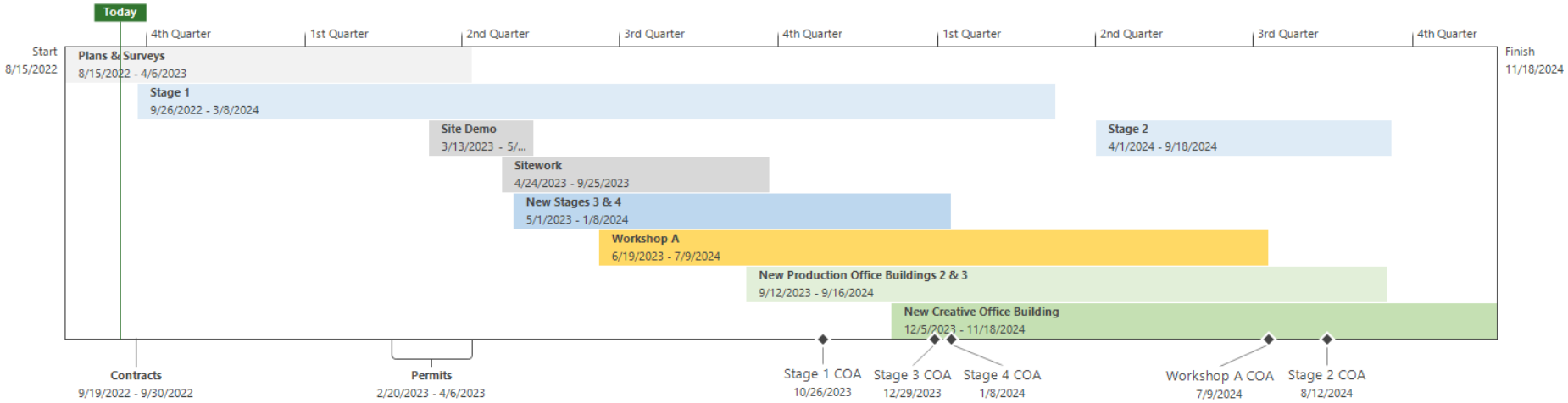
Name	Start	Finish	% Complete
DD Drawings	Mon 9/12/22	Mon 12/26/22	0%

CASH FLOW

Cost	Remaining Cost
$25,326,489.00	$25,326,489.00

	Qtr 3, 2022	Qtr 4, 2022	Qtr 1, 2023	Qtr 2, 2023	Qtr 3, 2023	Qtr 4, 2023	Qtr 1, 2024	Qtr 2, 2024
Cost	$489,856.00	$349,250.00	$2,963,293.00	$5,362,070.00	$8,134,020.00	$7,042,000.00	$566,000.00	$420,000.00
Cumulative Cost	$489,856.00	$839,106.00	$3,802,399.00	$9,164,469.00	$17,298,489.00	$24,340,489.00	$24,906,489.00	$25,326,489.00

Name	Cost	Start	Unique ID
828 STUDIOS NM	$25,326,489.00	Mon 8/15/22	1
RENOVATION	$9,341,489.00	Mon 8/15/22	171
Contracts	$0.00	Mon 9/19/22	2
Plans & Surveys	$532,100.00	Mon 8/15/22	7
Permits	$103,500.00	Mon 2/20/23	312
Phase I Site Work	$1,858,393.00	Mon 3/13/23	17
Misc Construction Costs	$166,141.00	Mon 3/13/23	314
Soundstages	$4,743,605.00	Mon 9/26/22	68
Workshop A	$1,846,000.00	Mon 6/19/23	110
Production Office Buildings	$91,750.00	Tue 11/1/22	157
NEW CONSTRUCTION	$15,985,000.00	Mon 5/1/23	172
New Stages 3 & 4	$14,000,000.00	Mon 5/1/23	173
New Production Office Buildings 2 & 3	$1,280,000.00	Tue 9/12/23	298
New Creative Office Building	$640,000.00	Tue 12/5/23	141
Guard Shacks	$65,000.00	Tue 9/5/23	158

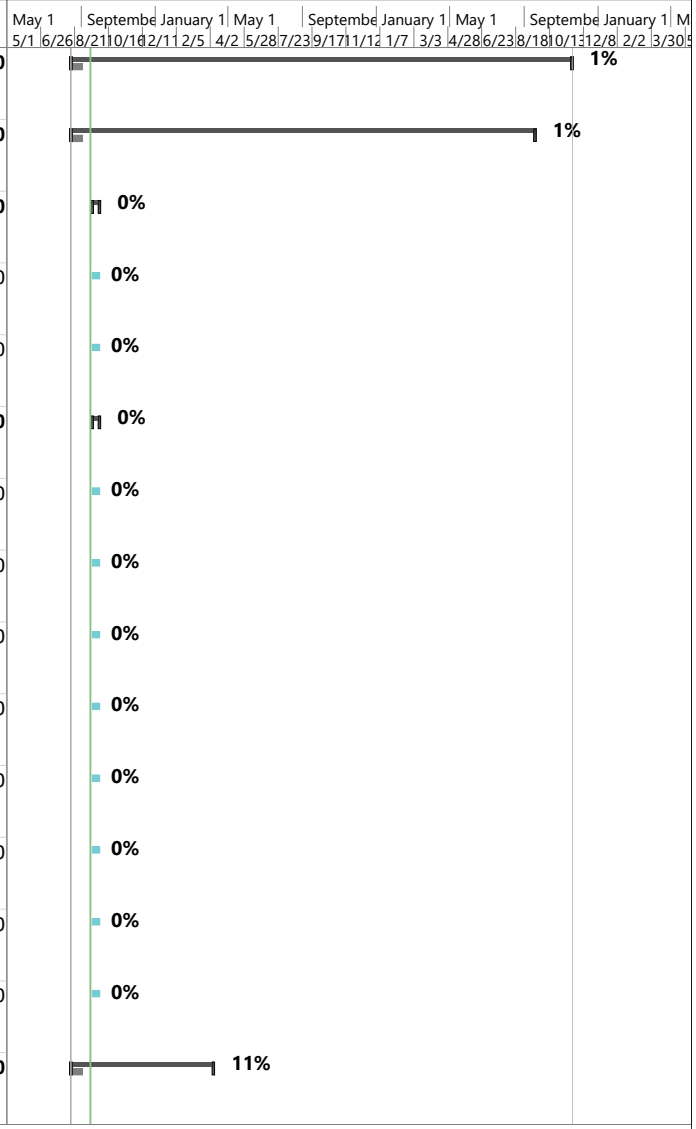


Project Timeline and Budgetary Estimates are derived from Highland Enterprises Inc. and Giant Entertainment & Management Inc. with supporting detail located in the appendix of this project summary.

Although preliminary in nature, the following schedule and associated costs are based on prior experience in respective fields. Even so, fixed costs can only be determined after full review of Construction Drawings, still to be developed.

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
1		**828 STUDIOS NM**	**578 days?**	**Mon 8/15/22**	**Mon 11/18/24**	**$25,326,489.00**
2		**RENOVATION**	**535 days?**	**Mon 8/15/22**	**Wed 9/18/24**	**$9,341,489.00**
3		**Contracts**	**10 days**	**Mon 9/19/22**	**Fri 9/30/22**	**$0.00**
4		General Contractor	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
5		Architectural	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
6		**Engineering**	**10 days**	**Mon 9/19/22**	**Fri 9/30/22**	**$0.00**
7		Mechanical	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
8		Electrical	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
9		Plumbing	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
10		Structural	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
11		Civil	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
12		Surveys	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
13		Geotech	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
14		Project Management	10 days	Mon 9/19/22	Fri 9/30/22	$0.00
15		**Plans & Surveys**	**156 days?**	**Mon 8/15/22**	**Thu 4/6/23**	**$532,100.00**

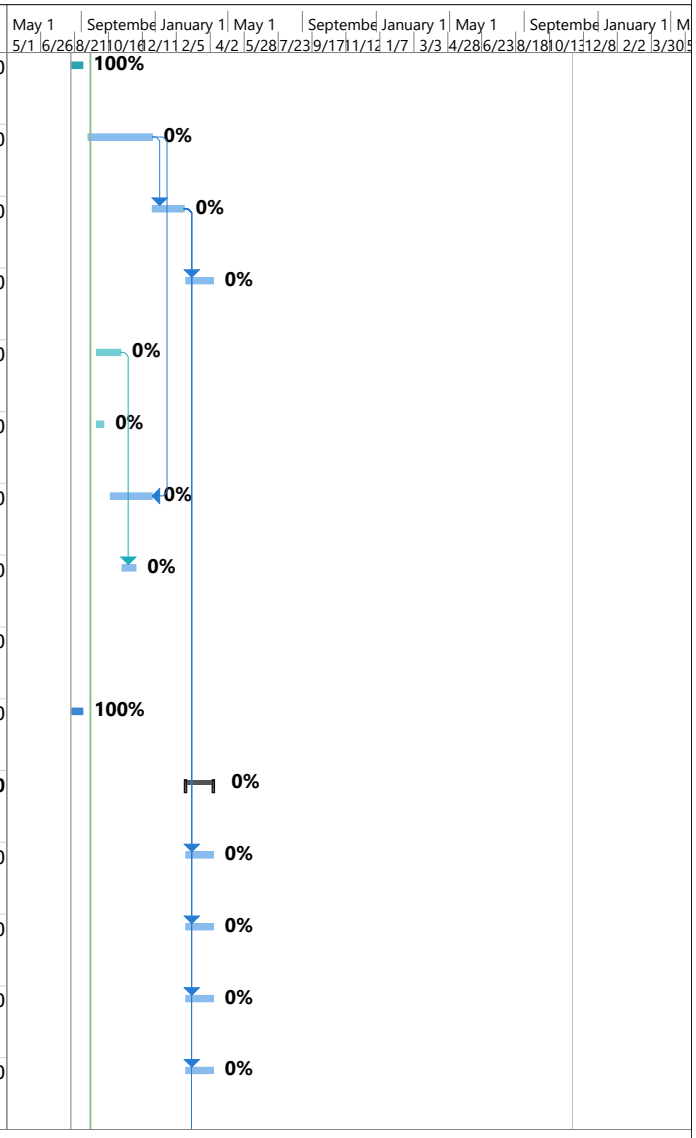


Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

Page 1

828 Studios Redevelopment Schedule.mpp

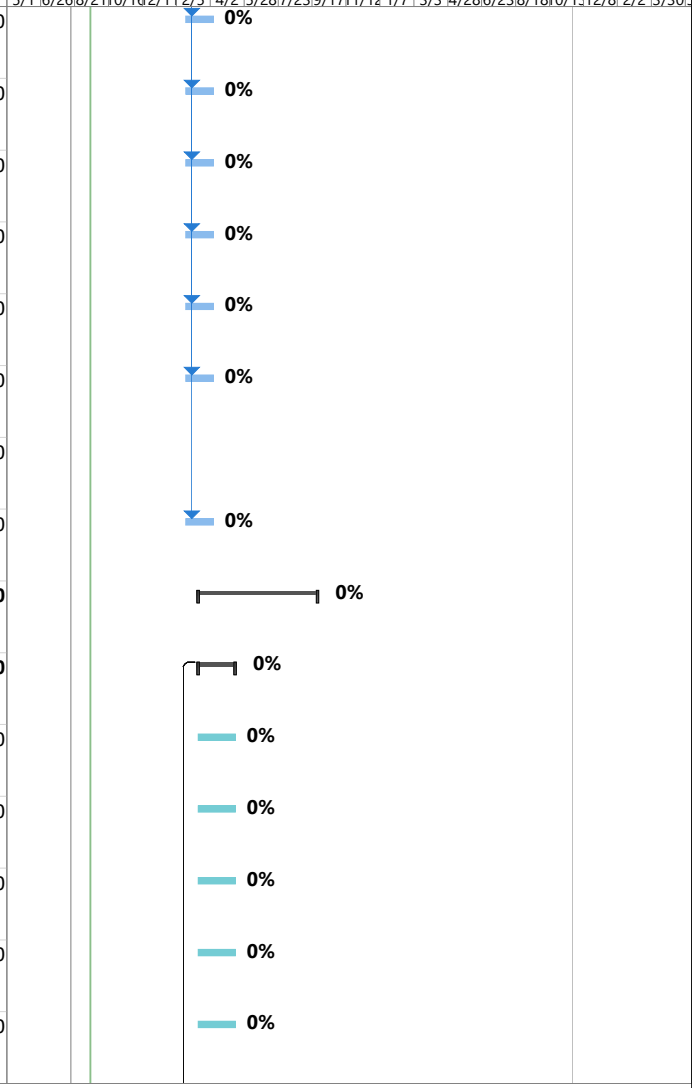
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
16		Conceptual Site Plans	15 days	Mon 8/15/22	Fri 9/2/22	$0.00
17		DD Drawings	76 days	Mon 9/12/22	Mon 12/26/22	$257,500.00
18		Construction Drawings	39 days	Tue 12/27/22	Fri 2/17/23	$257,500.00
19		Demo Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
20		Geotechnical Survey	30 days	Mon 9/26/22	Fri 11/4/22	$8,000.00
21		Topographical Survey	10 days	Mon 9/26/22	Fri 10/7/22	$9,100.00
22		Stormwater Plans	41 days	Wed 10/19/22	Mon 12/26/22	$0.00
23		Materials testing	15 days	Mon 11/7/22	Tue 11/29/22	$0.00
24		Traffic Study				$0.00
25		Traffic Circulation Plan	15 days	Mon 8/15/22	Fri 9/2/22	$0.00
26		**Permits**	**34 days?**	**Mon 2/20/23**	**Thu 4/6/23**	**$103,500.00**
27		Grading Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
28		Underground Utilities Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
29		MEP Permits	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
30		Structural Building Plans/Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

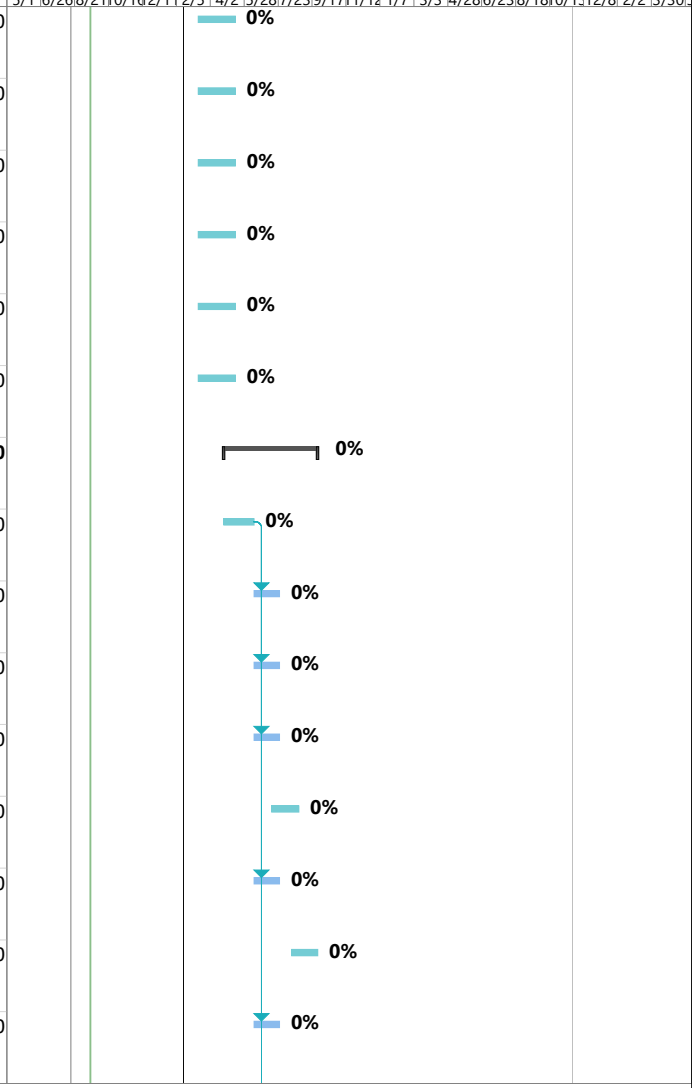
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
31		Stormwater Retention Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
32		Landscaping Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
33		Fire Life Safety Permits	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
34		Stage 1 Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
35		Stage 2 Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
36		Workshop Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
37		Creative Office Building Permit				$0.00
38		Guard Shack Permits	34 days	Mon 2/20/23	Thu 4/6/23	$0.00
39		**Phase I Site Work**	**141 days**	**Mon 3/13/23**	**Mon 9/25/23**	**$1,858,393.00**
40		**Site Demo**	**45 days**	**Mon 3/13/23**	**Fri 5/12/23**	**$390,403.00**
41		Tree removal	45 days	Mon 3/13/23	Fri 5/12/23	$52,096.00
42		Removal of volcanic rock to Phase 2	45 days	Mon 3/13/23	Fri 5/12/23	$166,000.00
43		Removal of tires	45 days	Mon 3/13/23	Fri 5/12/23	$1,500.00
44		Removal of trash and debris	45 days	Mon 3/13/23	Fri 5/12/23	$18,226.00
45		Removal of RV trailer	45 days	Mon 3/13/23	Fri 5/12/23	$2,700.00



Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

828 Studios Redevelopment Schedule.mpp

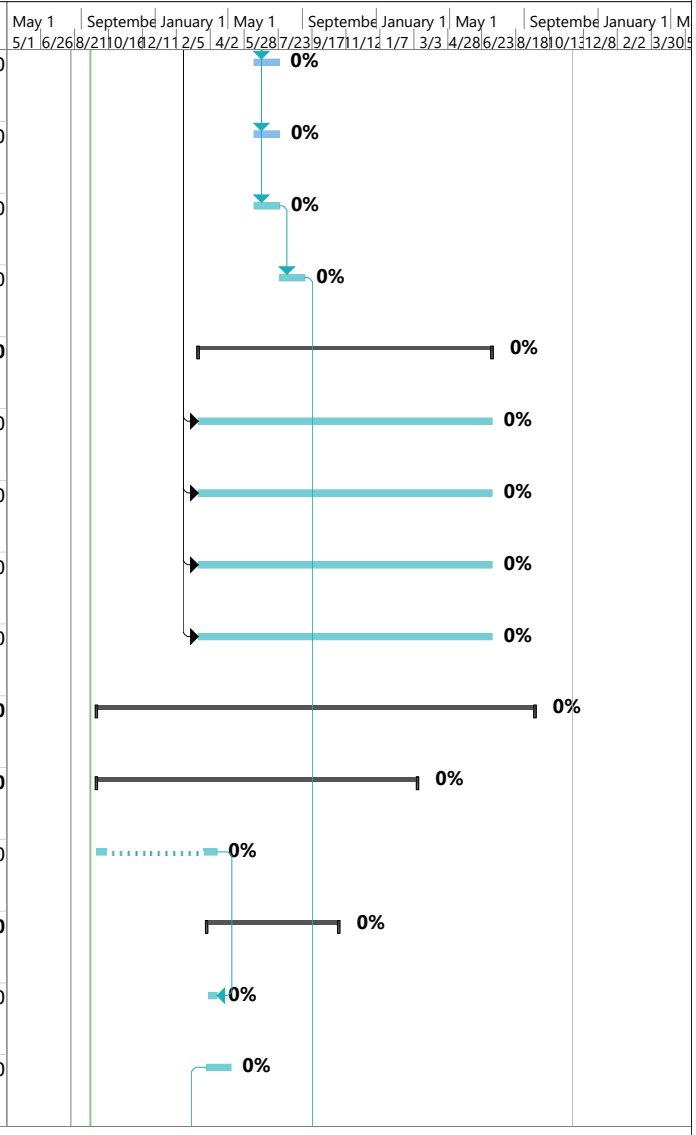
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
46		Waste Removal; Stage 1	45 days	Mon 3/13/23	Fri 5/12/23	$8,650.00
47		Waste Removal; Stage 2	45 days	Mon 3/13/23	Fri 5/12/23	$37,100.00
48		Waste Removal WS-A	45 days	Mon 3/13/23	Fri 5/12/23	$30,000.00
49		Clean and expose RR Tracks	45 days	Mon 3/13/23	Fri 5/12/23	$22,601.00
50		Demolition - above grade concrete	45 days	Mon 3/13/23	Fri 5/12/23	$44,830.00
51		Demo Bagging Equip WS-A	45 days	Mon 3/13/23	Fri 5/12/23	$6,700.00
52		**Sitework**	**111 days**	**Mon 4/24/23**	**Mon 9/25/23**	**$1,467,990.00**
53		Rough Grading	36 days	Mon 4/24/23	Mon 6/12/23	$0.00
54		Access road to Stage 1 and Work Shop	30 days	Tue 6/13/23	Mon 7/24/23	$304,790.00
55		Asphalt Parking - Lot 4	30 days	Tue 6/13/23	Mon 7/24/23	$159,100.00
56		Asphalt Parking - Lot 5	30 days	Tue 6/13/23	Mon 7/24/23	$167,015.00
57		Asphalt Parking Work Shop	33 days	Wed 7/12/23	Fri 8/25/23	$96,144.00
58		Asphalt Parking - Lot 6	30 days	Tue 6/13/23	Mon 7/24/23	$172,715.00
59		Asphalt Parking - Stage 1 Lot	31 days	Mon 8/14/23	Mon 9/25/23	$83,328.00
60		Asphalt Parking - POB Lots 2&3	30 days	Tue 6/13/23	Mon 7/24/23	$119,900.00



Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost
61		Graveled area temp power plants	30 days	Tue 6/13/23	Mon 7/24/23	$33,250.00
62		Cantina Slab	30 days	Tue 6/13/23	Mon 7/24/23	$7,200.00
63		Underground Retention Ponds	30 days	Tue 6/13/23	Mon 7/24/23	$75,000.00
64		Landscape Phase 1 (12,000 SF)	30 days	Tue 7/25/23	Mon 9/4/23	$249,548.00
65		**Misc Construction Costs**	**347 days**	**Mon 3/13/23**	**Tue 7/9/24**	**$166,141.00**
66		Contractor Fee	347 days	Mon 3/13/23	Tue 7/9/24	$125,000.00
67		Temporary Facillities	347 days	Mon 3/13/23	Tue 7/9/24	$2,100.00
68		Temporary Utilities	347 days	Mon 3/13/23	Tue 7/9/24	$19,041.00
69		Builders Risk Insurance	347 days	Mon 3/13/23	Tue 7/9/24	$20,000.00
70		**Soundstages**	**505 days?**	**Mon 9/26/22**	**Wed 9/18/24**	**$4,743,605.00**
71		**Stage 1**	**367 days?**	**Mon 9/26/22**	**Fri 3/8/24**	**$4,323,605.00**
72		Remove and replace 9,000 SF of existing floor	30 days	Mon 9/26/22	Wed 4/12/23	$215,256.00
73		**Replace Roof & Walls**	**156 days**	**Mon 3/27/23**	**Mon 10/30/23**	**$2,303,249.00**
74		Add sub-framing as required	10 days	Thu 3/30/23	Wed 4/12/23	$0.00
75		Remove Sheeting	30 days	Mon 3/27/23	Fri 5/5/23	$0.00

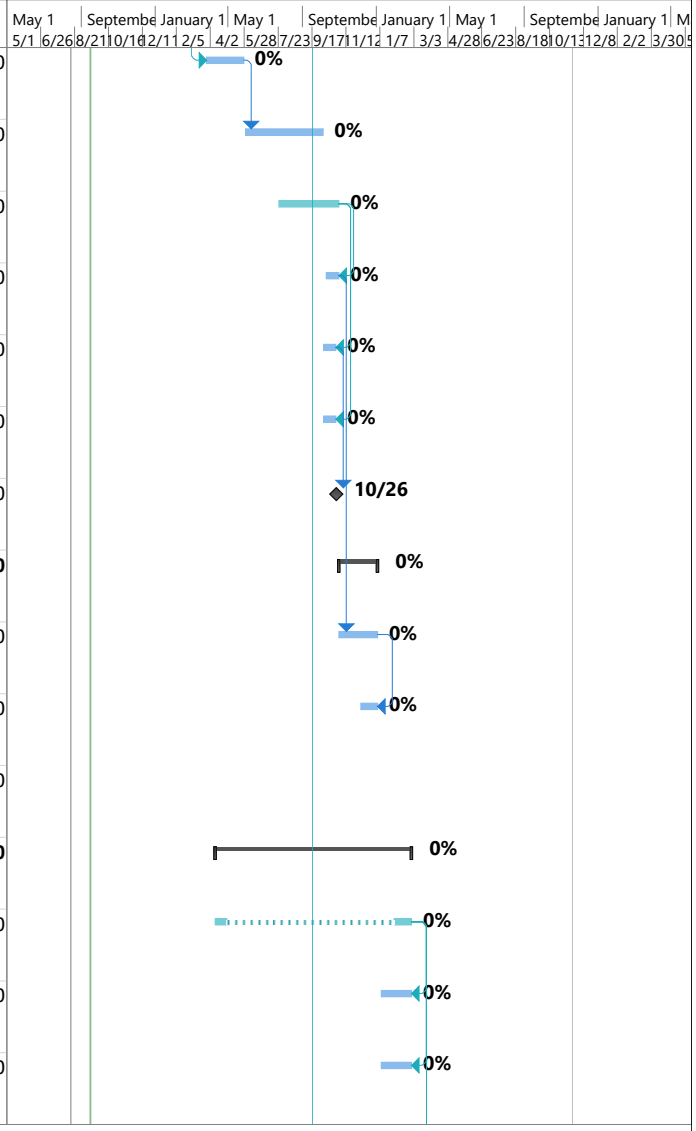


Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

Page 5

828 Studios Redevelopment Schedule.mpp

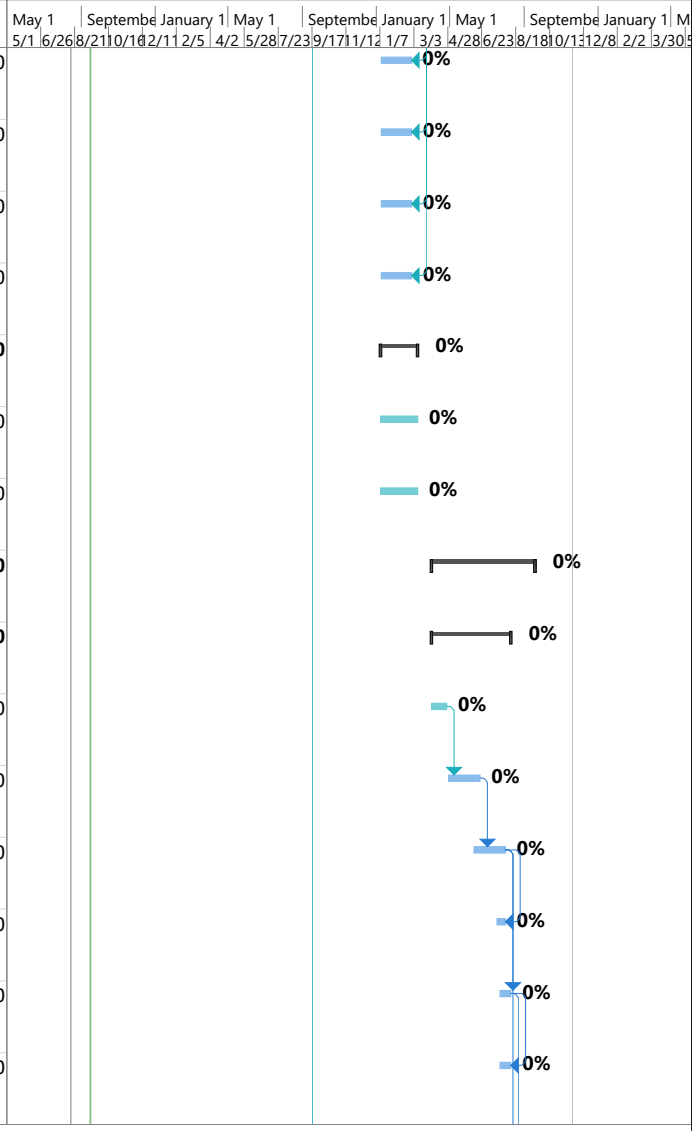
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
76		Modify Steel Structure (panel prep)	45 days	Mon 3/27/23	Fri 5/26/23	$0.00
77		Install 4 Kingspan Insulated panels	92 days	Tue 5/30/23	Wed 10/4/23	$0.00
78		Install 6 interior SIP panels	71 days	Mon 7/24/23	Mon 10/30/23	$0.00
79		Install Duct liner on roof and wall interior	15 days	Tue 10/10/23	Mon 10/30/23	$0.00
80		1 ea - 18' W x 12' H barn door	14 days	Fri 10/6/23	Wed 10/25/23	$0.00
81		3ea - Hollow metal man doors	14 days	Fri 10/6/23	Wed 10/25/23	$0.00
82		Stage 1 COA	1 day	Thu 10/26/23	Thu 10/26/23	$0.00
83		**Mechanical**	**46 days?**	**Tue 10/31/23**	**Tue 1/2/24**	**$624,000.00**
84		HVAC - 150 TNS heating and cooling	46 days	Tue 10/31/23	Tue 1/2/24	$624,000.00
85		Exhaust Fans	20 days	Wed 12/6/23	Tue 1/2/24	$0.00
86		Gas Line (Heating)				$0.00
87		**Electrical**	**232 days**	**Mon 4/10/23**	**Tue 2/27/24**	**$615,100.00**
88		750 KVA Transformer 900 amp, 480V 3P	36 days	Mon 4/10/23	Tue 2/27/24	$615,100.00
89		Main Panel	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
90		Bull Switches	36 days	Tue 1/9/24	Tue 2/27/24	$0.00



Critical	Task Progress	Baseline	Summary	Inactive Task
Critical Split	Manual Task	Baseline Split	Manual Summary	Inactive Milestone
Critical Progress	Start-only	Baseline Milestone	Project Summary	Inactive Summary
Task	Finish-only	Milestone	External Tasks	Deadline
Split	Duration-only	Summary Progress	External Milestone	

828 Studios Redevelopment Schedule.mpp

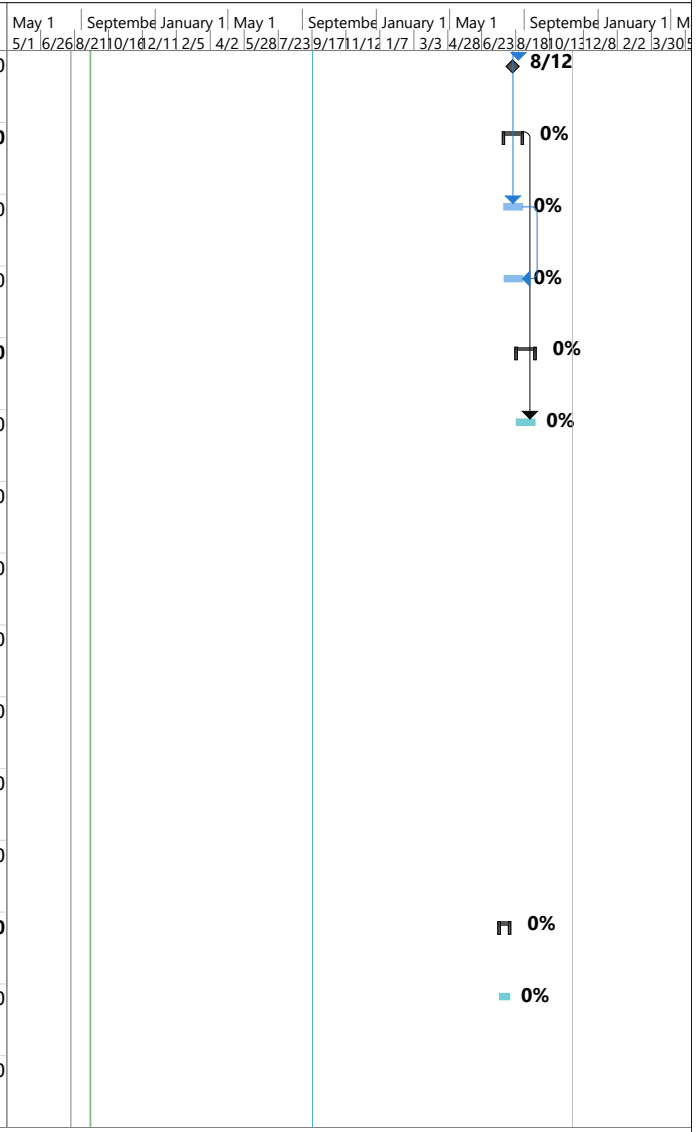
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
91		high bay lighting	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
92		emergency lighting	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
93		ingress/egress, exterior wall pack lighting	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
94		general purpose 120V outlets through out	36 days	Tue 1/9/24	Tue 2/27/24	$0.00
95		**Plumbing**	**45 days**	**Mon 1/8/24**	**Fri 3/8/24**	**$566,000.00**
96		Install Waterline	45 days	Mon 1/8/24	Fri 3/8/24	$20,000.00
97		Fire Sprinkler system	45 days	Mon 1/8/24	Fri 3/8/24	$546,000.00
98		**Stage 2**	**123 days?**	**Mon 4/1/24**	**Wed 9/18/24**	**$420,000.00**
99		**Stage 2 Renovation**	**95 days**	**Mon 4/1/24**	**Fri 8/9/24**	**$420,000.00**
100		Remove Sheet Metal	19 days	Mon 4/1/24	Thu 4/25/24	$0.00
101		Install 4 Kingspan panels	38 days	Mon 4/29/24	Wed 6/19/24	$0.00
102		Install 6 SIP panels	38 days	Mon 6/10/24	Wed 7/31/24	$0.00
103		Install interior Duct liner	10 days	Thu 7/18/24	Wed 7/31/24	$0.00
104		1 ea - 16' W x 14' H Barn Door	14 days	Tue 7/23/24	Fri 8/9/24	$0.00
105		3ea - Hollow metal man doors	14 days	Tue 7/23/24	Fri 8/9/24	$0.00



Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

828 Studios Redevelopment Schedule.mpp

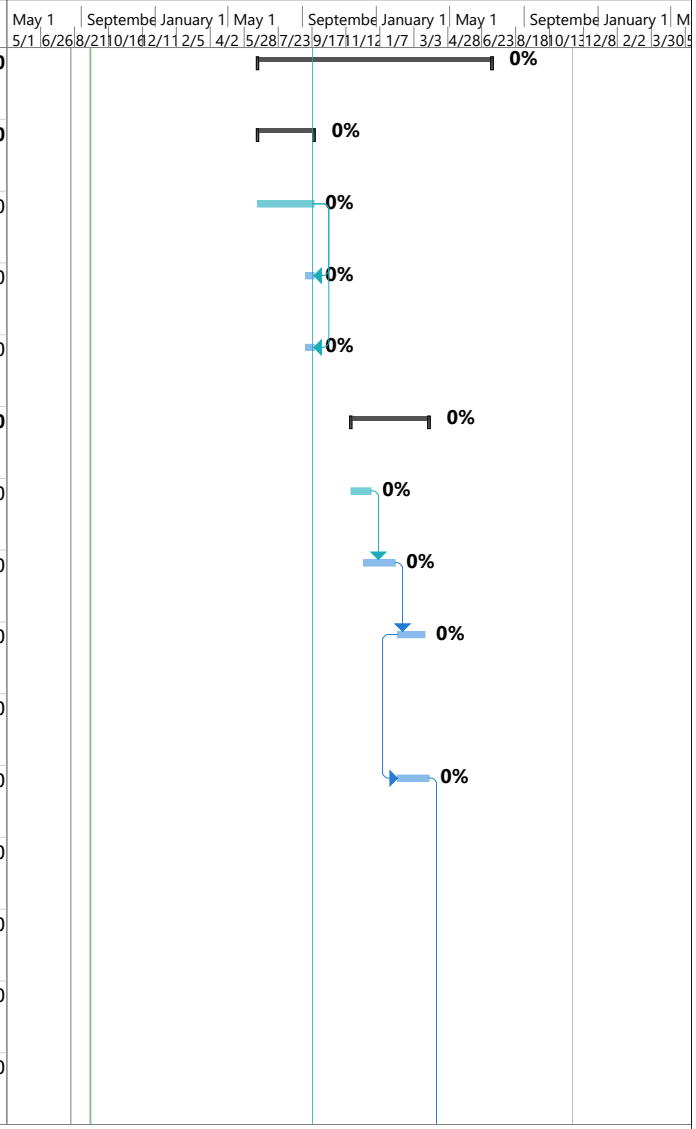
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
106		Stage 2 COA	1 day	Mon 8/12/24	Mon 8/12/24	$0.00
107		**Mechanical**	**23 days**	**Mon 7/29/24**	**Wed 8/28/24**	**$0.00**
108		HVAC - 20 TNS	23 days	Mon 7/29/24	Wed 8/28/24	$0.00
109		Exhaust fans	22 days	Tue 7/30/24	Wed 8/28/24	$0.00
110		**Electrical**	**23 days?**	**Mon 8/19/24**	**Wed 9/18/24**	**$0.00**
111		250 KVA Transformer	23 days	Mon 8/19/24	Wed 9/18/24	$0.00
112		Interior Main				$0.00
113		Bull Switches				$0.00
114		warehouse lighting				$0.00
115		emergency lighting ingress/ egress				$0.00
116		exterior wall pack lighting				$0.00
117		convenient outlets, 220V outlets				$0.00
118		**Plumbing**	**13 days?**	**Mon 7/22/24**	**Wed 8/7/24**	**$0.00**
119		Interior Water Lines/Sink	13 days	Mon 7/22/24	Wed 8/7/24	$0.00
120		Fire Sprinkler System				$0.00



Critical	Task Progress	Baseline	Summary	Inactive Task
Critical Split	Manual Task	Baseline Split	Manual Summary	Inactive Milestone
Critical Progress	Start-only	Baseline Milestone	Project Summary	Inactive Summary
Task	Finish-only	Milestone	External Tasks	Deadline
Split	Duration-only	Summary Progress	External Milestone	

828 Studios Redevelopment Schedule.mpp

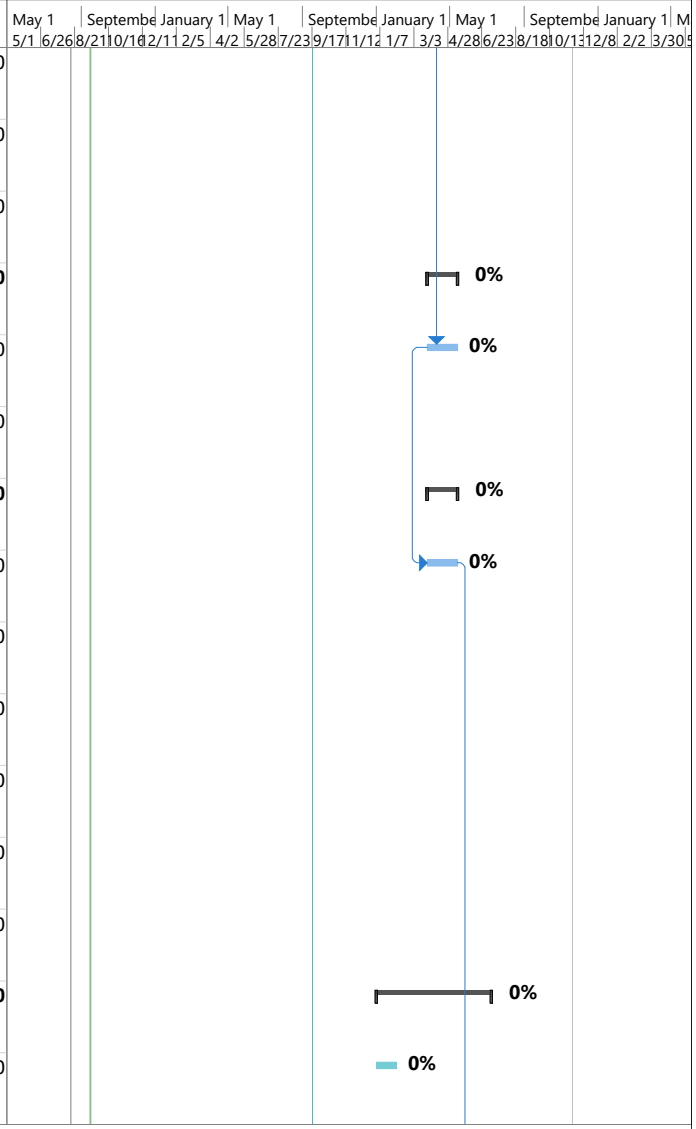
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
121		**Workshop A**	**277 days?**	**Mon 6/19/23**	**Tue 7/9/24**	**$1,846,000.00**
122		**2ea - Concrete Loading docks**	**67 days**	**Mon 6/19/23**	**Tue 9/19/23**	**$208,000.00**
123		concrete approach ramps	67 days	Mon 6/19/23	Tue 9/19/23	$208,000.00
124		hand railing	10 days	Wed 9/6/23	Tue 9/19/23	$0.00
125		dock levelers	10 days	Wed 9/6/23	Tue 9/19/23	$0.00
126		**Workshop A Renovation**	**93 days?**	**Mon 11/20/23**	**Wed 3/27/24**	**$1,638,000.00**
127		Remove existing roof and wall sheeting	25 days	Mon 11/20/23	Fri 12/22/23	$0.00
128		Modify Steel Structure (panel prep)	38 days	Mon 12/11/23	Wed 1/31/24	$0.00
129		Install PBR 26 ga roof sheets	33 days	Mon 2/5/24	Wed 3/20/24	$0.00
130		Install/replace sub-framing				$0.00
131		Install exterior OSB/SIP panels	38 days	Mon 2/5/24	Wed 3/27/24	$0.00
132		Install interior metal wall panels				$0.00
133		install under roof insulation				$0.00
134		Remove wood frame breezeway				$0.00
135		Add metal frame breezeway				$0.00



Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

828 Studios Redevelopment Schedule.mpp

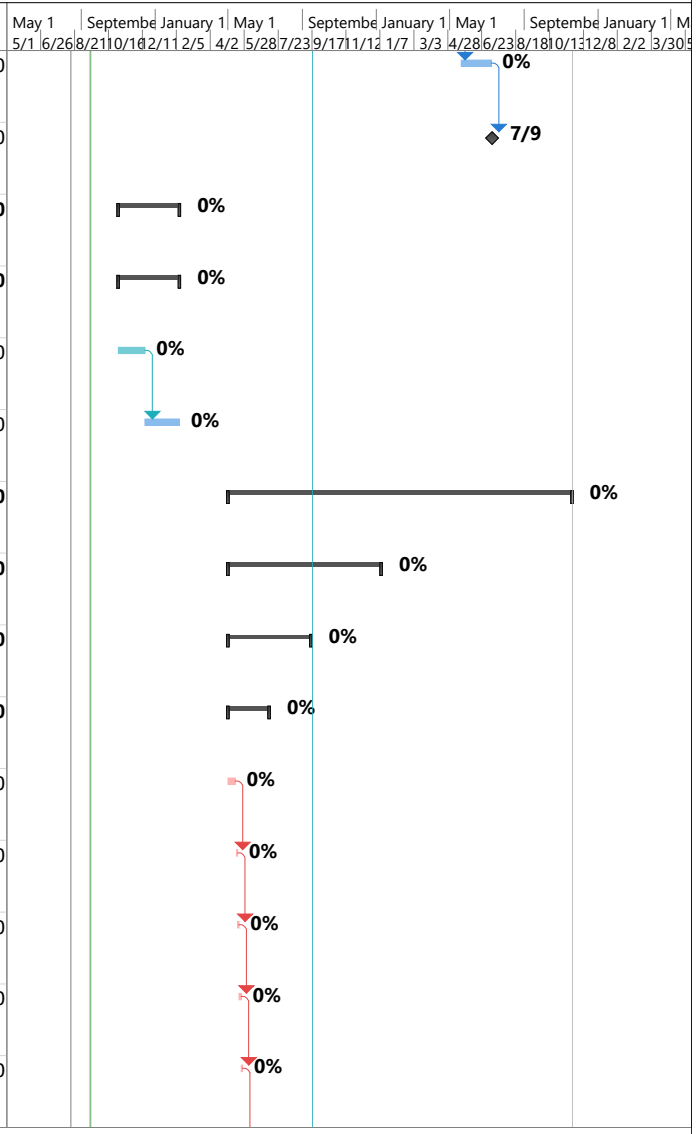
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
136		3ea demising walls in the building				$0.00
137		10 ea Exterior man doors				$0.00
138		6 ea 12' x 1O' Overhead doors				$0.00
139		**Mechanical**	**36 days?**	**Mon 3/25/24**	**Mon 5/13/24**	**$0.00**
140		HVAC - 75 TNS	36 days	Mon 3/25/24	Mon 5/13/24	$0.00
141		Gas (Heating)				$0.00
142		**Electrical**	**36 days?**	**Mon 3/25/24**	**Mon 5/13/24**	**$0.00**
143		Transformer (TBD)	36 days	Mon 3/25/24	Mon 5/13/24	$0.00
144		Interior Electrical Panels				$0.00
145		220V convenience power				$0.00
146		Warehouse lighting				$0.00
147		Emergency lighting ingress/egress				$0.00
148		Exterior lighting				$0.00
149		**Plumbing**	**136 days**	**Mon 1/1/24**	**Mon 7/8/24**	**$0.00**
150		Restrooms	25 days	Mon 1/1/24	Fri 2/2/24	$0.00



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

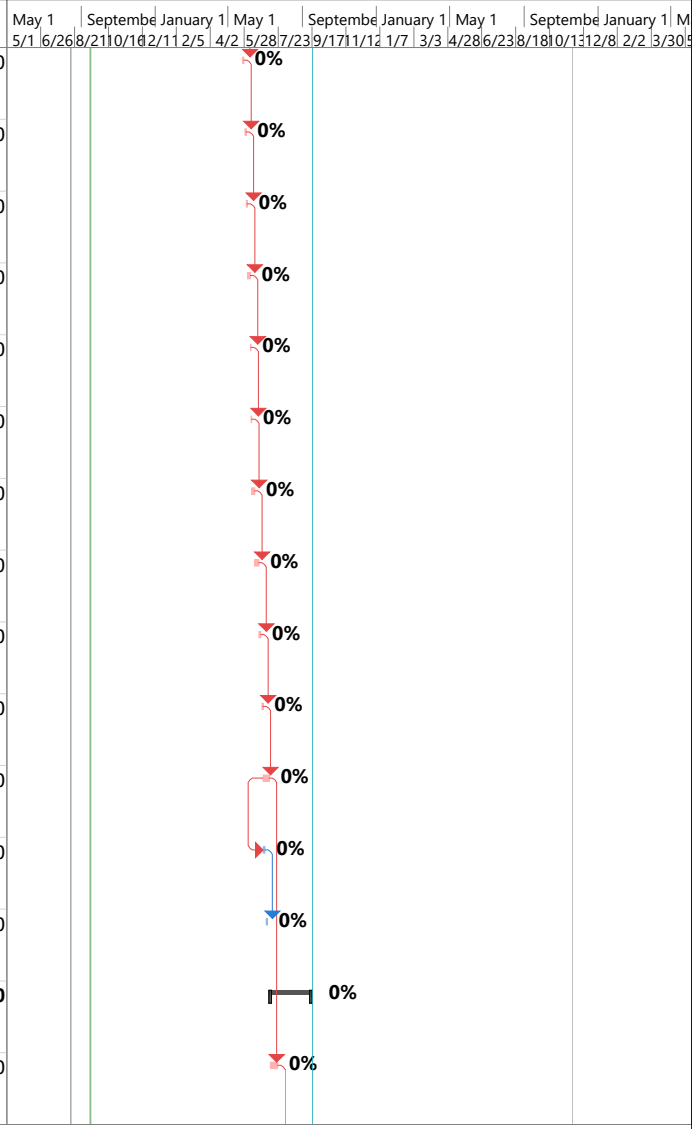
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
151		Fire sprinkler system	36 days	Mon 5/20/24	Mon 7/8/24	$0.00
152		Workshop A COA	1 day	Tue 7/9/24	Tue 7/9/24	$0.00
153		**Production Office Buildings**	**60 days**	**Tue 11/1/22**	**Thu 2/9/23**	**$91,750.00**
154		**POB 1**	**60 days**	**Tue 11/1/22**	**Thu 2/9/23**	**$91,750.00**
155		Exterior T.I. (TBD)	30 days	Tue 11/1/22	Wed 12/14/22	$45,875.00
156		Interior T.I. (TBD)	30 days	Thu 12/15/22	Thu 2/9/23	$45,875.00
157		**NEW CONSTRUCTION**	**406 days**	**Mon 5/1/23**	**Mon 11/18/24**	**$15,985,000.00**
158		**New Stages 3 & 4**	**181 days**	**Mon 5/1/23**	**Mon 1/8/24**	**$14,000,000.00**
159		**Stage Structural Assembly**	**99 days**	**Mon 5/1/23**	**Thu 9/14/23**	**$7,000,000.00**
160		**Stage 3 Structural Assembly**	**50 days**	**Mon 5/1/23**	**Fri 7/7/23**	**$3,500,000.00**
161		Base Plates	10 days	Mon 5/1/23	Fri 5/12/23	$0.00
162		Prep Modules 1-3	2 days	Mon 5/15/23	Tue 5/16/23	$0.00
163		Assembly Module 1	2 days	Wed 5/17/23	Thu 5/18/23	$0.00
164		Assembly Module 2	2 days	Fri 5/19/23	Mon 5/22/23	$0.00
165		Assembly Module 3	2 days	Tue 5/23/23	Wed 5/24/23	$0.00



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

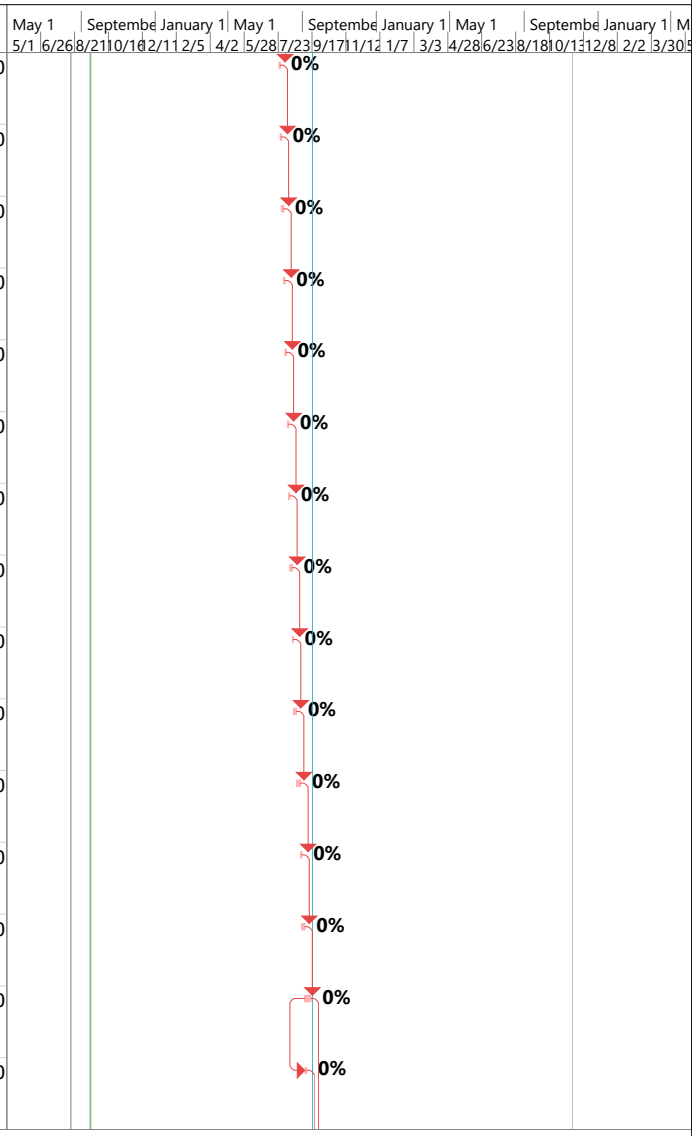
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
166		Prep Modules 4-5	2 days	Thu 5/25/23	Fri 5/26/23	$0.00
167		Assembly Module 4	2 days	Mon 5/29/23	Tue 5/30/23	$0.00
168		Assembly Module 5	2 days	Wed 5/31/23	Thu 6/1/23	$0.00
169		Assembly Single Frame	3 days	Fri 6/2/23	Tue 6/6/23	$0.00
170		Pulling Roof Module 1-5	1 day	Wed 6/7/23	Wed 6/7/23	$0.00
171		Stage 3 Module Lift	1 day	Thu 6/8/23	Thu 6/8/23	$0.00
172		Purlins, Cables, Braces	3 days	Fri 6/9/23	Tue 6/13/23	$0.00
173		Roof & Insulation & Tension Bars	5 days	Wed 6/14/23	Tue 6/20/23	$0.00
174		Gable End	3 days	Wed 6/21/23	Fri 6/23/23	$0.00
175		Gable Leg Sections	2 days	Mon 6/26/23	Tue 6/27/23	$0.00
176		Wall Panel Installation	8 days	Wed 6/28/23	Fri 7/7/23	$0.00
177		Corners & Gutters	3 days	Wed 6/28/23	Fri 6/30/23	$0.00
178		Weather Sealing	2 days	Mon 7/3/23	Tue 7/4/23	$0.00
179		**Stage 4 Structural Assembly**	**49 days**	**Mon 7/10/23**	**Thu 9/14/23**	**$3,500,000.00**
180		Base Plates	10 days	Mon 7/10/23	Fri 7/21/23	$0.00



Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

828 Studios Redevelopment Schedule.mpp

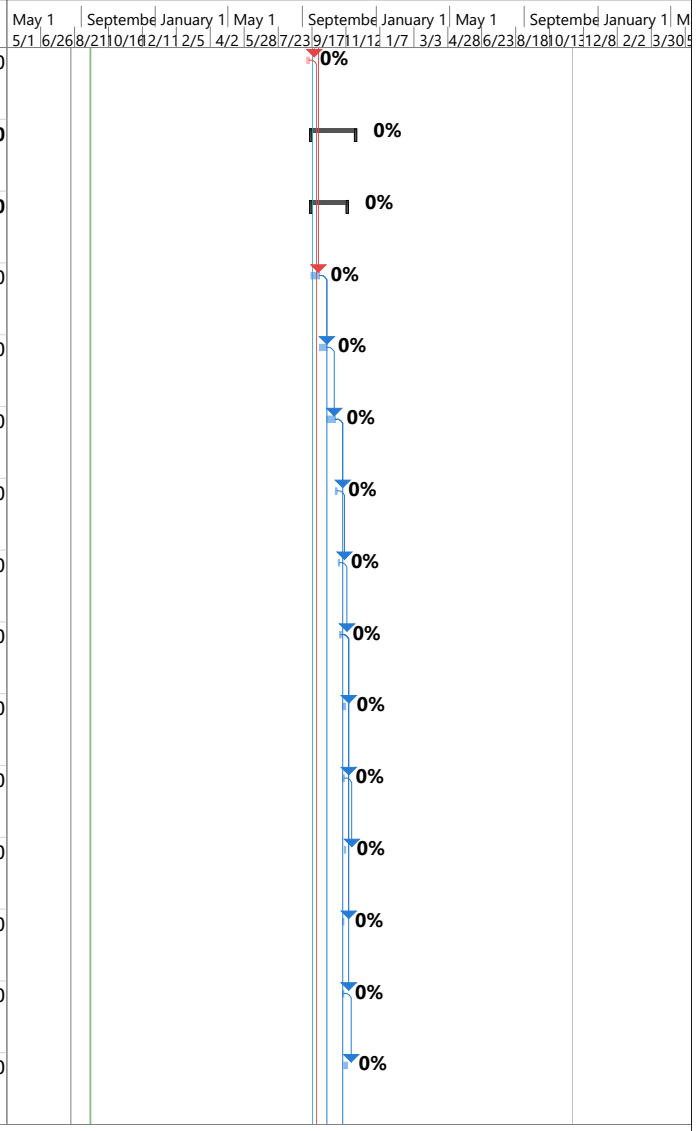
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
181		Prep modules 1-3	2 days	Mon 7/24/23	Tue 7/25/23	$0.00
182		Assembly Module 1	2 days	Wed 7/26/23	Thu 7/27/23	$0.00
183		Assembly Module 2	2 days	Fri 7/28/23	Mon 7/31/23	$0.00
184		Assembly Module 3	2 days	Tue 8/1/23	Wed 8/2/23	$0.00
185		Prep Modules 4-5	2 days	Thu 8/3/23	Fri 8/4/23	$0.00
186		Assembly Module 4	2 days	Mon 8/7/23	Tue 8/8/23	$0.00
187		Assembly module 5	2 days	Wed 8/9/23	Thu 8/10/23	$0.00
188		Pulling Roof Module 1-5	2 days	Fri 8/11/23	Mon 8/14/23	$0.00
189		Stage 4 Module Lift	2 days	Tue 8/15/23	Wed 8/16/23	$0.00
190		Purlins, Cables, Braces	3 days	Thu 8/17/23	Mon 8/21/23	$0.00
191		Roof Insulation & Tension Bars	5 days	Tue 8/22/23	Mon 8/28/23	$0.00
192		Gable Leg Sections	2 days	Tue 8/29/23	Wed 8/30/23	$0.00
193		Gable End	3 days	Thu 8/31/23	Mon 9/4/23	$0.00
194		Wall Panel Installation	8 days	Tue 9/5/23	Thu 9/14/23	$0.00
195		Corners & Gutters	3 days	Tue 9/5/23	Thu 9/7/23	$0.00



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

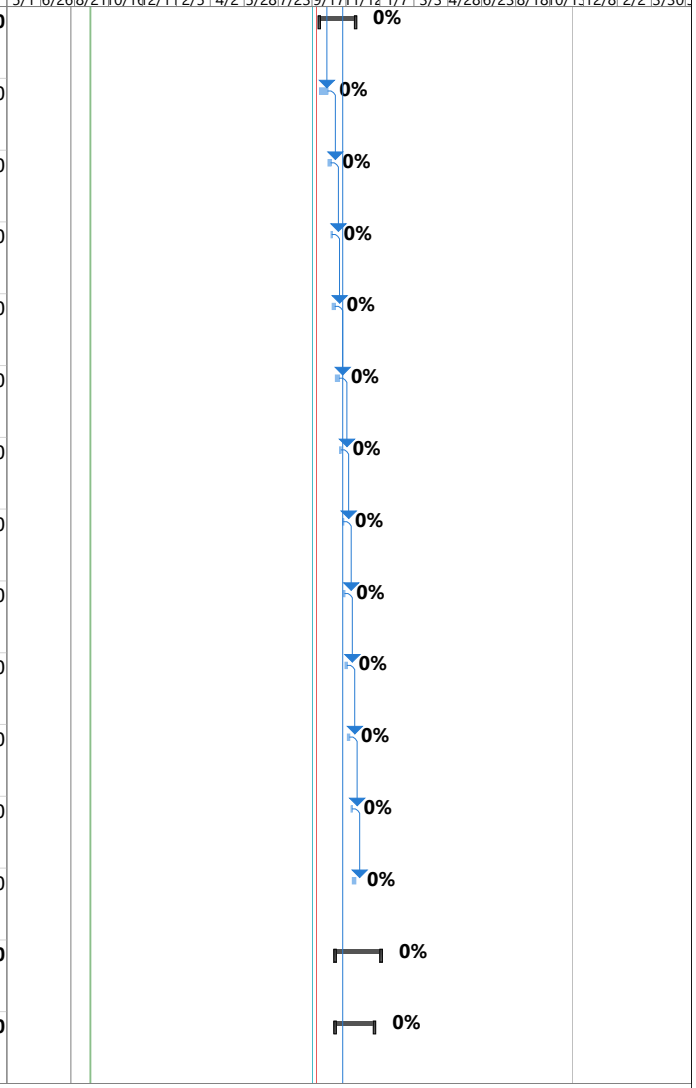
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
196		Weather Sealing	2 days	Fri 9/8/23	Mon 9/11/23	$0.00
197		**Stage Interior**	**52 days**	**Fri 9/15/23**	**Mon 11/27/23**	**$3,500,000.00**
198		**Stage 3 Interior**	**42 days**	**Fri 9/15/23**	**Mon 11/13/23**	**$1,750,000.00**
199		Stage 3 Flooring	10 days	Fri 9/15/23	Thu 9/28/23	$0.00
200		Stage 3 Plywood	8 days	Fri 9/29/23	Tue 10/10/23	$0.00
201		Acoustic Wall Liner	10 days	Wed 10/11/23	Tue 10/24/23	$0.00
202		Staircases & Emergency Exit Ladders	3 days	Wed 10/25/23	Fri 10/27/23	$0.00
203		Rat Holes	2 days	Mon 10/30/23	Tue 10/31/23	$0.00
204		Elephant Door	3 days	Wed 11/1/23	Fri 11/3/23	$0.00
205		Airlock Vestibules	5 days	Mon 11/6/23	Fri 11/10/23	$0.00
206		Personnel Doors (Exterior)	3 days	Mon 11/6/23	Wed 11/8/23	$0.00
207		Cable Port Guillotines	2 days	Thu 11/9/23	Fri 11/10/23	$0.00
208		Elephant Door Balustrades	2 days	Mon 11/6/23	Tue 11/7/23	$0.00
209		Handrails	2 days	Mon 11/6/23	Tue 11/7/23	$0.00
210		Stage 3 Floor Painting	4 days	Wed 11/8/23	Mon 11/13/23	$0.00



Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

828 Studios Redevelopment Schedule.mpp

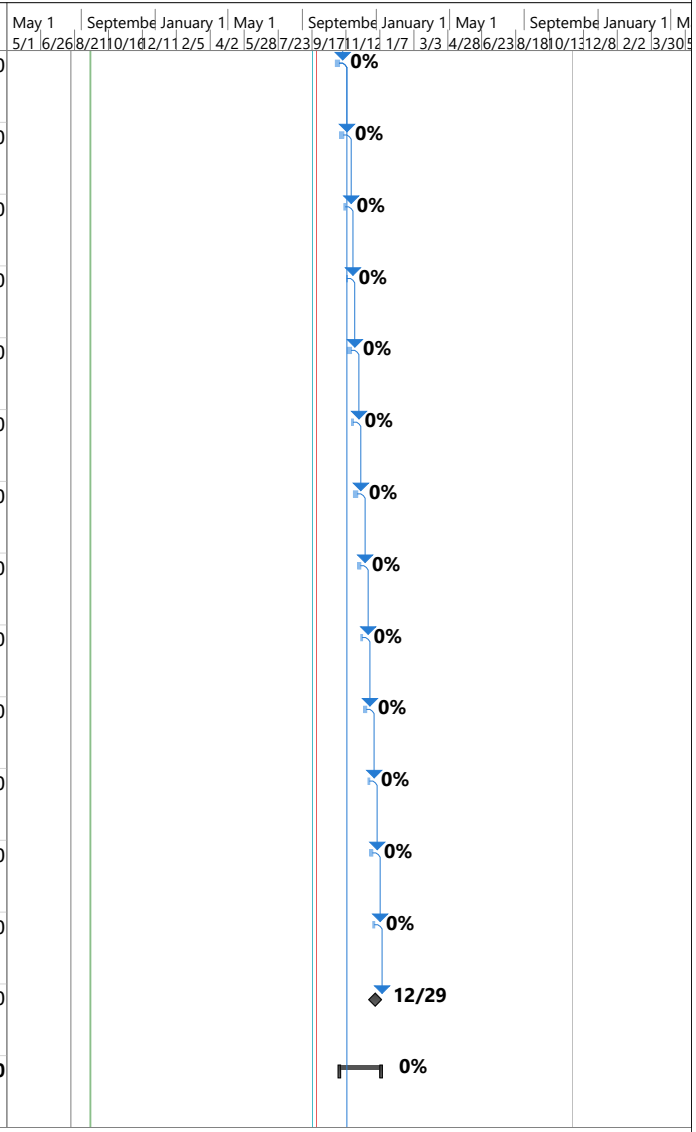
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
211		**Stage 4 Interior**	**42 days**	**Fri 9/29/23**	**Mon 11/27/23**	**$1,750,000.00**
212		Stage 4 Flooring	10 days	Fri 9/29/23	Thu 10/12/23	$0.00
213		Stage 4 Plywood	3 days	Fri 10/13/23	Tue 10/17/23	$0.00
214		Acoustic Wall Liner	2 days	Wed 10/18/23	Thu 10/19/23	$0.00
215		Staircases & Emergency Exit Ladders	3 days	Fri 10/20/23	Tue 10/24/23	$0.00
216		Rat Holes	5 days	Wed 10/25/23	Tue 10/31/23	$0.00
217		Elephant Door	3 days	Wed 11/1/23	Fri 11/3/23	$0.00
218		Airlock Vestibules	2 days	Mon 11/6/23	Tue 11/7/23	$0.00
219		Personnel Doors (Exterior)	2 days	Wed 11/8/23	Thu 11/9/23	$0.00
220		Cable Port Guillotines	2 days	Fri 11/10/23	Mon 11/13/23	$0.00
221		Elephant Door Balustrades	4 days	Tue 11/14/23	Fri 11/17/23	$0.00
222		Handrails	2 days	Mon 11/20/23	Tue 11/21/23	$0.00
223		Stage 4 Floor Painting	4 days	Wed 11/22/23	Mon 11/27/23	$0.00
224		**Stage Fit Out**	**54 days**	**Wed 10/25/23**	**Mon 1/8/24**	**$3,500,000.00**
225		**Stage 3 Fit Out**	**47 days**	**Wed 10/25/23**	**Thu 12/28/23**	**$1,750,000.00**



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

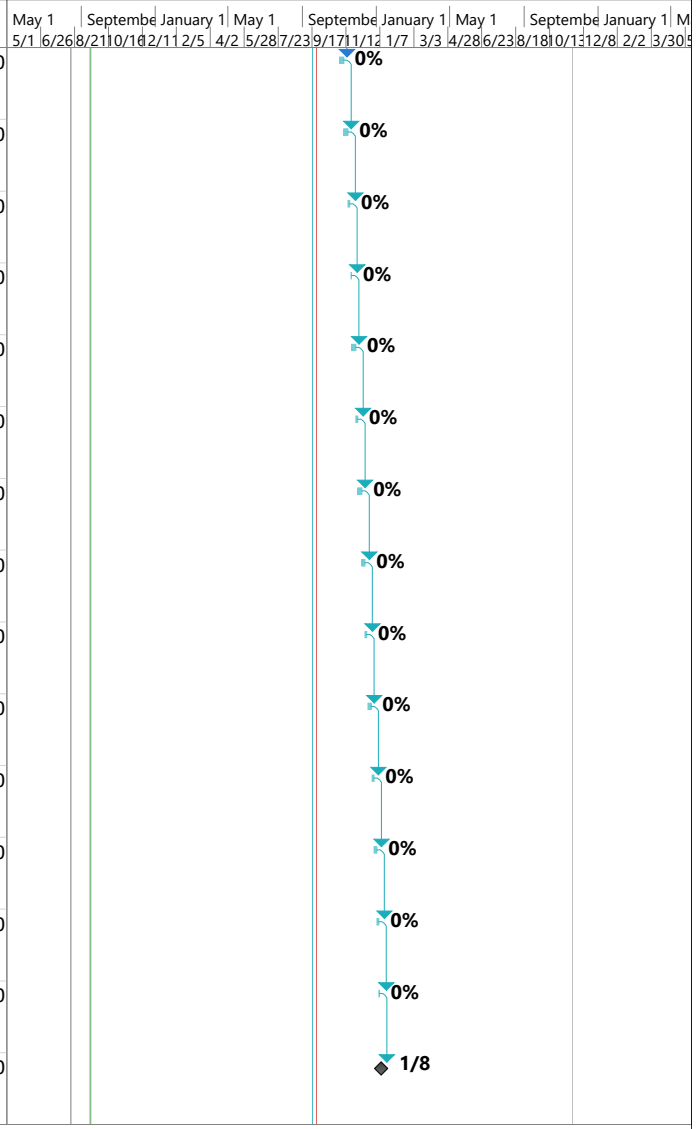
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
226		House Lighting	5 days	Wed 10/25/23	Tue 10/31/23	$0.00
227		Bull Switches	5 days	Wed 11/1/23	Tue 11/7/23	$0.00
228		Heating Control	3 days	Wed 11/8/23	Fri 11/10/23	$0.00
229		Signage	1 day	Mon 11/13/23	Mon 11/13/23	$0.00
230		Electrical Infrastructure	5 days	Tue 11/14/23	Mon 11/20/23	$0.00
231		MV Cable Trench/Duct Installation	3 days	Tue 11/21/23	Thu 11/23/23	$0.00
232		Transformer Pad	5 days	Fri 11/24/23	Thu 11/30/23	$0.00
233		Transformer Installation	3 days	Fri 12/1/23	Tue 12/5/23	$0.00
234		MV Electrical Connection/Installation	3 days	Wed 12/6/23	Fri 12/8/23	$0.00
235		HVAC Installation	5 days	Mon 12/11/23	Fri 12/15/23	$0.00
236		Fire Detection System	3 days	Mon 12/18/23	Wed 12/20/23	$0.00
237		Red Light & Bell	3 days	Thu 12/21/23	Mon 12/25/23	$0.00
238		Mesh Installation	3 days	Tue 12/26/23	Thu 12/28/23	$0.00
239		Stage 3 COA	1 day	Fri 12/29/23	Fri 12/29/23	$0.00
240		**Stage 4 Fit Out**	**49 days**	**Wed 11/1/23**	**Mon 1/8/24**	**$1,750,000.00**



Critical	Task Progress	Baseline	Summary	Inactive Task
Critical Split	Manual Task	Baseline Split	Manual Summary	Inactive Milestone
Critical Progress	Start-only	Baseline Milestone	Project Summary	Inactive Summary
Task	Finish-only	Milestone	External Tasks	Deadline
Split	Duration-only	Summary Progress	External Milestone	

828 Studios Redevelopment Schedule.mpp

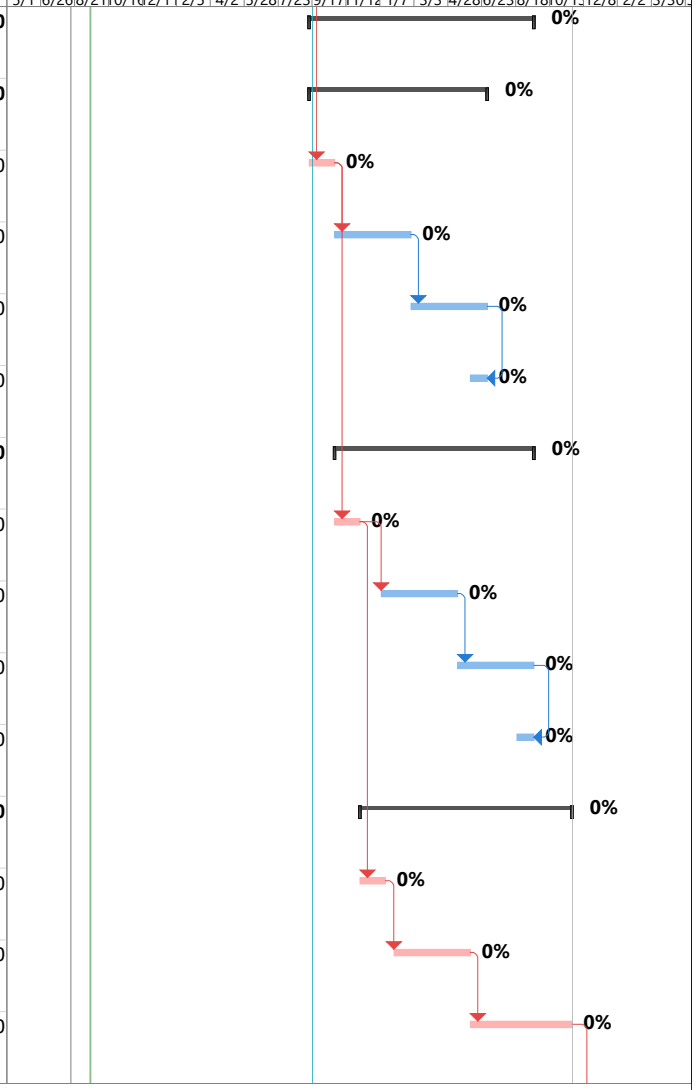
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
241		House Lighting	5 days	Wed 11/1/23	Tue 11/7/23	$0.00
242		Bull Switches	5 days	Wed 11/8/23	Tue 11/14/23	$0.00
243		Heating Control	3 days	Wed 11/15/23	Fri 11/17/23	$0.00
244		Signage	1 day	Mon 11/20/23	Mon 11/20/23	$0.00
245		Electrical Infrastructure	5 days	Tue 11/21/23	Mon 11/27/23	$0.00
246		MV Cable Trench/Duct Installation	3 days	Tue 11/28/23	Thu 11/30/23	$0.00
247		Transformer Pad	5 days	Fri 12/1/23	Thu 12/7/23	$0.00
248		Transformer Installation	3 days	Fri 12/8/23	Tue 12/12/23	$0.00
249		MV Electrical Connection/Installation	3 days	Wed 12/13/23	Fri 12/15/23	$0.00
250		HVAC Installation	5 days	Mon 12/18/23	Fri 12/22/23	$0.00
251		Fire Detection System	3 days	Mon 12/25/23	Wed 12/27/23	$0.00
252		Red Light & Bell	3 days	Thu 12/28/23	Mon 1/1/24	$0.00
253		Mesh Installation	3 days	Tue 1/2/24	Thu 1/4/24	$0.00
254		Mesh Installation	1 day	Fri 1/5/24	Fri 1/5/24	$0.00
255		Stage 4 COA	1 day	Mon 1/8/24	Mon 1/8/24	$0.00



Critical
Critical Split
Critical Progress
Task
Split
Task Progress
Manual Task
Start-only
Finish-only
Duration-only
Baseline
Baseline Split
Baseline Milestone
Milestone
Summary Progress
Summary
Manual Summary
Project Summary
External Tasks
External Milestone
Inactive Task
Inactive Milestone
Inactive Summary
Deadline

828 Studios Redevelopment Schedule.mpp

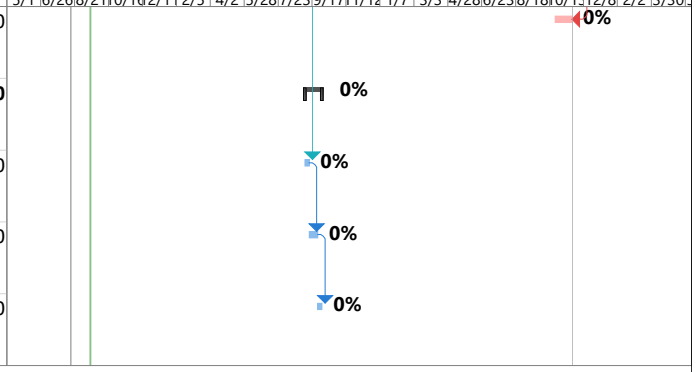
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
256		**New Production Office Buildings 2 & 3**	**265 days**	**Tue 9/12/23**	**Mon 9/16/24**	**$1,280,000.00**
257		**POB 2**	**210 days**	**Tue 9/12/23**	**Mon 7/1/24**	**$640,000.00**
258		Floorplans (TBD)	30 days	Tue 9/12/23	Mon 10/23/23	$0.00
259		MEP (TBD)	90 days	Tue 10/24/23	Mon 2/26/24	$0.00
260		Construction (TBD)	90 days	Tue 2/27/24	Mon 7/1/24	$0.00
261		IT / Telco	20 days	Tue 6/4/24	Mon 7/1/24	$0.00
262		**POB 3**	**235 days**	**Tue 10/24/23**	**Mon 9/16/24**	**$640,000.00**
263		Floorplans (TBD)	30 days	Tue 10/24/23	Mon 12/4/23	$0.00
264		MEP (TBD)	90 days	Tue 1/9/24	Mon 5/13/24	$0.00
265		Construction (TBD)	90 days	Tue 5/14/24	Mon 9/16/24	$0.00
266		IT / Telco	20 days	Tue 8/20/24	Mon 9/16/24	$0.00
267		**New Creative Office Building**	**250 days**	**Tue 12/5/23**	**Mon 11/18/24**	**$640,000.00**
268		Floorplans (TBD)	30 days	Tue 12/5/23	Mon 1/15/24	$0.00
269		MEP (TBD)	90 days	Tue 1/30/24	Mon 6/3/24	$0.00
270		Construction (TBD)	120 days	Tue 6/4/24	Mon 11/18/24	$0.00



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

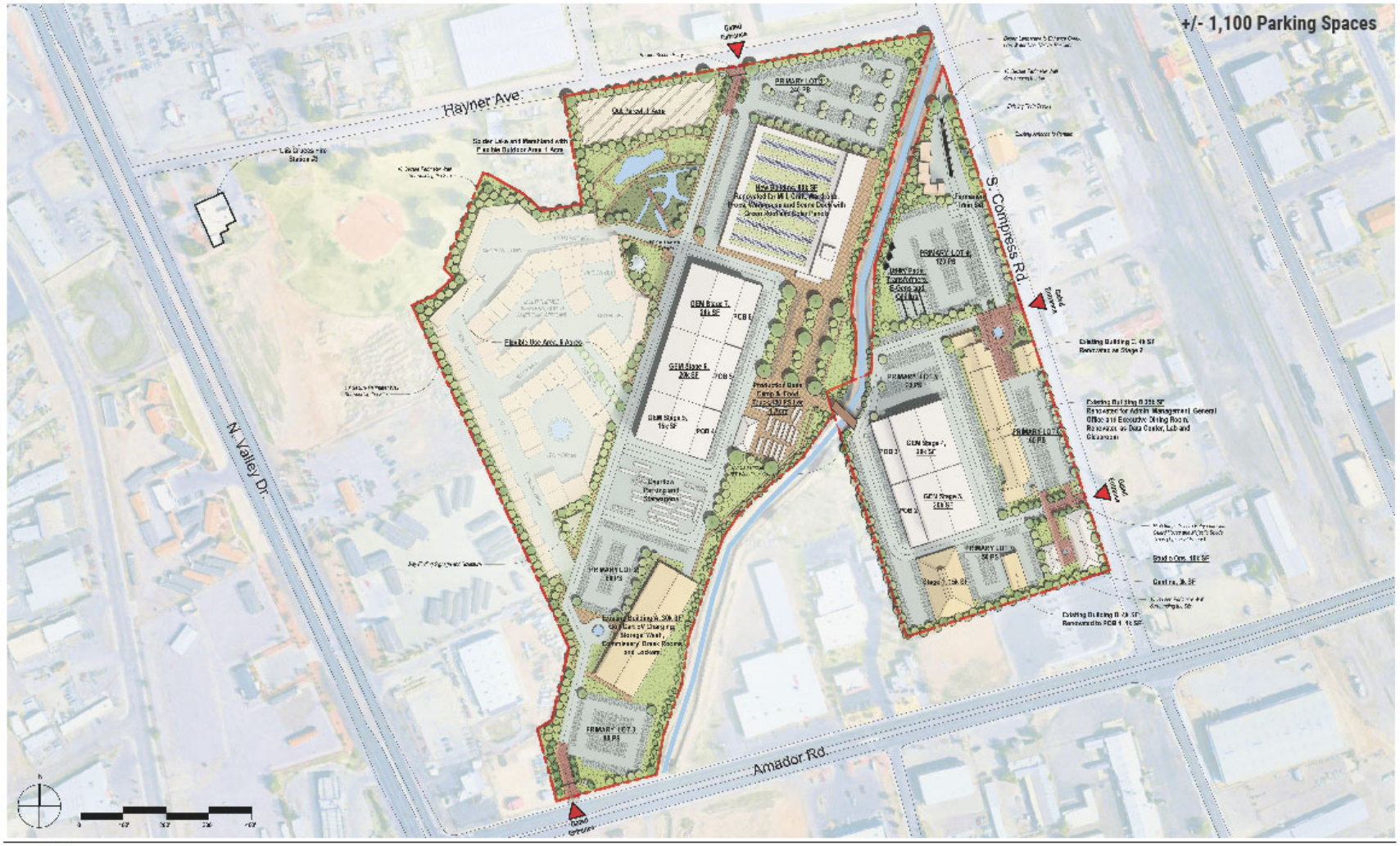
ID	Task Mode	Task Name	Duration	Start	Finish	Cost
271		IT / Telco	20 days	Tue 10/22/24	Mon 11/18/24	$0.00
272		**Guard Shacks**	**20 days**	**Tue 9/5/23**	**Mon 10/2/23**	**$65,000.00**
273		Floorplans	5 days	Tue 9/5/23	Mon 9/11/23	$0.00
274		MEP	10 days	Tue 9/12/23	Mon 9/25/23	$0.00
275		Construction	5 days	Tue 9/26/23	Mon 10/2/23	$65,000.00



Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

16 Conceptual Site Plans

CONCEPTUAL SITE PLAN



Online Land Planning

GIANT ENTERTAINMENT MANAGEMENT INC.

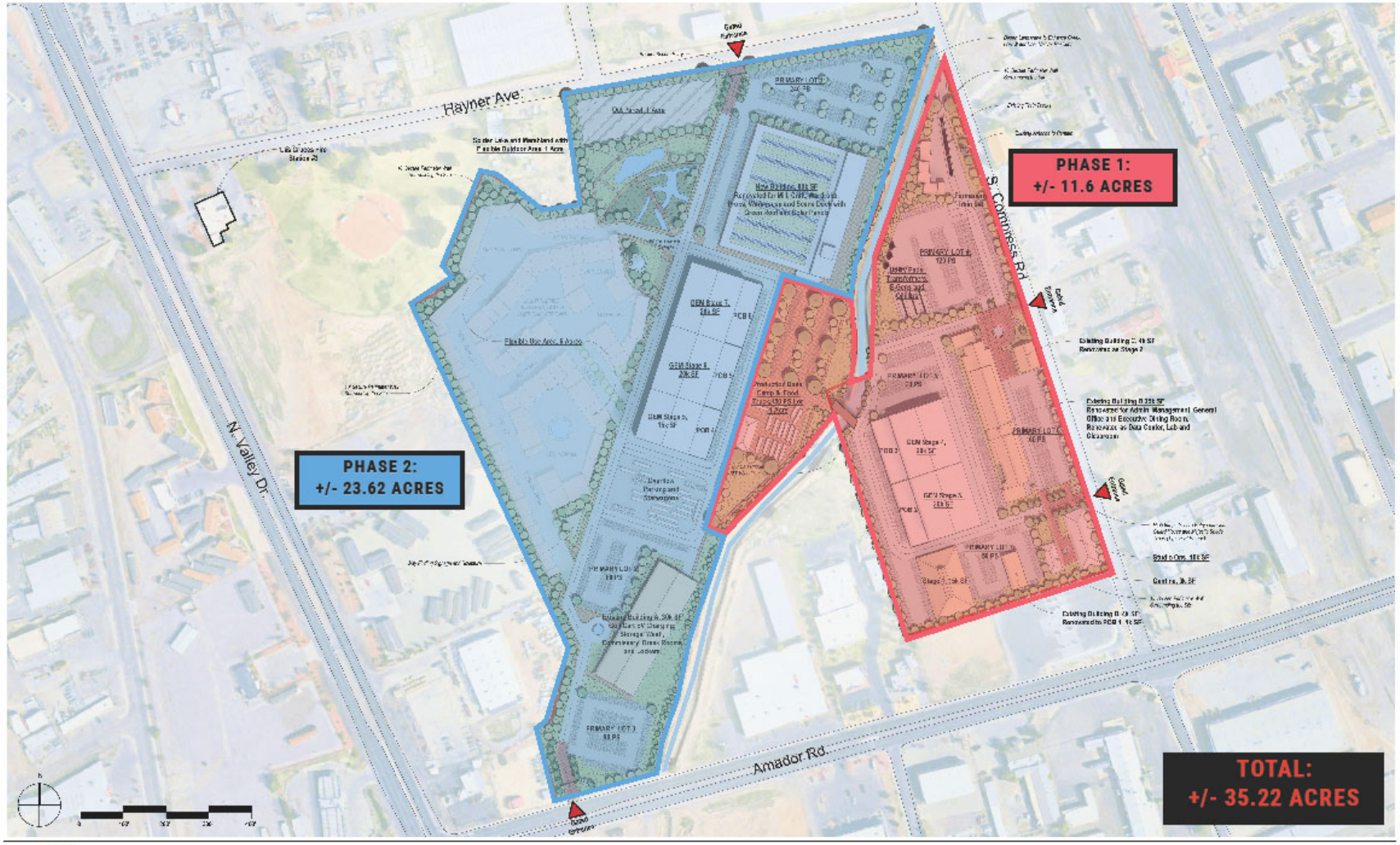
828 STUDIOS | LAS CRUCES, NEW MEXICO

SEPTEMBER 02 2022 2

CONCEPTUAL PERSPECTIVE



PHASING PLAN



Online Land Planning

828 STUDIOS | LAS CRUCES, NEW MEXICO

SEPTEMBER 02 2022 4

18 Construction Drawings

Placeholder pending architect agreement & scope.

Confirmation needed from GC re: 70 days ending 1/27/23 (Currently showning 70 days from 9/26/22 at a 5 day work week with two days off for Thanksgiving and two weeks off for Christmas/New Years)

19 Demo Permit

Confirm if demo permit can be obtained prior to completion of DD's.

25 Traffic Circulation Plan

CIRCULATION PLAN



Online Land Planning GIANT ENTERTAINMENT MANAGEMENT INC. **828 STUDIOS | LAS CRUCES, NEW MEXICO** SEPTEMBER 02 2022 3

•

26 Permits

Permit cost based on Highland Enterprises summarized estimate and not yet broken out by category.

27 Grading Permit

All permits, starting with grading, reflected in a 30 day window after completion of CD's

82 Stage 1 COA
Stage 1 Certificate Of Occupancy placeholder pending confirmation.

88 750 KVA Transformer 900 amp, 480V 3P
Interior power distribution schedule currently reflected in Task #82 and not yet broken out individually.

106 Stage 2 COA
Stage 2 Certificate Of Occupancy placeholder pending confirmation

107 Mechanical
Stage 2 Mechanical assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".

110 Electrical
Stage 2 Electrical assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".

111 250 KVA Transformer
Interior electrical installation currently reflected in Task #100; not broken out by task numbers.

118 Plumbing
Stage 2 Plumbing assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".

120 Fire Sprinkler System
Stage 2 Fire Sprinkler System installation requirements TBD

126 Workshop A Renovation
WS-A Renovation cost includes subcategories (Task #122-#133)

139 Mechanical
Workshop A Mechanical assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"

142 Electrical
Workshop A Electrical assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"

143 Transformer (TBD)
Workshop interior electrical installation currently reflected in Task#131 and not broken out by task.

149 Plumbing
Workshop A Plumbing assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"

152 Workshop A COA
Workshop A COA placeholder pending confirmation

153 Production Office Buildings
POB 1 T.I.'s TBD

157 NEW CONSTRUCTION
All new construction tasks TBD pending design.

257 POB 2
POB cost and schedule placeholder pending design

262 POB 3
POB 3 cost and schedule placeholder pending design

272 Guard Shacks
Guard Shack schedule TBD

HIGHLAND ENTERPRISES, INC.

General Contractors • Lic. No. 4460 MARK HETTINGA , PRESIDENT
Labor Registration No. 0036820050601
P.O. BOX 2409 Las Cruces, NM 88004
Phone (575) 524-3551 Fax (575) 526-0835
Email – hei@highlandnm.com

Budgetary Estimate No. One Date Septembe 8, 2022

Project 828 Studios Renovations Location 111 S. Compress Rd Las Cruces, NM 88005

To: 828 Studios

Budgetary Estimate

This is a budgetary estimate and is preliminary in nature. This estimate represents our best estimation of the project based on our interpretation the Customer's ideas, commentsand available information. This is not a firm fixed price. A firm fixed price may be offered upon a fully developed set of plans that has been approved by the City of Las Cruces.

Scope of Work

This Scope of Work is limited to Phase 1 which pertains to the following:

- Removal of Trash and debris from 8 acre portion of site
- Removal of large piles of volcanic rock. Rock is to be placed on adjacent lot
- Removal of existing concrete structures
- Construction of Parking Lots and roadways as described
- Renovation of large and tall building to become Stage 1
- Renovation of long building to become Work Shop
- Renovation of metal building to become Stage 2
- Renovation of existing Administration building to become POB 1

Plan Development Requirements

- Architectural and Engineering fees for:

Demolition plans
Site Plan Floor Plans
Elevation Views
Structural Foundation plans
Structural Building Plans
Plumbing plans
HVAC plans
Electrical plans
Fire Protection plans

- Contractor Design/Build Fee
- Topographical Survey
- Geo Technical Study
- Storm Water Pollution Prevention Plan

General Requirements

- Bond (add 2% to estimate total if required)
- Building Permit fees
- Builder's Risk Insurance
- Temporary Facilities
- Temporary Utilities

Demolition / Site Clean Up

- Tree removal
- Removal of Existing stock piles of volcanic rock to Phase 2
- Removal of tires

- Removal of trash and debris
- Removal of RV trailer
- Removal of building contents Stage 1
- Removal of building contents Stage 2
- Removal of building contents Work Shop
- Clean and expose RR Tracks
- Demolition - Existing above grade concrete structures
- Demo Bagging equipment at Work Shop

Site Work

- Materials testing
- Access road to Stage 1 and Work Shop
- Construction of remaining site roadways (Phase 2)
- Asphalt Parking - Lot 4
- Asphalt Parking - Lot 5
- Asphalt Parking Work Shop
- Asphalt Parking - Lot 6
- Asphalt Parking - Stage 1 Lot
- Asphalt Parking - POB Lots 2&3
- Graveled area for Chiller, Satellite Dishes, Generators
- Cantina Slab
- Landscape Phase 1 (12,000 SF)
- Landscape Phase 2 (35,990 SF)
- Phase 1 - Underground Retention Ponds
- Phase 2 - Underground Retention Ponds

Renovation of Sound Stage 1

- Remove and replace 9,000 SF of existing floor
- Remove existing sheeting on roof and walls
- Add sub-framing as required to receive new exterior and interior panel products
- Replace exterior sheeting with 4" Kingspan Insulated panels
- Install 6" SIP panels, roof and walls, on interior of building
- Install Duct liner on roof and walls on interior of the building
- 1 ea - 18' wide by 12' tall, bi-parting, insulated door
- 3ea - Hollow metal man doors
- Plumbing - gas piping
- HVAC - 150 TNS heating and cooling, ventilation fans, gas
- Electrical - 750 KVA, 900 amp, 480V 3 phase service, distribution transformers and panel boards at 6 places around the building, high bay lighting, emergency lighting, ingress/egress, exterior wall pack lighting, general purpose 120V outlets through out
- Fire Sprinkler system

Renovate Work Shop - 350' x 72' x 12' Metal Building

- Remove existing roof and wall sheeting
- Install PBR 26 ga roof sheets
- Install/replace/repair sub-framing as required
- Install OSB/SIP panels at exterior walls
- Install metal wall panels on interior side of SIP panels
- Insulate roof with vinyl backed fiberglass insulation
- Remove existing wood framing structure (Breeze Way) and replace with metal building framing
- 3ea demising walls in the building
- 10 ea Exterior man doors
- 6 ea 12' x 10' Overhead doors
- 2ea - Construct Loading docks with concrete approach ramps, hand railing, dock levelers

- HVAC - 75 TNS
- Plumbing - Restrooms, gas
- Electrical - Distribution transformers and panel boards, warehouse lighting, emergency lighting ingress/ egress, exterior wall pack lighting, convenient outlets, 220V outlets
- Fire Sprinkler system

Renovate Stage 2 - 3,750 SF

- Remove existing roof and wall sheeting
- Replace exterior sheeting with 4'' Kingspan Insulated panels
- Install 6'' SIP panels, roof and walls, on interior of building
- Install Duct liner on roof and walls on interior of the building
- 1 ea - 16' wide by 14' tall, bi-parting, insulated door
- 3ea - Hollow metal man doors
- HVAC - 20 TNS, ventilation fans
- Electrical - Distribution transformers and panel boards, warehouse lighting, emergency lighting ingress/ egress, exterior wall pack lighting, convenient outlets, 220V outlets

Misc. Buildings

- Studio Ops Building (Generic SF Price $160.00/SF)
- Renovate POB 1 - make repairs and minor modifications (Generic SF Price $25.00/SF)
- Stages 3&4 POB 2 & 3 - ???
- 2 ea Pre-manufactured Guard House
- Proposed buildings at north end of RR tracks ???

Estimated Cost - Please Refer to Breakdown Sheet Attached

Exclusions / Assumptions:

- Assumes existing building foundations and slabs are suitable for intended purposes
- Assumes existing metal building frames, joist, rafters are structurally sufficient for intended use
- Excludes Development and Impact fees
- Excludes Traffic Studies
- Excludes Flood Plain Studies
- Excludes Site Survey (To be provided by Owner)
- Excludes Mobilization / Demobilization charges
- Excludes City induced improvements along Compress Rd. i.e. sidewalks, bike paths, traffic signage etc.
- Excludes underground unforeseen conditions - buried slabs, footings, basements, unknown utilities
- Excludes removal/abatement of any hazardous materials that may be found on site
- Excludes removal of existing utilities
- Excludes existing concrete slabs on site
- Excludes retaining walls near Workshop
- Excludes any utility extensions - Water, sewer, electrical, gas
- Excludes camera, surveillance systems, security systems, telephone systems, fiber optics
- Excludes repair or alteration of existing footings
- Excludes filling vent pipes with concrete

Respectfully submitted

HIGHLAND ENTERPRISES, INC.

By _____

September 8, 2022
Highland Enterprises, Inc.
hei@highlandnm.com

828 Studios
Budgetary Estimate 1

Phase 1 8 Acres	Qty	unit	Budget	Phase 1	Phase 2
PLAN DEVELOPMENT REQUIREMENTS					
Archictectural Fees			$ 515,000.00	$ 515,000.00	
Contractor Design/Build Fee	1		$ 125,000.00	$ 125,000.00	
Topo Survey	1		$ 9,100.00	$ 9,100.00	
Geo Tech Report	1		$ 8,000.00	$ 8,000.00	
Storm Water Pollution Prevention Plan	1		$ 7,000.00	$ 7,000.00	
GENERAL REQUIREMENTS					
Bond			???	???	
Building Permit	1		$ 103,500.00	$ 103,500.00	
Development/ Impact Fees	1		???	???	
Insurance Builder's Risk	1		$ 20,000.00	$ 20,000.00	
Temporary Facilities	1		$ 2,100.00	$ 2,100.00	
Temporary Utilities	1		$ 19,041.00	$ 19,041.00	
DEMOLITION /SITE CLEAN UP					
Tree Removal	22	EA	$ 52,096.00	$ 52,096.00	
Removal of volcanic rock to Phase 2	2,490	CY	$ 166,000.00	$ 166,000.00	
Tire Removal	1	LS	$ 1,500.00	$ 1,500.00	
Misc Trash	1	LS	$ 18,226.00	$ 18,226.00	
RV Trailer	1	LS	$ 2,700.00	$ 2,700.00	
Stage 1 Clean Out	1	LS	$ 8,650.00	$ 8,650.00	
Stage 2 Clean Out	1	LS	$ 37,100.00	$ 37,100.00	
Work Shop Clean Out	1	LS	$ 30,000.00	$ 30,000.00	
Clean Gravel at RR Tracks	1	LS	$ 22,601.00	$ 22,601.00	
Demo above grade concrete Structures	1	LS	$ 44,830.00	$ 44,830.00	
Demo Bagging Equipment	1	LS	$ 6,700.00	$ 6,700.00	
SITE WORK					
Materials Testing	1		$ 7,000.00	$ 7,000.00	
Site Security Systems	1		???	???	
Utility Extension Water	1		???	???	
Utility Extension Sewer	1		???	???	
Utility Extension Gas	1		???	???	
Utility Extension Electric	1		???	???	
Utility Extension Fiber Optic	1		???	???	
Site Rough Grading	???	CY	???	???	???
Access Road ST1 & Work Shop	3,460	SY	$ 304,790.00	$ 304,790.00	
Remaining Access Roads	47,144	SY	$ 203,000.00		$ 203,000.00
Asphalt paved Parking Lot Parking Lot - Lot 4	3,280	SY	$ 159,100.00		$ 159,100.00
Asphalt paved Parking Lot - Lot 5	3,155	SY	$ 167,015.00	$ 167,015.00	
Asphalt paved Parking Lot - Work Shop	1,694	SY	$ 93,144.00	$ 93,144.00	
Asphalt paved Parking Lot - Lot 6	3,280	SY	$ 172,715.00	$ 172,715.00	
Asphalt paved Parking Lot - Stage 1 Lot	1,509	SY	$ 83,328.00	$ 83,328.00	$ -
Asphalt Paved Parking Lot -POB Lots 2&3	2,162	SY	$ 119,900.00		$ 119,900.00
Graveled Lot for Chillers, Satellites, Generators	4,646	SY	$ 33,250.00		$ 33,250.00
Cantina Slab	950	SF	$ 7,200.00		$ 7,200.00
Landscape	47,990	SF	$ 249,548.00	$ 62,387.00	$ 187,161.00
Area Adjacent to East Side to Stage 3&4	6,746	SF	???		???
Phase 1 Underground Storm Retention	2	EA	$ 575,000.00	$ 575,000.00	
Phase 2 Underground Storm Retention	2	EA	$ 575,000.00		$ 575,000.00

September 8, 2022
Highland Enterprises, Inc.
hei@highlandnm.com

828 Studios
Budgetary Estimate 1

SOUND STAGE 1 RENOVATION					
Floor - Demo and Replace	9,000	SF	$ 215,256.00	$ 215,256.00	
Remove existing wall sheets, Replace with King Span Panels Install SIPS Panels Interior Walls and Roof Install Duct Liner	32,000	SF	$ 2,303,249.54	$ 2,303,249.54	
18' wide Bi-parting door	1	EA			
Holow Metal Man Doors	3	EA			
Plumbing	15,600	SF	$ 20,000.00	$ 20,000.00	
HVAC 150 TNS	15,600	SF	$ 624,000.00	$ 624,000.00	
Electrical 750 KVA, 900 amp, 3Ph Service	15,600	SF	$ 615,100.00	$ 615,100.00	
Fire Sprinkler System w/ booster pump	15,600	SF	$ 546,000.00	$ 546,000.00	

WORK SHOP RENOVATION					
Work Shop Bldg 350' x 72' x 12	25,200	SF	$ 1,638,000.00	$ 1,638,000.00	
Loading Dock	2	EA	$ 208,000.00	$ 208,000.00	
STAGE 2 RENOVATION					
Stage 2 Bldg 50'x75'x14'	3,750	SF	$ 420,000.00	$ 420,000.00	

MISC. BUILDINGS					
Studio Ops Bldg	4,000	SF	$ 640,000.00		$ 640,000.00
POB 1 Building Renovate	3,670	SF	$ 91,750.00	$ 91,750.00	
Stages 3,4 POB 2,3	62,962	SF	???		???
Guard Shacks	2	EA	$ 65,000.00	$ 65,000.00	
Proposed Train Set Buildings	4,901	SF	???		???
			Total Budget So Far	Phase 1	Phase 2 So Far
			$ 11,335,489.54	$ 9,410,878.54	$ 1,924,611.00

8.1875% NMGR Tax	$ 770,515.68	
	$ 10,181,394.22	Phase 1 w/ tax

828 Productions Financial History Description

828 Productions, LLC is a start up with no prior financial data. The business plan and projections submitted in this application are the financial information that is currently available.

828 PRODUCTIONS

100 S. Church St.
Las Cruces,
NM 88001

LEDA Application

Job Creation Additional Information

The current LEDA Application for 828 Productions is pertaining only to the work being proposed for 828 Studios NM. Future expansions to 828 Productions will include the following areas:

- Film Financing
- Production Accounting
- Production Services
- Postproduction Services

Additional models are being developed for these business areas and will be included in any future LEDA funding applications.

828 Productions LLC				Number of Jobs Created				Payroll Calculations**		
Job Type/Dept and Title:		*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
Studio	Director, Studio Operations	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
Studio	Asst to Director of Studio Operations	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
Studio	Manger, Studio Operation	L	$ 70,000.00	1				$ 70,000.00	$ -	$ -
Studio	Manager, Accounting	L	$ 125,000.00	1				$ 125,000.00	$ -	$ -
Studio	Coordinator, Studio Facilities	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Studio Electrician	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
Studio	Studio Electrician	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
Studio	Maintenance Worker	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Maintenance Worker	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Stage Department Manager	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
Studio	Stage Manager	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Stage Hand	L	$ 50,000.00	1				$ 50,000.00	$ -	$ -
Studio	Stage Hand	L	$ 50,000.00		1			$ -	$ 50,000.00	$ -
Studio	Stage Hand	L	$ 50,000.00			1		$ -	$ -	$ 50,000.00
Studio	Catering Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	UPM	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Set Designer	L	$ 65,000.00	1				$ 65,000.00	$ -	$ -
Studio	Property Manager	L	$ 50,000.00	1				$ 50,000.00	$ -	$ -
Studio	Transporation and Logistics Manger	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Transporatation Asst	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Transporatation Asst	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Grip	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Grip	L	$ 60,000.00	0	1			$ -	$ 60,000.00	$ -
Studio	Lighting Foreman	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Mill Supervisor	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
Studio	Mill Assistant	L	$ 30,000.00	1				$ 30,000.00	$ -	$ -
Studio	Painter	L	$ 30,000.00	1				$ 30,000.00	$ -	$ -
Studio	Construction Grip	L	$ 45,000.00	1				$ 45,000.00	$ -	$ -
Studio	IT Support	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
Studio	Security Superisor	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
Studio	Security Guard	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
828 Productions	CEO	L	$ 300,000.00	1				$ 300,000.00	$ -	$ -
828 Productions	Project Coordinator	L	$ 50,000.00	1				$ 50,000.00	$ -	$ -
828 Productions	Project Manager	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -

828 Productions LLC				Number of Jobs Created				Payroll Calculations**		
Job Type/Dept and Title:		*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
828 Productions	Project Manager	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	EVP, Sales and Distribution	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Productions	Asst to EVP Sales and Distribution	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	EVP, Physical Production	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Productions	Asst to EVP Physical Production	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	Director, Creative Services? DM	L	$ 125,000.00	1				$ 125,000.00	$ -	$ -
828 Productions	Office Manager	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	Office Assistant	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Director of Human Resources	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	EVP of Production Accounting	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Productions	VP of Production Accounting	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Productions	Production Accountant	L	$ 60,000.00		1			$ -	$ 60,000.00	$ -
828 Productions	Production Accountant	L	$ 60,000.00		1			$ -	$ 60,000.00	$ -
828 Productions	Production Accountant	L	$ 60,000.00			1		$ -	$ -	$ 60,000.00
828 Productions	Production Accouting Asst.	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00	1				$ 40,000.00	$ -	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 Productions	Production Accouting Asst.	L	$ 40,000.00			1		$ -	$ -	$ 40,000.00
828 Productions	Legal Counsel	L	$ 300,000.00		1			$ -	$ 300,000.00	$ -
828 Productions	Paralegal	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 VFX Facility	VFX Producer	L	$ 200,000.00		1			$ -	$ 200,000.00	$ -
828 VFX Facility	VFX Supervisor	L	$ 150,000.00		1			$ -	$ 150,000.00	$ -
828 VFX Facility	VFX Controller	L	$ 150,000.00			1		$ -	$ -	$ 150,000.00
828 VFX Facility	Technical Director	L	$ 150,000.00		1			$ -	$ 150,000.00	$ -
828 VFX Facility	Lead Animator	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 VFX Facility	Animator	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 VFX Facility	Lighting and Renderting Lead	L	$ 90,000.00		1			$ -	$ 90,000.00	$ -
828 VFX Facility	VFX Assisstant	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 VFX Facility	VFX Assisstant	L	$ 40,000.00		1			$ -	$ 40,000.00	$ -
828 VFX Facility	Art Dept Assisstant	L	$ 40,000.00	1	0			$ 40,000.00	$ -	$ -
828 VFX Facility	Office Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Post Production	VP Post Production	L	$ 150,000.00	1				$ 150,000.00	$ -	$ -
828 Post Production	Post Production Supervisor	L	$ 100,000.00	1				$ 100,000.00	$ -	$ -
828 Post Production	Post Production Supervisor	L	$ 100,000.00		1			$ -	$ 100,000.00	$ -
828 Post Production	Editor	L	$ 90,000.00	1				$ 90,000.00	$ -	$ -
828 Post Production	Editor	L	$ 90,000.00		1			$ -	$ 90,000.00	$ -
828 Post Production	Asst. Editor	L	$ 75,000.00		1			$ -	$ 75,000.00	$ -
828 Post Production	Asst. Editor	L	$ 75,000.00			1		$ -	$ -	$ 75,000.00
828 Post Production	Colorist	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Post Production	Colorist	L	$ 75,000.00		1			$ -	$ 75,000.00	$ -
828 Post Production	Sound Designer	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -
828 Post Production	Sound Designer	L	$ 75,000.00		1			$ -	$ 75,000.00	$ -
828 Post Production	Music Supervisor	L	$ 75,000.00	1				$ 75,000.00	$ -	$ -

828 Productions LLC				Number of Jobs Created				Payroll Calculations**		
Job Type/Dept and Title:		*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
828 Post Production	Tech Support	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Post Production	Tech Support	L	$ 60,000.00		1			$ -	$ 60,000.00	$ -
828 Post Production	Facilities Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
828 Post Production	Office Manager	L	$ 60,000.00	1				$ 60,000.00	$ -	$ -
								$ 4,635,000.00	$ 2,295,000.00	$ 575,000.00
								Total Yr 1	**Total added yr 2**	**Total added yr 3**

Total Number of Jobs Created	62	28	10	=	100

Total Estimated Payroll At year 3	$	7,505,000.00
Average Payscale	$	75,050.00

* All hiring will be done locally, but may move to outside NM recruitment and new hires asked to move to Las Cruces if needed.

** Projections are based on 3 years per the requirments of the online application, but will be accomplished over a 5-7 year span as directed by NMEDD.

*NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AUTHORIZATION FOR EXAMINATION AND RELEASE OF INFORMATION

Todd Lundbohm hereby grants permission to the New Mexico Economic Development Department to conduct a review, full disclosure, and release of any and all information authorized pursuant to federal and state law. The purpose for obtaining and examining the information is to construct a record of the company's personal and professional history, including credit history, to ensure it meet the requirements that the New Mexico Economic Development Department has established for potential recipients of State funds. The company understands an investigation will be conducted by the New Mexico Economic Development Department, the New Mexico Department of Public Safety, or their contractors, and the results of the investigation will only be supplied to the New Mexico Economic Development Department.

Todd Lundbohm, hereby grants the New Mexico Economic Development Department permission to obtain any information in its background pertaining to any credit (to include obtaining a copy of a commercial credit report), education, bankruptcy, investigation, arrest and/or conviction of it or its principals in any criminal or civil matter. The company also authorizes an employee of the New Mexico Economic Development Department, as its authorized representative, to obtain from the New Mexico Taxation and Revenue Department and/or the Department of Workforce Solutions any tax information that is in any way related to a company Todd Lundbohm owns or has invested in. Todd Lundbohm, hereby directs you to release such information upon the request of this bearer. Todd Lundbohm, hereby releases you as a custodian of such records for any criminal justice, law enforcement or court agency, including its officers and employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, that may at any time result to the New Mexico Economic Development Department or the State of New Mexico because of compliance with this authorization and request to release information; or any attempt to comply with it.

1. The information reviewed, disclosed, and/or released may be used by the New Mexico Economic Development Department for any lawful purpose and/or to determine the company's suitability to receive funds from the State of New Mexico.
2. Todd Lundbohm hereby releases the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the New Mexico Economic Development Department, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. Todd Lundbohm, understands that it may revoke this authorization in writing at any time.

FULL NAME: Todd Lundbohm
SIGNATURE:

TITLE: CEO
COMPANY: 828 Productions llc

The above named certifies that they are authorized to commit to this release on behalf of the company identified.

Please provide below information if company is a sole proprietorship:

SSN:
DOB:

DATE: 9/29/2022

This Document is only valid if notarized

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.

Scribed and sworn to me on this 29th day of September 2022 of San Diego County, ~~New Mexico~~ California

Signed

My Commission expires: 6-15-2023

Notary Public

GMN1 M.W. BOYD COMM. # 2293232 NOTARY PUBLIC - CALIFORNIA SAN DIEGO COUNTY My Commission Expires June 15, 2023 GMN1

828 PRODUCTIONS

100 S. Church St.
Las Cruces,
NM 88001

LEDA Application

NM Quarterly Wage Report

The current LEDA Application does not include a quarterly wage report due to 828 Productions being a start up company. Wage details will be provided with any future LEDA applications as the organization adds jobs.

Michelle Lujan Grisham • Governor
Alicia J. Keyes • Cabinet Secretary

Exhibit C – LEDA Application

Affirmation of officer of Company

Declaration of 828 Productions LLC **Officer**

I, Todd Lundbohm, declare as follows:

I am CEO for 828 Productions LLC and I have been employed in this capacity since 6/15/2020. Except where otherwise noted, I have personal knowledge of the facts set forth in this declaration.

Date: 9/24/2022

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:
Todd Lundbohm
89EB80C4B4E340D...

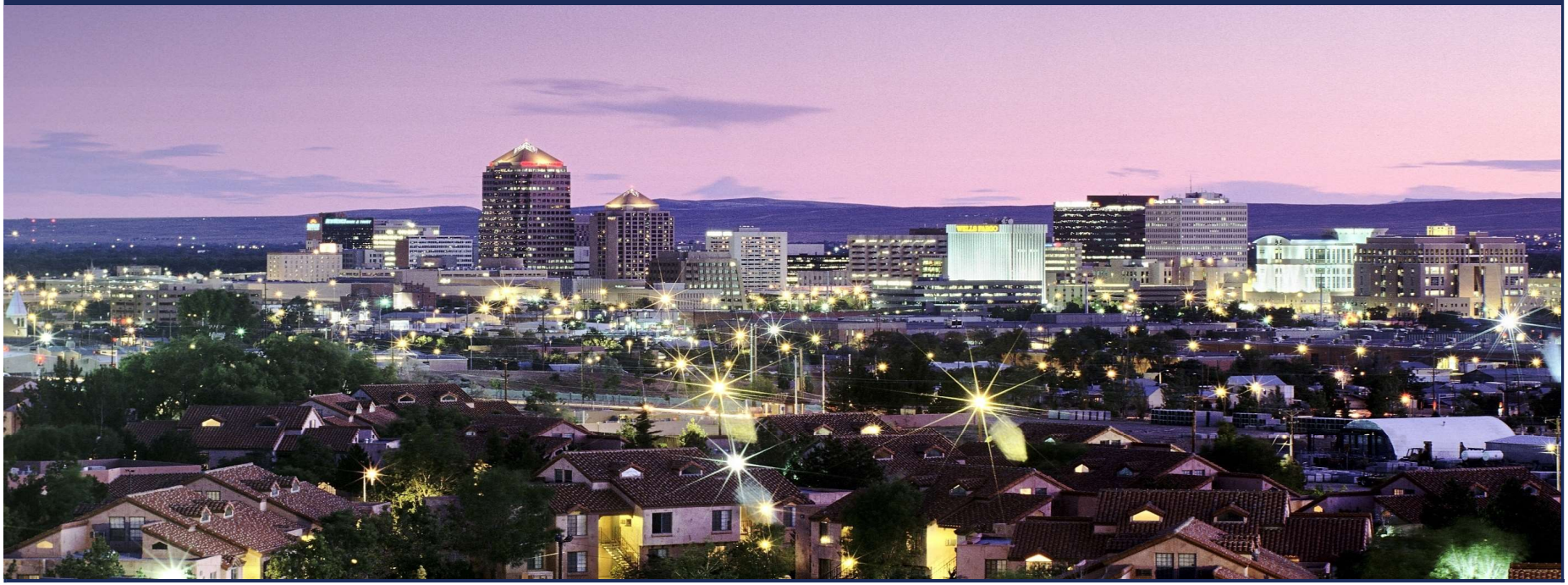
Name Todd Lundbohm
Job Title CEO
Name of Company 828 Productions LLC

EDD Economic Development Department

3/30/2022

FISCAL IMPACT ANALYSIS AND ECONOMIC IMPACT OF THE EXPANSION OF 828 PRODUCTIONS

Prepared by:
New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505





Purpose and Limitations:

This report and analysis, provided by the New Mexico Economic Development Department, relies on prospective estimates of business activity. These estimates, which are provided by the company, may not be realized due to unforeseen events that are outside the control of the company and unknown to the New Mexico Economic Development Department.

The New Mexico Economic Development Department made reasonable efforts to ensure that the estimates provided by the company, are realistic estimates of future activity.

The model was created by the New Mexico Economic Development Economists and used assumptions to generate the final report. The report and analysis provided by the New Mexico Economic Development Department is not a guarantee that any of the estimates or results contained in this report will actually be achieved.

Introduction:

This report and analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Most projects produce a growth in population and/or a growth in the workforce in a City, County and the State of New Mexico. All growth comes at a cost, the additional economic activity and population growth stimulated by the project will generate additional costs in terms of providing basic infrastructure (roads and utilities) and public services (including public safety and schools). For example, if the applicant hires employees from outside the State, County and City, those workers who end up relocating their residence to within one or all of those areas, the population for which the government must provide services also increases. The costs associated with the expansion are broken down into two categories: 1) New residents to the State, County and City. 2) New Mexican residents hired to work for the company. The analysis assumes that all workers will live in the area of the expansion.

Description of the Company:

0

Description of the Project:

828 Productions is looking to develop multiple stages and postproduction facilities in the Las Cruces area. This will be a combination of productions and permanent full-time positions dedicated to post and pre- production.


Total Impacts

Fiscal Impact of Existing and Expanded Operations Over the Next Ten Years

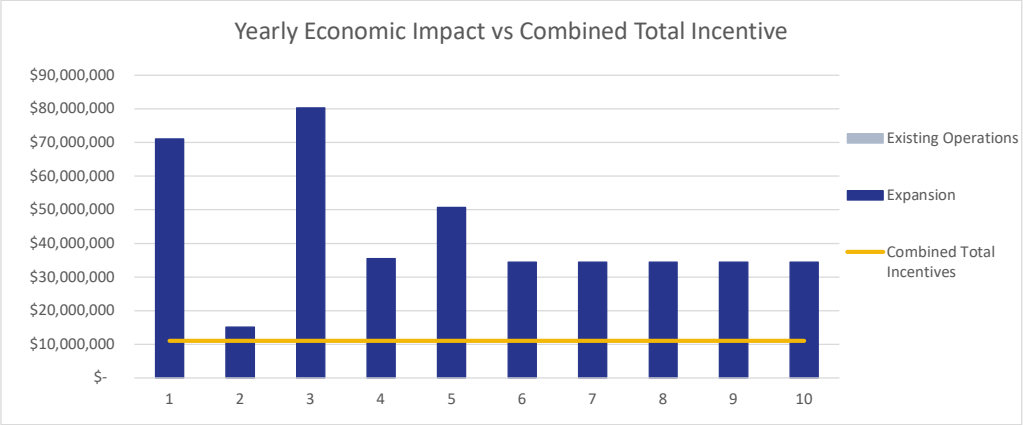
	Cumulative Net Benefits			
	Existing Operations	Expansion	Existing & Expanded Operations	Present Value of Net Benefits*
State of New Mexico	$ -	$ 18,050,424	$ 18,050,424	$ 15,061,099
County	$ -	$ 7,642,060	$ 7,642,060	$ 6,243,473
City	$ -	$ 10,567,772	$ 10,567,772	$ 8,899,565
School District	$ -	$ 4,202,609	$ 4,202,609	$ 3,306,051
Special Taxing District	$ -	$ 830,883	$ 830,883	$ 653,628
Total	**$ -**	**$ 41,293,749**	**$ 41,293,749**	**$ 34,163,816**

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

** In the cumulative net benefits of the existing and expanded operations for the State of New Mexico, corporate income tax has been removed from the existing operations total to avoid double counting.

Total Economic Impact

	Total
Estimated Economic Impact Over 10 Years:	$ 424,743,368
Combined Total Incentive Over 10 Years:	$ 10,994,818
Economic Impact Rate of Return:	3,763%

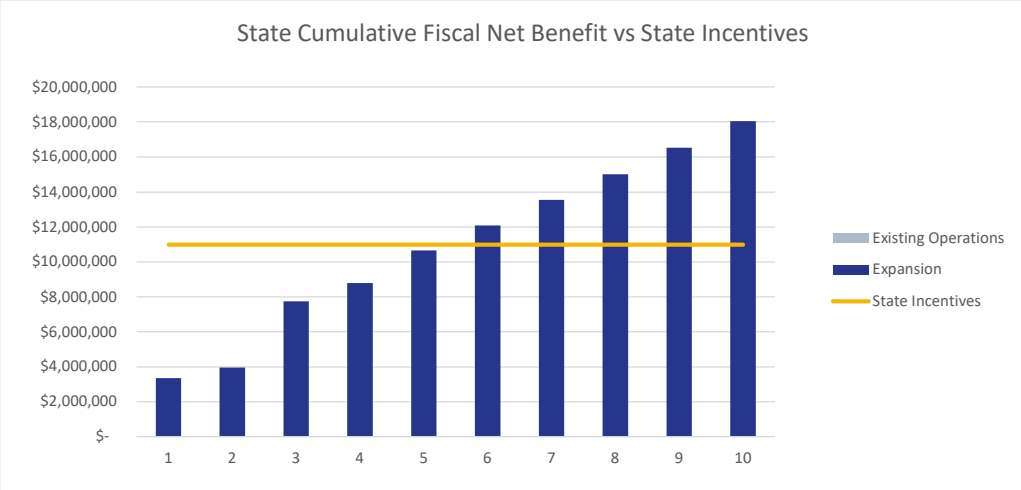


Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	335	177
Estimated Number of Construction Workers:	1002	
Estimated Number of New Residents to the State:	0	
Estimated Number of New Residents to the County:	0	
Estimated Number of New Residents to the City:	0	

State Impacts





Incentives

Total State Incentive:	$	10,994,818
State Incentive Per Job:	$	32,820

Combined Payback and Return

State Payback Period Combined:	5.24	Years
State Rate of Return Combined:	37%	

Expansion Only Payback and Return

State Payback Period Expansion:	5.24	Years
State Rate of Return Expansion:	37%	

State Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

State Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,348,162	$ -	$ 3,348,162	$ 3,348,162
2	$ 608,048	$ -	$ 608,048	$ 3,956,211
3	$ 3,791,510	$ -	$ 3,791,510	$ 7,747,721
4	$ 1,041,353	$ -	$ 1,041,353	$ 8,789,073
5	$ 1,861,537	$ -	$ 1,861,537	$ 10,650,611
6	$ 1,436,182	$ -	$ 1,436,182	$ 12,086,792
7	$ 1,457,746	$ -	$ 1,457,746	$ 13,544,538
8	$ 1,479,634	$ -	$ 1,479,634	$ 15,024,172
9	$ 1,501,851	$ -	$ 1,501,851	$ 16,526,023
10	$ 1,524,401	$ -	$ 1,524,401	$ 18,050,424

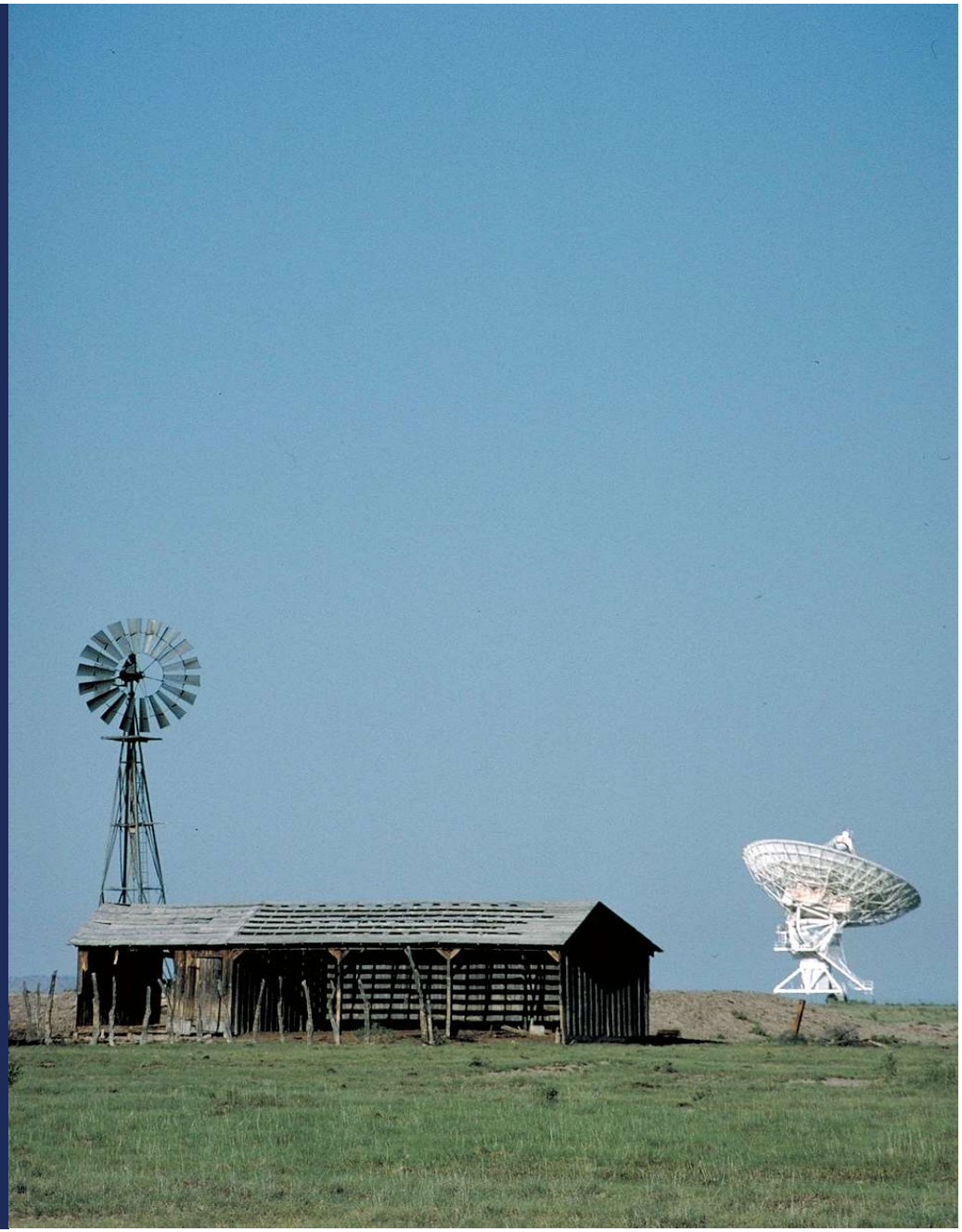
State Combined Net Benefits

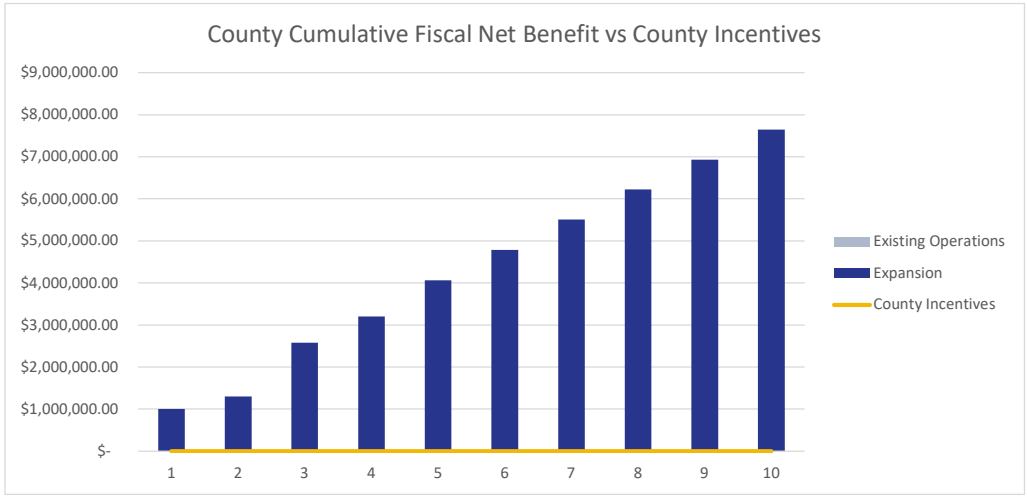
Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 3,348,162	$ -	$ 3,348,162	$ 3,348,162
2	$ 608,048	$ -	$ 608,048	$ 3,956,211
3	$ 3,791,510	$ -	$ 3,791,510	$ 7,747,721
4	$ 1,041,353	$ -	$ 1,041,353	$ 8,789,073
5	$ 1,861,537	$ -	$ 1,861,537	$ 10,650,611
6	$ 1,436,182	$ -	$ 1,436,182	$ 12,086,792
7	$ 1,457,746	$ -	$ 1,457,746	$ 13,544,538
8	$ 1,479,634	$ -	$ 1,479,634	$ 15,024,172
9	$ 1,501,851	$ -	$ 1,501,851	$ 16,526,023
10	$ 1,524,401	$ -	$ 1,524,401	$ 18,050,424

State Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	8,355,193
	Personal Income Taxes	$	9,695,231
	Corporate Income Taxes	$	-
	Misc. Taxes and Revenue	$	-
	Subtotal of Benefits	**$**	**18,050,424**
Costs			
	Costs	$	-
	Subtotal of Costs	**$**	**-**
Net Benefits			
	Net Benefits	**$**	**18,050,424**
	Present Value	**$**	**15,061,099**

County Impacts





Incentives

Total County Incentive:	$	-
County Incentive Per Job:	$	-

Combined Payback and Return

County Payback Period Combined:	-	Years
County Rate of Return Combined:	N/A	

Expansion Only Payback and Return

County Payback Period Expansion:	-	Years
County Rate of Return Expansion:	N/A	

County Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

County Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,000,293	$ -	$ 1,000,293	$ 1,000,293
2	$ 300,654	$ -	$ 300,654	$ 1,300,946
3	$ 1,280,261	$ -	$ 1,280,261	$ 2,581,207
4	$ 619,670	$ -	$ 619,670	$ 3,200,877
5	$ 860,723	$ -	$ 860,723	$ 4,061,600
6	$ 725,341	$ -	$ 725,341	$ 4,786,941
7	$ 720,495	$ -	$ 720,495	$ 5,507,436
8	$ 715,868	$ -	$ 715,868	$ 6,223,304
9	$ 711,465	$ -	$ 711,465	$ 6,934,769
10	$ 707,291	$ -	$ 707,291	$ 7,642,060

County Combined Net Benefits

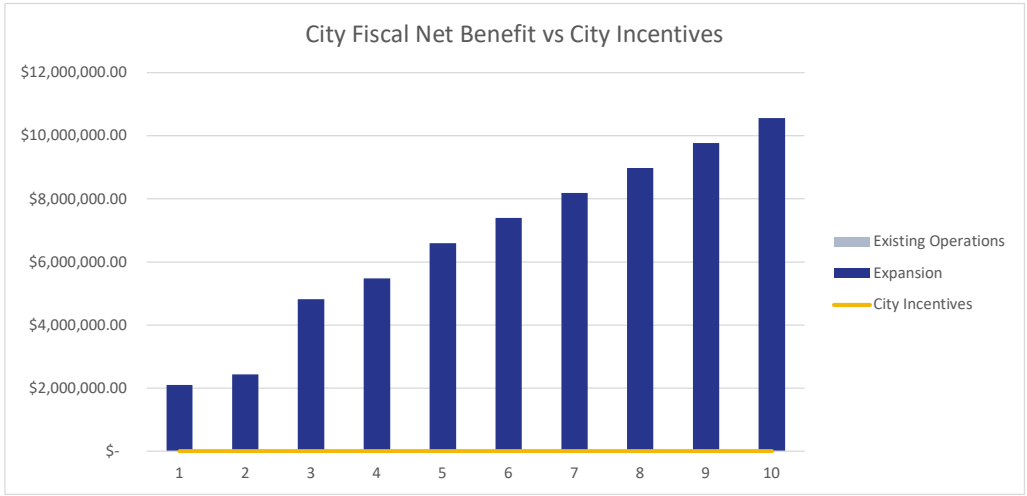
Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 1,000,293	$ -	$ 1,000,293	$ 1,000,293
2	$ 300,654	$ -	$ 300,654	$ 1,300,946
3	$ 1,280,261	$ -	$ 1,280,261	$ 2,581,207
4	$ 619,670	$ -	$ 619,670	$ 3,200,877
5	$ 860,723	$ -	$ 860,723	$ 4,061,600
6	$ 725,341	$ -	$ 725,341	$ 4,786,941
7	$ 720,495	$ -	$ 720,495	$ 5,507,436
8	$ 715,868	$ -	$ 715,868	$ 6,223,304
9	$ 711,465	$ -	$ 711,465	$ 6,934,769
10	$ 707,291	$ -	$ 707,291	$ 7,642,060

County Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	2,677,947
	Misc. Taxes and Revenue	$	-
	Property Taxes	$	4,964,113
	Subtotal of Benefits	**$**	**7,642,060**
Costs			
	Costs	$	-
	Subtotal of Costs	**$**	**-**
Net Benefits			
	Net Benefits	**$**	**7,642,060**
	Present Value	**$**	**6,243,473**

City Impacts





Incentives

Total City Incentive:	$	-
City Incentive Per Job:	$	-

Combined Payback and Return

City Payback Period Combined:	-	Years
City Rate of Return Combined:	N/A	

Expansion Only Payback and Return

City Payback Period Expansion:	-	Years
City Rate of Return Expansion:	N/A	

City Net Benefits Of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

City Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 2,101,596	$ -	$ 2,101,596	$ 2,101,596
2	$ 332,213	$ -	$ 332,213	$ 2,433,809
3	$ 2,389,140	$ -	$ 2,389,140	$ 4,822,949
4	$ 647,923	$ -	$ 647,923	$ 5,470,872
5	$ 1,124,271	$ -	$ 1,124,271	$ 6,595,143
6	$ 794,255	$ -	$ 794,255	$ 7,389,398
7	$ 794,166	$ -	$ 794,166	$ 8,183,565
8	$ 794,300	$ -	$ 794,300	$ 8,977,864
9	$ 794,659	$ -	$ 794,659	$ 9,772,523
10	$ 795,249	$ -	$ 795,249	$ 10,567,772

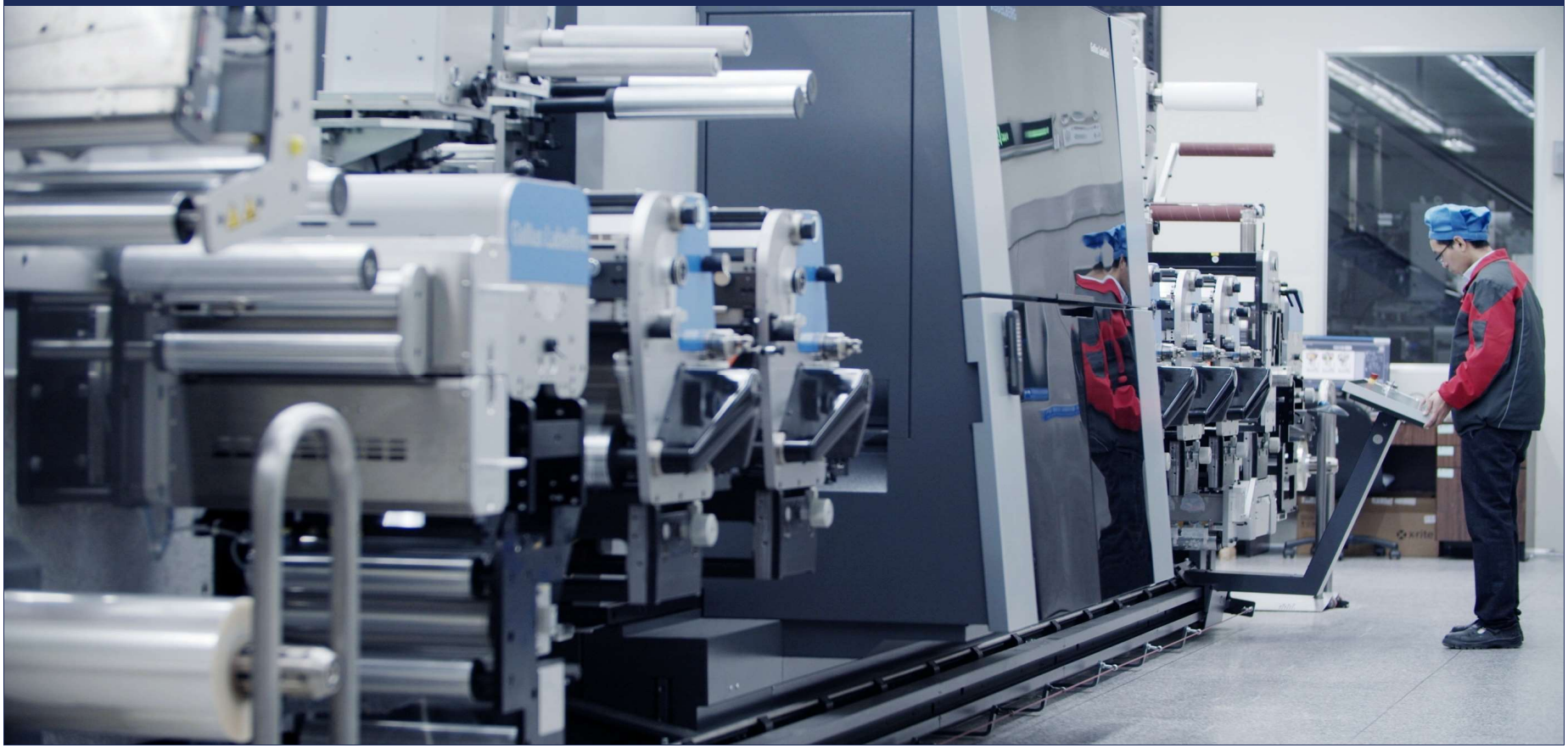
City Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 2,101,596	$ -	$ 2,101,596	$ 2,101,596
2	$ 332,213	$ -	$ 332,213	$ 2,433,809
3	$ 2,389,140	$ -	$ 2,389,140	$ 4,822,949
4	$ 647,923	$ -	$ 647,923	$ 5,470,872
5	$ 1,124,271	$ -	$ 1,124,271	$ 6,595,143
6	$ 794,255	$ -	$ 794,255	$ 7,389,398
7	$ 794,166	$ -	$ 794,166	$ 8,183,565
8	$ 794,300	$ -	$ 794,300	$ 8,977,864
9	$ 794,659	$ -	$ 794,659	$ 9,772,523
10	$ 795,249	$ -	$ 795,249	$ 10,567,772

City Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue			
	Gross Receipt Taxes	$	6,775,205
	Misc. Taxes and Revenue	$	-
	Property Taxes	$	3,792,568
	Subtotal of Benefits	**$**	**10,567,772**
Costs			
	Costs	$	-
	Subtotal of Costs	**$**	**-**
Net Benefits			
	Net Benefits	**$**	**10,567,772**
	Present Value	**$**	**8,899,565**

Special Taxing District and Public Schools



Special Taxing District

Special Taxing District Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

Special District Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 40,673	$ -	$ 40,673	$ 40,673
2	$ 40,607	$ -	$ 40,607	$ 81,280
3	$ 80,554	$ -	$ 80,554	$ 161,834
4	$ 87,181	$ -	$ 87,181	$ 249,014
5	$ 99,835	$ -	$ 99,835	$ 348,849
6	$ 98,650	$ -	$ 98,650	$ 447,500
7	$ 97,497	$ -	$ 97,497	$ 544,996
8	$ 96,375	$ -	$ 96,375	$ 641,371
9	$ 95,285	$ -	$ 95,285	$ 736,656
10	$ 94,228	$ -	$ 94,228	$ 830,883

Special District Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 40,673	$ -	$ 40,673	$ 40,673
2	$ 40,607	$ -	$ 40,607	$ 81,280
3	$ 80,554	$ -	$ 80,554	$ 161,834
4	$ 87,181	$ -	$ 87,181	$ 249,014
5	$ 99,835	$ -	$ 99,835	$ 348,849
6	$ 98,650	$ -	$ 98,650	$ 447,500
7	$ 97,497	$ -	$ 97,497	$ 544,996
8	$ 96,375	$ -	$ 96,375	$ 641,371
9	$ 95,285	$ -	$ 95,285	$ 736,656
10	$ 94,228	$ -	$ 94,228	$ 830,883

Public Schools

Public Schools Net Benefits of Current Operations

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ -	$ -	$ -	$ -
2	$ -	$ -	$ -	$ -
3	$ -	$ -	$ -	$ -
4	$ -	$ -	$ -	$ -
5	$ -	$ -	$ -	$ -
6	$ -	$ -	$ -	$ -
7	$ -	$ -	$ -	$ -
8	$ -	$ -	$ -	$ -
9	$ -	$ -	$ -	$ -
10	$ -	$ -	$ -	$ -

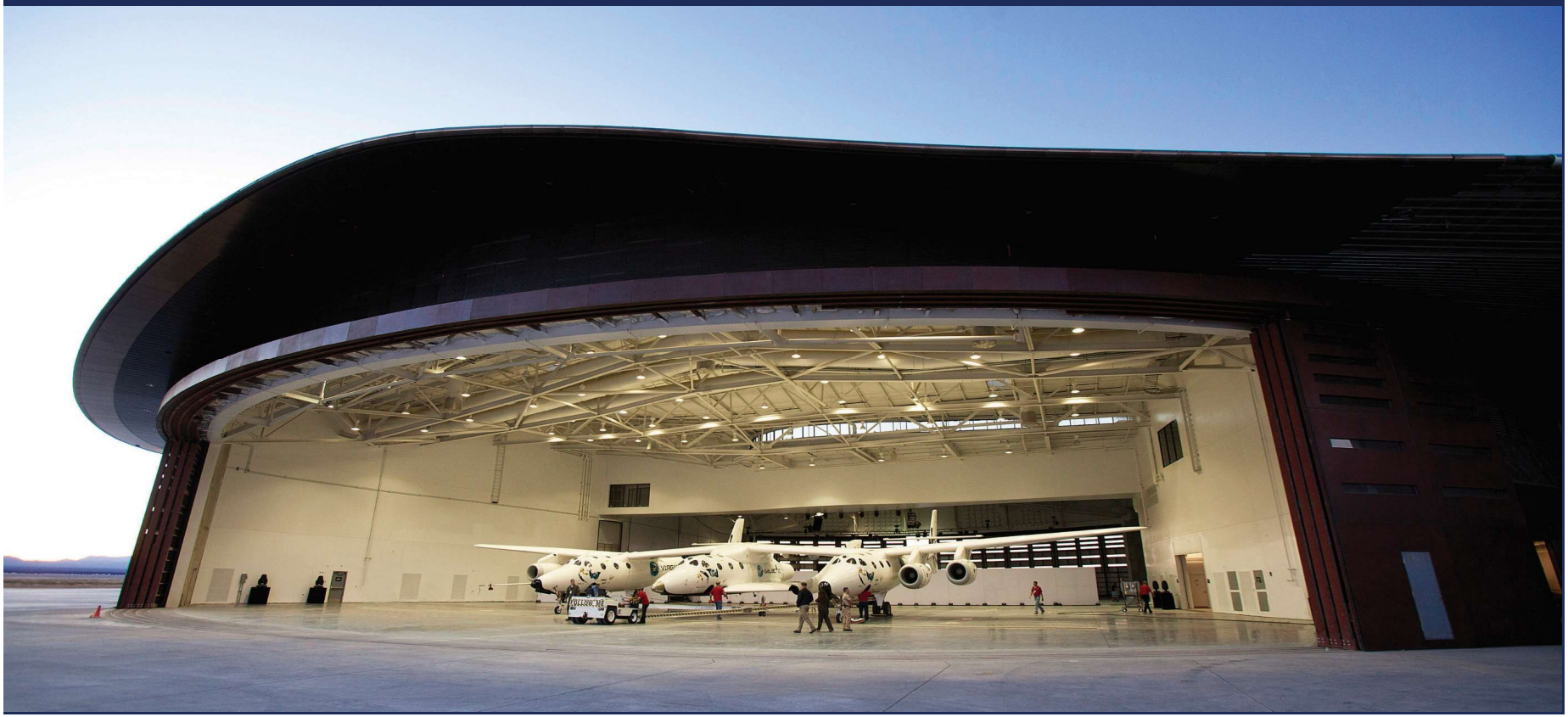
Public Schools Net Benefits of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 205,726	$ -	$ 205,726	$ 205,726
2	$ 205,389	$ -	$ 205,389	$ 411,115
3	$ 407,440	$ -	$ 407,440	$ 818,555
4	$ 440,960	$ -	$ 440,960	$ 1,259,515
5	$ 504,965	$ -	$ 504,965	$ 1,764,480
6	$ 498,973	$ -	$ 498,973	$ 2,263,453
7	$ 493,138	$ -	$ 493,138	$ 2,756,592
8	$ 487,463	$ -	$ 487,463	$ 3,244,054
9	$ 481,950	$ -	$ 481,950	$ 3,726,004
10	$ 476,604	$ -	$ 476,604	$ 4,202,609

Public Schools Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	$ 205,726	$ -	$ 205,726	$ 205,726
2	$ 205,389	$ -	$ 205,389	$ 411,115
3	$ 407,440	$ -	$ 407,440	$ 818,555
4	$ 440,960	$ -	$ 440,960	$ 1,259,515
5	$ 504,965	$ -	$ 504,965	$ 1,764,480
6	$ 498,973	$ -	$ 498,973	$ 2,263,453
7	$ 493,138	$ -	$ 493,138	$ 2,756,592
8	$ 487,463	$ -	$ 487,463	$ 3,244,054
9	$ 481,950	$ -	$ 481,950	$ 3,726,004
10	$ 476,604	$ -	$ 476,604	$ 4,202,609

Property Tax Exemptions and Industrial Revenue Bonds



Property Tax Exemptions and Industrial Revenue Bonds

The City and/or the County is considering abating taxes on the Project's property. Below is a table that identifies the types of property that are under consideration for property tax abatement:

Land:	No
Building and Property Improvements:	No
Furniture, Fixtures and Equipment:	No

Property Tax Percentage Exemptions On Land and Building

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Property Tax Percentage Exemptions On Furniture, Fixtures and Equipment

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Value of Exemption Through 10 Years:	$ -	$ -	$ -	$ -
*Value of Payment in Lieu of Taxes Through 10 Years:	$ -	$ -	$ -	$ -

*The model assumes that the payment in lieu of taxes will be administered to the either the county or city, and the local government will disperse the amounts to the appropriate districts.

Percentage of Gross Receipt Taxes Foregone on Newly Purchased Furniture, Fixtures and Equipment Over 10 Years

Year	State	County	City
1	0%	0%	0%
2	0%	0%	0%
3	0%	0%	0%
4	0%	0%	0%
5	0%	0%	0%
6	0%	0%	0%
7	0%	0%	0%
8	0%	0%	0%
9	0%	0%	0%
10	0%	0%	0%
Value of Exemption Through 10 Years:	$ -	$ -	$ -

INTERGOVERNMENTAL AGREEMENT BETWEEN THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT AND THE CITY OF LAS CRUCES, NEW MEXICO

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("EDD") and The City of Las Cruces (the "City"), a political subdivision of the State of New Mexico, and collectively referred to as "the Parties" with reference to the following facts.

RECITALS:

WHEREAS, the legislature of the State of New Mexico appropriated funds to the Economic Development Department for economic development projects statewide pursuant to the Local Economic Development Act (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-14 (2020) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts"; and

WHEREAS, the City has adopted LEDA by Ordinance No. 2873, which established the City of Las Cruces Economic Development Plan that promotes economic development within the City; and

WHEREAS, 828 Productions, LLC (hereinafter "Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the City. A copy of the City's Ordinance and PPA are attached hereto and incorporated herein; and

WHEREAS, pursuant to the terms of that PPA, the Qualifying Entity will remodel/refurbish and occupy the production facility at 300 S. Compress Road in Las Cruces, New Mexico (the "Project") and will employ at least 335 full-time persons by December 31, 2029; and

WHEREAS, EDD and the City desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to define the responsibilities of the City and EDD for the oversight and administration of up to $3,000,000 of the Appropriation for the Project. It is the intent of the parties that the City will receive an amount up to three million dollars ($3,000,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by the City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

SECTION 2. SCOPE OF WORK:

The City will act as fiscal agent for up to $3,000,000 of the Appropriations for the Project. Pursuant to Section 5-10-3(D) of LEDA, EDD will transfer up to $3,000,000 to the City for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ at least 335 full-time employees at the facility by December 31, 2029.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the City agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the City to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the City the monies owned as provided for by the PPA then such violation will require that the City foreclose on the security interest after any cure period granted to the Qualifying Entity. Any monies

recovered by the City as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within 30 calendar days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the City contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the "Security").

SECTION 3. CITY RESPONSIBILITIES:

The City shall:

A. Pay the costs and expenses incurred for the Project from the Appropriation;

B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the City as the result of enforcing the provisions of the PPA shall be returned to EDD;

C. The City shall notify EDD in writing of any failure to meet requirements (default) of the PPA by the Qualifying Entity within 15 business days of learning of the event of default;

D. Serve as Fiscal Agent for the funds transferred to it under this Agreement;

E. Distribute the funds transferred to the City by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement;

F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the City Council accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the City and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required;

G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and

H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary.

SECTION 4. CITY CERTIFICATIONS:

As Fiscal Agent, the City hereby assures and certifies that:

A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of the Appropriation;

B. It has the legal authority to receive and expend the Appropriation;

C. It will enforce the provisions of Ordinance No. 2873 and the City's Economic Development Plan;

D. It has exercised due diligence in confirming that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;

E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation City receives from the Qualifying Entity;

F. It has entered into a PPA with the Qualifying Entity and has obtained from the NM EDD all financial documentation necessary to protect the City's and State's investments in the Project;

G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;

H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;

I. No member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or

responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

SECTION 5. EDD RESPONSIBILITIES:

EDD shall:

A. Transfer to the City for costs and expenses incurred for the Project an amount not to exceed three million dollars ($3,000,000). The funds shall be used only for the purpose stated in this Agreement;

B. Monitor job creation by the Qualifying Entity and report the number of jobs created to the City each quarter up to December 31, 2030.

C. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and

D. Reimburse the City for any costs associated with litigation to enforce the terms of the Security and the Clawback provisions.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on January 31, 2031 or when all of the obligations of the PPA have been fulfilled.

SECTION 7. LIABILITY:

No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The City and EDD may agree to reimburse one another under these liability provisions, subject to sufficient

appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the Party responsible for payment.

SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS

A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.

B. The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.

C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the City, the City shall return said funds to EDD for disposition in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request, and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 10. REPORTS:

The Qualifying Entity shall submit quarterly reports regarding employment to the EDD during the life of this Agreement and EDD shall share those reports and any other information obtained respecting job retention and creation attributable to the State appropriation with the City. The City shall coordinate with EDD to conduct an annual performance review of the Project.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Finance Development Team Leader
NM Economic Development Department
Joseph Montoya Building
1100 St. Francis Drive
PO Box 20003
Santa Fe, New Mexico 87504

To the CITY:

City Manager
The City of Las Cruces
700 S Main Street
P O Box 20000
Las Cruces, NM 88004

SECTION 12. AMENDMENTS:

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 13. GOVERNING LAW/VENUE:

This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

THE CITY OF LAS CRUCES, NEW MEXICO

By: _____

Name: Ifo Pili

Title: City Manager

Date: _____

APPROVED AS TO FORM

By: _____

The City of Las Cruces Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Alicia J. Keyes
Cabinet Secretary

Date: _____

APPROVED AS TO FORM

By: _____

Jesika Ulibarri
General Counsel

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on _____, 2023 by and between **CITY OF LAS CRUCES, NEW MEXICO** (the "City"), a political subdivision of the State of New Mexico (the "State"), and **828 Productions, LLC** (the "Company").

Recitals.

A. Article 9, Section 14 of the New Mexico Constitution provides counties the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.

B. Pursuant to City of Las Cruces Ordinance No. 2873 (the "Las Cruces Local Economic Development Plan"), adopted on September 17, 2018, the City established the City of Las Cruces Economic Development Plan (the "Plan") as the City's economic development plan as required by Section 5-10-6, NMSA 1978.

C. As provided in the Las Cruces Local Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for an appropriation of up to $3,000,000 from the Legislature of the State of New Mexico (the "**State Contribution**") and also provide up to $897,596 in Capital Outlay funds (the "**City Contribution**") toward the Company's development of a production facility at 106 S. Miranda Street in the City of Las Cruces, New Mexico (the "Project"). The company will construct and occupy the facility and will employ a minimum of 100 full-time persons by December 31, 2029.

D. The City has adopted Ordinance No. 2873 ("Local Economic Development Act") and Resolution No. 19-050 ("Local Economic Development Plan" finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.

1. **Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

2. Substantive Contribution from the Company.

a. **Facility.** The Company will establish a production facility at 106 S. Miranda Street and other suitable locations within the City of Las Cruces, New Mexico (the “Facility”).

b. **Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately $75,000,000 by December 31, 2031 (the "Project Contribution").

c. **Production Spend Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will spend $350 million on productions by December 31, 2032.

d. **Job Creation.** The Company will directly employ a target of 100 full-time employees at the facility by December 31, 2029 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full–time employees do not include agency, sub-contracted, temporary employees or independent contractors.

e. **Sustainability.** Although the Company intends to have a long-term presence in the City, for purposes of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2032.

3. The State Contribution

a. The City anticipates that the State Contribution will be delivered by the State to the City for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the City, after which time the City will request transfer of the State Contribution. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. The City will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the City and the State. The City will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company’s satisfaction of the conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the City. For purposes of this

Agreement, "**LEDA Eligible Expenditures**" shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

b. The State's contribution is composed of a LEDA award of $3,000,000 for use by the Company for such purposes as set forth in NMSA 1978, § 5-10-3(E), the application of the Company and the agreements entered into between the parties. The Company shall also instruct the contracted construction companies to use the correct **New Mexico Taxation and Revenue Department Location Code of 07-105 for the City of Las Cruces**.

4. The City Contribution.

a. The City will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The City will contribute up to $897,596 in Capital Outlay funds. The City will comply with the Local Economic Development Act ("LEDA") with respect to the acceptance and disbursement of the State and Local Contributions. As required by the LEDA Ordinance and the Act, City will deposit the State Contribution into a clearly identified separate account.

b. The State Contribution will be disbursed to the Company through the City for reimbursement of LEDA Eligible Expenditures.

5. Disbursement of City and State Contributions

a. State and City contributions shall be deposited into separate accounts for this project and disbursed through the City.

b. **Conditions to Disbursement; Performance Milestones.** The State Contribution will be disbursed in four (4) separate allotments. The City Contribution will be disbursed in six (6) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) where applicable, the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

State of New Mexico LEDA Disbursement Schedule		
Tranche	*Amount of State Contribution Available for Disbursement/Tranche*	*Disbursement Performance Milestone*
1	$1,000,000	Obtain a certificate of occupancy, incur LEDA eligible expenses, and current with all reporting
2	$1,000,000	Hire 30 new employees for a total employment of 30 and maintain for two quarterly reporting periods, incur LEDA eligible expenses and current with all reporting
3	$500,000	Maintain a minimum of 35 employees for two quarterly reporting periods and have at least $100,000,000 in film production spend and current with all reporting
4	$500,000	Hire 40 additional new employees for a total employment of 70 employees and maintain for two quarterly reporting periods, incur LEDA eligible expenses and current with all reporting

City of Las Cruces LEDA Disbursement Schedule		
Tranche	*Amount of Local Contribution Available for Disbursement/Tranche*	*Release of Lien Performance Milestone*
1	$304,790	Access road to Stage 1 and Work Shop
2	$96,144	Surface Parking Workshop
3	$83,328	Surface Parking – Stage 1 Lot
4	$119,900	Surface Parking – POB Lots 2&3
5	$159,100	Surface Parking – Lot 6
6*	$134,334	Surface Parking – Lot 5
*Will not reimburse for entire cost		

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the City and the New Mexico Economic Development Department ("EDD") a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) documentation of current employment level in New Mexico pursuant to Section 10c below. The Company will not submit a Disbursement Request for less than $50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution or City Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.

7. **Review.** EDD will review the Disbursement Request to assure the charges submitted are LEDA Eligible Expenditures. The EDD's review and approval or objection shall not be unreasonably withheld and shall occur within 30 calendar days of receipt of the Disbursement Request. The City will disburse to the Company the full amount requested in the Disbursement Request no later than 30 calendar days after EDD's approval of the Disbursement Request.

8. **No Offset of City costs.** The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.

9. **Security.** As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the State Contribution or City Contribution, Company shall furnish the City with a Letter of Credit or some alternative form of security in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be $3,897,596. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement Request and shall not be required to secure the Maximum Obligation before a disbursement will be made. No State Contribution will be transferred to the City until Security in the amount of the State Contribution is accepted.

   a. The City may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) calendar days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.
   b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on January 31, 2033, unless earlier released in accordance with this Agreement.
   c. If the State or the City reduce the amount of LEDA Funds and/or forgivable lien that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds and/or forgivable lien available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds and/or forgivable lien actually received by the Company.
   d. A mortgage agreement/municipal lien document shall be recorded in Dona Ana County in the amount of the City Contribution. Partial lien releases shall be recorded upon performance of the set performance milestones.

10. **Clawbacks.** Notwithstanding any other provision of this Agreement, the Company shall be required to pay the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Clawback obligations), if the Company does not satisfy the conditions

set forth herein.

Facility Closure Clawback.
Full closure of the facility will result in a clawback based on the number of years the Q/E has operated under this agreement as per the following table:

2023	100%
2024	100%
2025	100%
2026	100%
2027	90%
2028	80%
2029	70%
2030	60%
2031	50%
2032	40%

a. For purposes of this Agreement, a failure to produce product for a period of 90 calendar days or more, after initial startup (initial startup will be considered the date of the first production run or within 180 days of receipt of certificate of occupancy, whichever comes first) or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 calendar days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the City within 10 calendar days.

b. **Performance Clawback.** It is the Company's intent to create, hire and maintain the number of jobs set forth in the table below under the column captioned "Cumulative Fulltime Target Job Number" on the Job Determination Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Determination Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the City which will be applied in the percentage set forth in the table below in addition the company is agreeing to generate a minimum of $350 million in production those clawback penalties are also described below:

	Job Creation and Production Spend Commitment and Schedule				
Year	*Cumulative Full Time Job Creation Target*	*Minimum Job Number*	*Job Determination Period*		*Clawback %*
1	10	9	Ordinance Date	12/31/23	100%
10	10+90 = 100	90	1/1/32	12/31/32	30%
b Additional Notes: Only New Mexico based employees count towards job creation target.					
^ Clawback calculator attached for illustrative purposes.					

Year	Cumulative Spend Target	Minimum Spend	Spend Determination Period		Clawback %
5	$55,000,000	$50,000,000	Ordinance Date	12/31/2027	100%
10	$350,000,000	$315,000,000	1 /1/32	12/31/2032	50%
Clawback percentage is calculated on the shortfall quotient times the amount of LEDA received by the company time the percentage of clawback, example illustrated below					
Year 10 production spend by the company $290,000,000 LEDA received $3,897,000 $315,000,000 - $290,000,000 = $25,000,000 $25,000,000/$315,000,000 = 7.94% 7.94% X $3,897,000 = $309,285.71 $309,285.71 X 50% = $154,642.86					

For the purposes of this Section:

The "**Clawback Penalty**" is a penalty that the Company will be required to pay the City upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the "**Percentage Hiring Shortfall**" shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date. See Attachment 1 hereto for examples of job Clawback Calculations

"**Cure Period**" is the period of 180 calendar days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated

by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

In the event that there are shortfalls on both jobs and spend requirements the respective clawback penalties will be combined to determine the total clawback required.

The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. "Business Climate Changes" means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a significant decrease in the Company's ability to perform pursuant to the requirements of this agreement with the City. The Company may request specific modifications to the job creation schedule in writing within ten calendar days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the City and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified by ordinance.

c. **Job Reporting.** The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' (DWS) Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD and the City beginning with the January 31, 2023 and continuing every April 30, July 31 and October 31 thereafter until the completion of this agreement. The State will provide copies of all such reports to the City or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the City and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up-to-date quarterly job reporting as set forth herein.

    1. The Company shall complete an annual economic impact data sheet (EIA) provided by the State of New Mexico Economic Development department not late than February 28 of each year beginning in 2024. This will reflect actual economic activity and hiring of the Q/E for the preceding calendar year. Failure to complete EIA data sheet by April 15th of any calendar year Q/E shall be subject to a 10% clawback of all

funds received.

d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

11. **Fees.** Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

12. **Annual Performance Review.** To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2023 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

    If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

13. **Termination**. This Agreement shall terminate at the close of business on January 31, 2033 or when otherwise terminated by ordinance.

14. **Request for early release of security.** If the Company achieves and then sustains the Minimum Job Number of 100 permanent, full-time employees for six (6) consecutive months prior to December 31, 2030 and has made in excess of three hundred and fifty million dollars ($350,000,000) in production spend the Company may request release of the Security and termination of the agreement. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of the Security may not be submitted prior to December 31, 2030. Upon receipt of such a request the New Mexico Economic

Development Department will work with the Company to gather sufficient documentation of the economic activity directly created by the Company during the period of this agreement and complete an economic impact analysis report. If said report verifies that the State of New Mexico has received direct tax revenues from the activity of the company said request shall be granted.

15. **Liability.** No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.

16. **Amendments.** This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the Governing Body of City of Las Cruces.

17. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

18. **Miscellaneous.** This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the City and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.

19. **Notice.**

All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:
City of Las Cruces
Attention: Economic Development
P O Box 20000
Las Cruces, New Mexico 88004

If to the Company:
828 Productions, LLC
100 S. Church Street
Las Cruces, NM 88001

Effective Date: _____

Attachment:

1. Example of Clawback Calculations

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

CITY OF LAS CRUCES, NEW MEXICO

By _____

Name Ifo Pili

Title City Manager

828 Productions, LLC

By _____

Name: _____

Title: _____

Attachment 1
Example of Clawback Calculations

Clawback Calculations

Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed)

Job Creation % Shortfall = (1 - (actual jobs / cumulative hiring target))*100%

Example - 1 100%		End of year 1, inclusive of cure period
Actual Employees	(a)	41
Cumulative Hiring Target	(b)	42
Job Creation % Shortfall =	(c) = 1-(a/b)	2.38%
LEDA Dollars Distributed	(d)	$ 150,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,571.43

Example - 2 100%		End of year 2, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	100%
Penalty	(f) = c*d*e	$ 3,448.28

Example - 3 75%		End of year 3, inclusive of cure period
Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = 1-(a/b)	1.72%
LEDA Dollars Distributed	(d)	$ 200,000.00
Clawback %	(e)	75%
Penalty	(f) = c*d*e	$ 2,586.21

3055; Council Bill 24-013

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	December 18, 2023	**Adopted:**	January 2, 2024
Drafter:	Vince Banegas	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **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.**

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 a zone change from EE (Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for property approximately 1.78 acres in size and located at 780 Stern Drive. The existing EE zone represents a district designation that allows the development of residential lots that maintain a semi-rural atmosphere (1-acre minimum lot size) and allow the keeping of large and small animals. In this instance, no more than one lot could be created and as such, staff believes that the EE zone was applied when rezoned (October 6, 2003) to supplement the land use buffer between the commercial land use/zoning (northwest) and single-family residential uses/zoning south and west of the subject property.

The subject property is currently vacant and the property owner wishes to convert the zoning to a commercial designation much like properties directly northwest of the subject location. In that there are no imminent plans for development, the property owner wishes to market the location with the proposed zoning in place so that any future development remains consistent with developed nonresidential properties in the vicinity.

If rezoning is approved, buffering will still be achieved via the A-2 (Agriculture District) property located at the northwest corner of Stern Drive and Boutz Road and the buffering that will be required when development pursuant to the 2001 Las Cruces Zoning Code, as amended takes place. Because of these circumstances, approving the zone change as proposed makes sense and maintains the protections the EE zone sought to provide.

The proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan and several goals, policies, and actions contained therein. Policy supporting the request speaks to balanced growth, promoting

investment in older areas of the city through development, encouraging infill, economic equity, and entrepreneurship to name a few. Furthermore, the property is within the Suburban Neighborhood place type which encourages intermixed areas of residential and commercial uses.

On September 26, 2023, the case was heard by the Planning and Zoning Commission at their regular meeting. The zone change request had no opposition from area residents. Ultimately, the Planning and Zoning Commission voted 6-0-0 (one Commissioner absent) to approve the request with no conditions.

SUPPORT INFORMATION:

EXHIBIT "A" - Vicinity Map
EXHIBIT "B" - Findings
ATTACHMENT "A" - Approved 9.26.23 P_Z Minutes
ATTACHMENT "B" - Staff Report

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. The subject property located at 780 Stern Drive will be rezoned from EE (Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity).
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current zoning designation of EE will remain, requiring the property owner to seek an alternative zoning designation to aid in furtherance of the property owner's plans.
3. Vote to "Amend"; this would allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.
4. Vote to "Table"; this would allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3055; COUNCIL BILL 24-013

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.

The City Council is informed that:

WHEREAS, Mr. Ted Scanlon, Borderland Engineers and Surveyors, has submitted a request for a zone change from EE (Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity); and

WHEREAS, the subject property is approximately 1.78 acres in size, vacant, and has no imminent plans for development; and

WHEREAS, the proposed C-3 (Commercial High Intensity) zone is consistent with the Suburban Neighborhood place type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals and policies contained therein; and

WHEREAS, the proposed zone change meets the purpose and intent of the 2001 Las Cruces Zoning Code, as amended; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on September 26, 2023, recommended that the zone change request be approved by a vote of 6-0-0 (one Commissioner absent).

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 C-3 (Commercial High Intensity).

(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)

THATCity 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:

_____

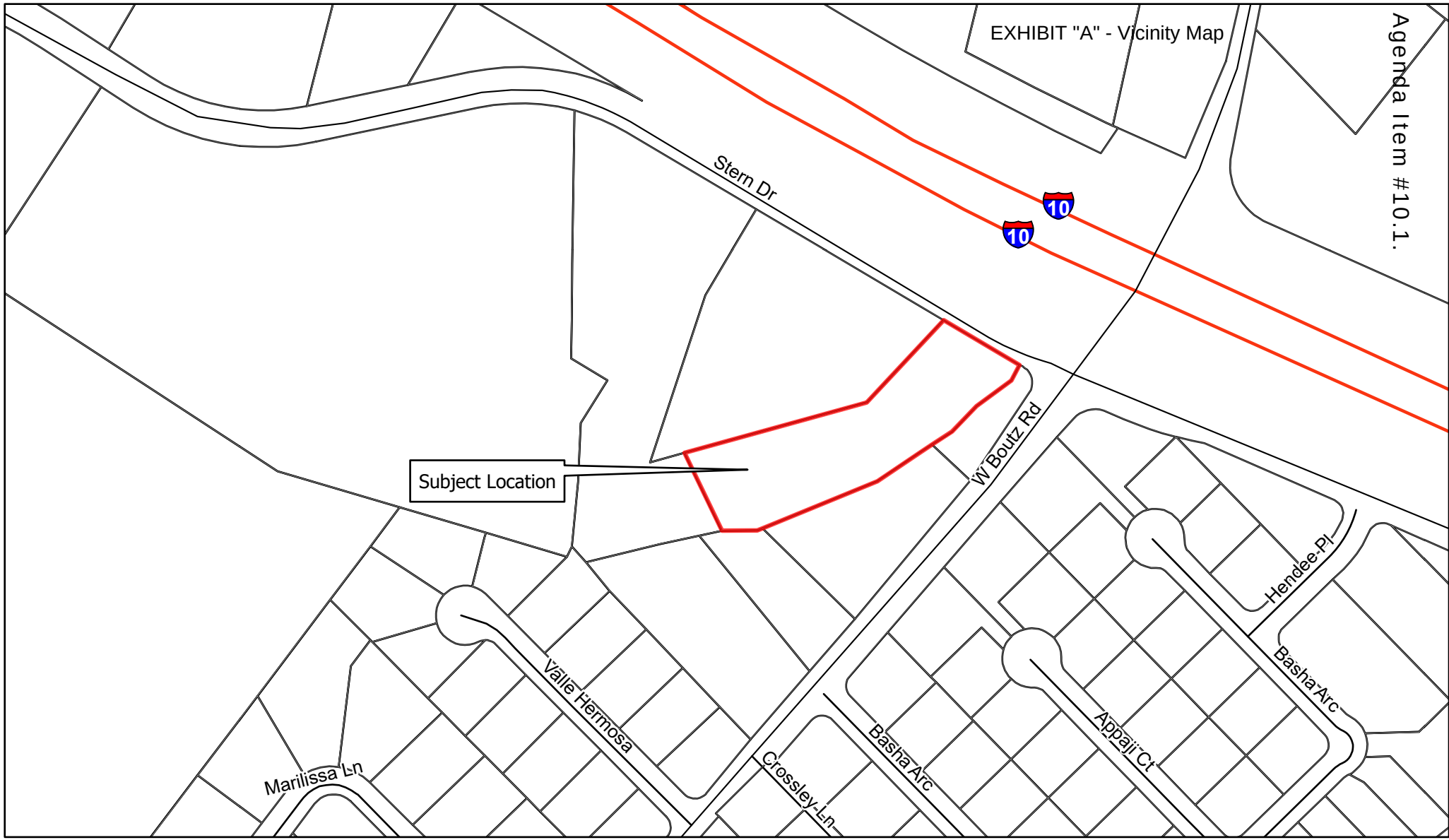
Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A" - Vicinity Map



Note: Subject property is outlined in red.

0 0.01 0.03 0.06 0.09 0.12 Miles

N
W E
S

Legend

- parcel
- RoadCenterline
- Road Class
  - Freeway
  - Minor Arterial
  - Collector
  - Local Streets
- DAC_Parcel
- Heather Hills Zoning

FINDINGS

1. The subject property is vacant and there are no imminent plans for development.
2. The subject property falls within the Suburban Neighborhood place type. This classification provides for low-to-moderate density residential land uses intermixed with areas of commercial development.
3. The request is consistent with what the Suburban Neighborhood place type provides.
4. Currently, land uses along Stern Drive from Avenida de Mesilla south to Boutz Road consist of residential (RV Park), office (Agricultural Dept. and a “spec” building), regional commercial/service (RV sales and service) and vacant land. No neighborhood commercial retail exists currently along that segment.
5. The northwest boundary for the Suburban Neighborhood place type is shared with the adjacent Regional Commercial place type.
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).

CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
September 26, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Vanessa Vega, Member
Joaquin Acosta, Member
Connor Murray, Member

BOARD MEMBERS ABSENT:

Vanessa Porter, Member

STAFF PRESENT:

Tim Pitts, Deputy Director Building Development
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Vincent Banegas, Interim Planner
Brad Douglas, Deputy City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening. It is 6:00 p.m. on September 26th and we will go ahead and call this meeting to order. It is the City of Las Cruces Planning and Zoning Commission meeting. Before we get started, we've got a couple of housekeeping items tonight. The first is I've been informed that I believe that big screen up there is out of order but we do have this smaller screen on either side of me so if you do want to move up or feel like you need to move up to be able to see the presentations tonight, I encourage you to do so.

The second item is I want to extend my thanks and gratitude to Commissioner Smith for covering last month while I was out. First month as Vice Chair and threw you into the deep end, and so I appreciate you covering for me and really did a great job. So thank you.

And then finally, if the rumors are true this is Commissioner Vega's final meeting with us here on the Commission. I speak for myself but certainly colleagues of up here, it's been a pleasure working with you the last year-

plus for myself, and certainly longer for others. And we wish you all the best and hope to see you around town.

Vega: You will, on my bike.

Kaiser: Sounds great. All right.

2. CONFLICT OF INTEREST

Kaiser: So with that we will go ahead. Are there any conflicts of interest from the Commission tonight? All right. Seeing none.

3. APPROVAL OF MINUTES – July 25, 2023

Kaiser: We'll go to the approval of minutes. Before we do that were there any corrections or edits that folks would like to make? I just have a couple just to clarify on the attendance. It should be Commissioner Bennett listed as the Secretary and Commissioner Smith listed as the Vice-Chair. So we can make those corrections and then looking for a motion to approve.

Bennett: I make a motion to approve the minutes.

Smith: I second.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: I abstain. I was not here.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: I abstain as I was absent.

Baum: Thank you. Passes.

4. POSTPONEMENTS

Kaiser: All right. Moving onto the acceptance of the agenda, or I actually should clarify there are no postponements tonight; is that correct?

Ochoa: Nothing tonight, sir. No.

5. ACCEPTANCE OF THE AGENDA

Kaiser: So go ahead and looking for a motion approve tonight's agenda?

Ochoa: I make a motion to approve tonight's agenda.

Murray: I second.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

6. PUBLIC PARTICIPATION

Kaiser: All right. Moving onto public participation. Is there anybody in the audience who wishes to speak on an item that is not on tonight's agenda? Please raise your hand. Okay. Seeing none.

7. CONSENT AGENDA

Kaiser: We will move onto the consent agenda in which we have three, yes, three items on the consent agenda. Can I get a motion to approve tonight's consent agenda?

Vega: I make a motion to approve the consent agenda.

Smith: I second.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

8. OLD BUSINESS

Kaiser: Okay. Moving on. We do not have any old business tonight.

9. NEW BUSINESS

9.1 Case No. 22ZO0500085: A zone change request from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-3 (Commercial High Intensity) for a property located at 3250 Northrise Drive and encompassing 2.5 acres in size. Submitted by Mark Heck, property owner. Council District 6.

Kaiser: So we'll move onto new business and begin with item 9.1, A zone change request from R-4 to C-3 located at 3250 Northrise Drive. Staff, please take it away.

Banegas: Good evening, Commissioners. Vincent Banegas, Interim Planner for the record, presenting tonight's case involving 3250 Northrise Drive. It is a zone change request seeking zone change from R-4 to C-3. It is Case 22ZO0500085.

Current conditions on the case at hand, the zoning is R-4 which is our multi dwelling, high density and limited retail and office zone. Limited retail and office in the sense that there are perhaps more office uses than retail and retail home occupation that type of thing is allowed. But otherwise, it's well suited for the multi dwelling component of our land use spectrum. It is roughly 2.5 acres in size and it was rezoned from A-2 to R-4 back in 2014.

The property is currently vacant and from a grading or elevation perspective it does sit lower than some of the properties around it. In fact to that end, there's some fill dirt being requested to help elevate the site so that it is more developable, easier to develop in that regard.

It is one of several of 2.5 acre lots that were annexed back in the day with the East Mesa U.S. 70 annexation that took place in 1986. The A-2 zone was used quite extensively during that time. And for many of these parcels as a placeholder, if you will, in that future consideration, future development was going to be thought through and then a rezoning would be brought forth at that time. So there's still several that are A-2 in nature and that's what prompted the rezoning back in 2014 for this particular parcel.

Many of the properties in question around the subject property and including the subject property were platted with access easements serving as a legal method to gain access to the property. But from a broader perspective doesn't provide any great surety in completing or providing for a suitable road network further south of Northrise.

The property in question has approximately 35 feet of Northrise Drive frontage, barely enough to comply with the ingress/egress requirements of the code or design standards. The transportation issue going back to that because there is a general lack of roadway system south of Northrise, a

blueprint to address those type of issues is currently underway. In fact, the City has hired a consultant to aid in that effort and they are holding a meeting I believe tomorrow if I'm not mistaken. And the expected completion date is approximately four months from now, so end of year.

The property currently sits in the suburban neighborhood place type and as we now know that supports low to moderate residential densities and allows pockets of commercial development. The property is directly south and west of the regional commercial neighborhood place type. In fact, the majority of that place type sits north of Northrise Drive and then does wrap around on the southwest corner of Rinconada Boulevard and Northrise.

The current R-4 zoning helps address some of the housing related issues that we are well aware of through the planning efforts of late. Specifically, the missing middle housing that we are trying to fill the gap for, and also housing affordability. So those are a couple of the housing related issues that play a role in this current request.

The surrounding neighborhood is multifamily residential both west and southwest, office and commercia, north, northeast and east and southeast, and vacant to the south of the subject property. The supporting zoning for those uses is an alphabet soup, as you can see there's PUD, R-4, EE, A-2, and so on. There's no immediate plans to develop the property. Certainly, none that were mentioned to staff.

So here's a zoning map that shows the location of the subject parcel here. Northrise Drive sits here. And the property as shown is currently R-4. You do have EE which is our equestrian estates and agriculture zoning district allowing up to one dwelling unit on a minimum of a one-acre lot size. The other A-2 zone parcels kind of speak to that zoning effort back in the '80s and based on what I know from the efforts back then those are the placeholders.

You do have some plethora of other uses up in here. Some vacant, some are developing right now but you have some office and commercial uses further west of the property along Roadrunner. And of course, you do have significant commercial uses beginning further east of the property along Northrise out towards Rinconada with Walmart, etc., taking place in that region.

The aerial view of the subject property. You do have this area here which is not currently serviced, that's the area that is being referenced when I speak of lack of road network. Connectivity for any roadway from Northrise down to Calle Jitas intersection with Sonoma Ranch for instance once you get past that it's kind of no man's land. There is the school further south of subject property, an arroyo that separates some of the land in question.

A lot of these parcels, these 2.5-acre parcels are individually owned and some have a grouping in terms of ownership. We refer to one as the tetras parcel which has a shape of a tetra's game piece and has multiple 2.5-acre lots assembled under a single ownership.

So the proposal given is R-4 to C-3 speculative in nature. Speculative in the sense that that's a necessary step to get to market the property and ultimately develop the property. Staff is aware of that but the applicant has indicated that there's a need to change the zoning to commercial to help offset some of the costs that are associated with grading and making the parcel marketable and developable.

This is a plat showing the parcel in question. It's a little hard to read but you see that small amount of frontage right along Northrise Drive which runs at this location here. And you do see some of the easements, road easement, in this case it looks to be a 33-foot road and utility easement here. A lot of those parcels have very similar easements identified.

Some of the photos taken out on site. Here's the sign that's seeking clean fill to help elevate the parcel. There is a fairly significant drop depending where you stand from the top of surface here adjacent to Northrise Drive on down to the subject parcel. Another shot. And then looking at either direction both west and east along Northrise Drive and that's what these photos represent. A lot of vacant land or underdeveloped land.

So in terms of analysis, there's no health, safety, or welfare issues that are identified by staff through the review process. However, we do consider the fact that the proposed zoning maybe compatible to some of the properties east of the subject location. What I'm referring to are some of the commercial properties there but again the regional commercial place type that starts looping down along Rinconada lends credence to that compatibility.

Staff feels that allowing further intrusion, if you will, of the regional commercial or commercial uses I should say in an area that's already identified as a suburban place type kind of minimizes the importance of that suburban placed type and may provide added pressure for additional property owners to seek rezoning to a commercial designation. So staff feels that the areas north of Northrise Drive and east, south at the southwest corner of Rinconada and Northrise Drive already allow commercial and so limiting commercial to those areas is prudent.

So the property is within that suburban place type. We do encourage a variety of residential development at low to moderate densities with areas of commercial as we have identified in previous cases. I've also stipulated

that the deficient road network is a concern and the planning effort underway at the present time will hopefully shed some light on how we can handle that for future development.

The proposed zoning that is being requested in terms of the C-3 does allow residential densities. I don't want to lead you to believe that it will not. It does allow a minimum of 10 dwelling units per acre and up to 40 dwellings units per acre as well. So that can be done. The question is will it be done or will we see additional commercial development? Again, based on the grading issues and the information provide, staff would suspect that commercial would probably be a likely development scenario for that lot.

In terms of public notice and input, notice was sent in accordance with the 2001 Zoning Code as amended. And we really did not receive any feedback from property ownership within the 500 feet of the subject property.

Staff recommendation and findings. This is going to be a little different than most cases that you hear. Staff is recommending denial based on the following findings. Property south of the subject property do not have adequate road network to service those properties. Many of the properties are platted with access easements which provide legal access but no surety of developing right-of-way and efficient connectivity.

The CLC consultant is currently studying developing the blueprint in an area concentrating on transportation issues and needs. And that hasn't come to fruition yet so we feel rezoning is a little premature at this point given that. The property is in the suburban neighborhood place type. Again, low to moderate residential densities with supporting commercial.

The regional commercial place type primarily takes place north of Northrise Drive, directly north of the subject property wrapping around to Rinconada and Northrise. And so commercial areas and opportunities for development already exist. The further introduction of commercial in this suburban neighborhood place type kind of minimizes its purpose, that's kind of how we feel. There's an ongoing need for apartments which the R-4 can satisfy addressing the missing middle and housing affordability.

And so, we feel that the proposal is not substantially supported by Elevate Las Cruces Comprehensive Plan in that it doesn't meet the purpose and intent of the 2001 Las Cruces Zoning Code. The subject property is surrounded largely by commercial, office, multifamily, and vacant property, and zoned a variety of zoning designations. So a little different here in terms of options. Staff would recommend you vote in affirmative like you would any other case. But in this case if you vote yes, you're voting to approve the zone change to C-3 in which case the findings that I've already identified in the presentation you need to know do not support the request so you'd

have to identify findings of fact that are different from those I've just presented. If you vote no, then you deny the request and you can also vote yes amend with conditions, or you vote to table. And that concludes that presentations. And I stand for question. And I know the property owner's in attendance might want to say a few words regarding his request.

Kaiser: All right. Well, before we come to the Commission, would the applicant, property owner wish to make a presentation or provide statements? Before you start can you state your name for the record so I can swear you in?

Heck: Full name is John Mark Heck.

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

Heck: Yes.

Kaiser: Okay. Please go ahead, sir.

Heck: Good afternoon. Good evening. He failed to mention that that is a massive sewer line across the, what I would call the southwest portion of the property. It's already in existence. It's probably an 18-inch sewer line. It serves Walmart and all the commercial area on upstream.

There's also an easement on what I would call the northeast side which is a utility easement with an existing powerline. It's the only property in that entire area that fronts Northrise. And it's also one of the deepest points along Northrise elevation and topographical, so it needs to be filled in, and you're talking approximately 35 to 40 feet of fill on 2.5 acres, that is a considerable amount of fill. That's going to be incredibly expensive in most cases.

Also, he did not mention that there is an existing arroyo that often flows that goes around what I would call the west point of the property. That's going to have to be addressed. I do not think that residential property can be built on that area that would overcome those expenses that's why we need to go commercial in that property. And I do have a prospective restaurant that has looked at it and were thinking about it, but we don't know what the zoning is going to be and we don't know whether they would qualify or not.

It seems like that's all I can think of that needs to be addressed. Other than there's nothing but commercial property on both sides of it except for the south portion and across the road it's all commercial in that area. I don't understand why it has to be residential when you have so much other property there and when they address the access needs that that could not be developed more efficiently and at a lower cost. Thank you.

Kaiser: Thank you. All right. Coming to the Commission, are there any questions or comments?

Acosta: I've got one. So looking at the, a statement you said Vincent about it being perhaps too premature. In terms of the steps that would need to be making it appropriate for rezoning could you clarify that for me?

Banegas: Certainly. Mr. Chairman, Commissioner Acosta. The statement of being premature is referring to the planning effort for the blueprint in terms of identifying how to provide for transportation networks, road networks in that southern area. It could be that as Mr. Heck indicated that the property in question that has perhaps the only access at least for some of those A-2 zoned and EE zoned parcels that's the only one that has the frontage could be impacted in some form or fashion in terms of the provision for access.

So we don't know what's going to come from the planning effort. We truly don't. We would like to wait and see and see what they come up with policy wise, idea wise in terms of road network.

Acosta: And so just to clarify that, it comes from the City of Las Cruces before a property owner could do what he needs to do as far as developing that? Or can property owner, or if he sells it somebody come in there and do the blueprints or propositions?

Banegas: The City of Las Cruces in working with the consultant have made contact to the various property owners in the vicinity trying to assemble them, trying to setup a meeting. In fact, that meeting as I recall talking with Sara about, will take place tomorrow. And so the purpose is to convey what is being proposed and start assembling some of the ideas and the thoughts of those property owners in terms of making this a reality, making the road network a reality for this region.

Acosta: Okay. Thank you.

Kaiser: Yes. Go ahead, Commissioner Smith.

Smith: I have a question or concern. I did a site on this area and it is highly commercial and now looking at the zoning map, seeing that this one parcel that's zoned residential. What is the likelihood that that area would be developed for residential? I know of course the property owner would have to sell it and then someone would have to purchase it and decide to build residences there but what is that likelihood because of the highly commercial and the fact that it's zoned EE and also A-2 that that would happen sooner than say zoning it for commercial and having another business there?

Banegas: Mr. Chairman, Commissioner Smith. That's a difficult question and the only thing I can point to is some areas that have previously undergone master planning that have identified multifamily as a use on property as part of the master plan. Staff has received in the past immense pressure to convert those parcels that were identified as multifamily over to a commercial designation from a use perspective and then change the zoning to support that. Staff has resisted that in the past and it took a while but we finally got apartments exactly where the master plan intended them to be. And this was an area along Sonoma Ranch.

In this case, it's likely. I can't indicate that some of these areas that are south of the subject property will not ever be multifamily in nature. Keep in mind that the suburban neighborhood place type encourages residential with pockets of commercial. So commercial isn't outright banned. It's allowed but we want to see, from our perspective residential is often, especially multifamily is often the stepchild of master plans. Those tend to come last.

Smith: All right. Thank you.

Kaiser: I just want to go back to Commissioner Acosta's question. So as it stands right now R-4 is the current zoning. So if they wanted to move ahead with a residential project is it staff's position that at this time due to the circulation constraint concerns that it would also be premature to develop that type of project now as well?

Banegas: Mr. Chairman. Based on the fact that the existing zoning is in place, staff would encourage them to hold on but we wouldn't restrict them from proceeding with development plans.

Kaiser: Okay. Thank you. And if you could go back to the slide that showed the easement.

Banegas: If I could find it. Let's see. There.

Kaiser: That one, yes. So if I'm reading this correctly, the easements I guess would be the eastern edge of the parcel, correct?

Banegas: That's correct.

Kaiser: So I'm just trying to think because that would be if they were to develop say a residential project right now. Would that presumably be the access point? I mean because they would have access, I'm assuming through that easement back to Northrise.

Banegas: Mr. Chairman, Commissioners. You might also reference this little detail. Based on that detail, I'd have to assume that their intent for primary access to this property will be right at that frontage. The detail kind of illustrates a driveway detail that is being at least proposed per this plat. I don't know if that's going to change in terms of their development proposal, they would ultimately submit but.

Kaiser: Okay. Thank you. Yes. This seems like a headache to be honest given the lack of circulation there. I do want to kind of touch on the point that Commissioner Smith kind of alluded to. And part of my concern is that, and staff I think you've made this point in your presentation that we only ever see these zone changes from residential to commercial on our multifamily parcels. And I'm really concerned about that because we don't have a lot of that to begin with. And every single time we do these, one instance. It's always one instance. Well soon we're at 1,000 instances and we've lost a tremendous amount of opportunity to develop multifamily and the missing middle types of housing that the comprehensive plan is wanting to see.

We never see the opposite. We never see commercial being proposed to be rezoned for multifamily residential, and we sure as heck do not see single-family being rezoned either to commercial or multifamily. So I am very concerned that by us giving this away it's another two acres. I mean back in July I think we had another zone change off of multifamily residential to commercial in urban core. It's just another example of this maybe one, 2.5-acre parcel but you do that 25 times, 30 times, 40 times suddenly we're left with nothing else.

And so, I'm just very concerned. I'm also concerned that I mean I think you've got to do some sort of master plan here. It sounds like the blueprint may address some of it but I just think there's got to be some bigger vision aside from just one, 2.5-acre parcels. So that's just my perspective there. Any other questions or comments from, yes, Commissioner Smith?

Smith: Would you once again just clarify how we're to vote on this proposal?

Banegas: Yes.

Smith: Thank you.

Banegas: If I could before I leave this slide, Mr. Chairman, Commissioner Smith. I just wanted to point out that this EE is the tetras piece that I mentioned. They're knocking. Okay, they've already come and they're aware of the planning effort but they're holding off until that goes through. Okay..

So going back to Commissioner Smith's question. The report that you've read and my presentation are recommending denial. Staff would like for

you to vote. Make a motion in the affirmative and if you do so the findings that I presented are based on a denial position. So you'd have to come up with findings of fact that would support approval. Now, I do have some standard ones that are in our com plan that could support that if you feel it's warranted. But otherwise, if you vote no, you're siding with the packet, you're siding with this presentation and you're denying the request. Okay. Is that clear, because it is a little convoluted.

So if you want to approve it, these are some of the elements in our comprehensive plan that speak to commercial development growth, development of not necessarily older areas but vacant areas infill development generating employment opportunities. Those are some of the ones that we've used in the past. So I offer them up but staff recommends denial.

Kaiser: Okay. I'm going to go to the public now. Are there anyone in the audience who wishes to speak on this item? Please raise your hand. All right. Seeing none. We'll come back to the Commission. Any final questions or comments? All right. Looking for a motion to approve.

Bennett: I make a motion to approve 9.1.

Vega: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on some of the findings that he had given us there, balanced growth I would say, and I think infill development as well would support my vote.

Baum: Board Member Smith.

Smith: I vote no based on staff recommendation. I feel that this needs to be more of a master plan for this entire zoning area.

Baum: Board Member Vega.

Vega: I vote no based on staff recommendation.

Baum: Board Member Bennett.

Bennett: I vote no based on staff recommendation.

Baum: Board Member Murray.

Murray: No based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion fails.

9.2 Case No. 23ZO0500006: A zone change request from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for one parcel located at 780 Stern Drive and encompassing 1.78 acres in size. Submitted by Ted Scanlon, Borderland Engineers and Surveyors on behalf of Michael Clute, Hacienda RV LLC. Council District 4.

Kaiser: Okay, moving onto item 9.2. This is a zone change request from EE to C-3 located at 780 Stern Drive and I'll turn it over to staff.

Banegas: Once again, Mr. Chairman, Commissioners. Vincent Banegas for the record, Interim Planner presenting tonight's case involving 780 Stern Drive. The property is currently zoned EE and they are seeking the designation to C-3. And you may draw some I guess the proper term would be corollaries from what we just heard to this case. And if you have any questions, I think I can answer them as to why one is denial and this one is approval.

But this case has the following current conditions. It's located along Stern Road between Boutz Road to the south and the Avenida de Mesilla to the north. It's 1.78-acre parcel and it's our equestrian estate and agricultural district. Again, allowing one dwelling unit for a minimum of one acre lot size. It's within the suburban neighborhood place type per the Elevate Las Cruces Comprehensive Plan and immediately adjacent on the north side of this property is our commercial place type, literally just due north.

The applicant's request in this case at least early discussions with them are speculative in nature. But like the last case, we do recognize it's a necessary step in the marketing, sale, and development of property. The existing EE as indicated can be developed residentially, in fact that's what it calls for. But given the minimum lot sizes, you're going to see one lot based on the current acreage of this property developed unless they were to seek a variance to allow additional homes on the property.

The area has limited commercial office uses that exist between Avenida de Mesilla and Boutz. The commercial uses are largely coming from the RV sales right off of Avenida de Mesilla. Office uses, you have the Department of Agriculture not too far from this subject property. And you do have other I think it's a spec building on the east side of Stern. I didn't see any signs and couldn't come up with a specific use but it looks to be a spec building at this point in time, perhaps also for an office.

Stern Drive and Avenida de Mesilla are both minor arterials. Boutz Road is a major collector. So you have adequate road infrastructure in this case to support the commercial zoning that is immediately northwest of the subject property. In fact, the zoning here is C-3C and you have additional C-3 not too far off of Stern.

Now, in here you have what some of you may recall Banmore Estates, a residential subdivision that was approved by you all, single-family detached homes. You have an existing neighborhood in here. All this is R-1aC in terms of zoning. Some of the existing older properties in the area, you have fairly large R-1a tract here. I think some of that was used for agricultural purposes as well. You have an A-2 sliver right up against Boutz Road and right along the south boundary of the EE existing parcel in question. So you do have much of that is underutilized property at the present time. So again, even though you have C-3 zoning a lot of that is office and/or service related.

Here is an aerial view of the subject property. You can see Banmore Estates is well on its way. The Department of Ag building, RV park which is residential in nature but nonetheless an RV park, RV sales further down the road there. This is that spec building that I couldn't identify as to what it is.

Staff is of the understanding that U-Haul seeks to develop here on this portion, this lot. To my knowledge, we haven't seen any plans submitted yet but that's what we hear is coming. So the proposal is to rezone to C-3. Again, staff has not been informed of any specific development proposal for this lot in question. The staff feels that this proposed zoning is in accordance with Elevate Las Cruces. The early notification efforts that staff requested of the applicant's representative were undertaken and to the best of my knowledge staff did not receive any input from the neighborhood as a result of that effort. And as I recall the representative indicated they had received none as well.

A couple of photos. This was right off of Stern looking west. A vacant property right now. This is part of that A-2 strip on the south side of the property line. You can kind of tell what's going on there. Looking down Stern Drive due north, the Department of Ag building. And looking south there's Banmore Estates going in right here, right at the corner of Boutz and Stern.

So staff did not identify any health, safety, or welfare issues related to this proposal. We do find that the zoning district that is being proposed provides some compatibility with existing uses in the surrounding neighborhood. It is within the suburban place type and would offer the commercial

component that is allowed as per the suburban place type, and as such it is found to be consistent with Elevate.

As we know it's low to moderate density residential development with intermixed commercial uses. There are some buffers that will have to be maintained if this property goes to a C-3 designation and those are anywhere adjacent to lower density or less intense parcels. For instance, those residential parcels on the southside. So regardless of the zone change if it goes through that is an element of protection that can be maintained pursuant to code for those residential single-family or lesser zoned properties.

Public input notice was carried out as indicated. Early notification efforts were conducted. Staff's efforts, we sent out letters pursuant to code. We did not receive any inquiry as of this meeting date. So staff's recommendation and finding is approval based on the following findings. The property is 1.78 acres in size and has limited development potential for providing a significant buffer, if you will, between the regional commercial place type and the suburban place type. So since it's immediately adjacent, we felt that impacts would be rather limited.

The applicant has no imminent plans for development. And if approved the supporting road network, Stern Drive, etc., Boutz Road and Avenida de Mesilla could easily provide for access to the property. And we all know suburban supports that. Several goals, policies, and actions from Elevate are identified for support of the proposed request as well as the 2001 Las Cruces Zoning Code in terms of its purpose and intent.

And your options this evening with this one is to vote "yes" and approve, vote "no" and deny, in which case you'd have to come up with your own findings of fact, you could vote "yes" with conditions, or vote to table. And that concludes staff's that presentation. And I believe the owner and/or representative are in attendance if they'd like to speak to their case.

Kaiser: All right. Thank you very much. Would the owner/applicant wish to speak before we turn this over for Q&A? If you could just state your name for the record.

Scanlon: My name is Ted Scanlon. Address 2990 North Main Street.

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

Scanlon: I do.

Kaiser: Go ahead.

Scanlon: Okay. I don't have a whole lot to add to Vince's very concise and thorough presentation here but it was -- one thing I wanted to bring up is the fact that we subdivided this property and created that lot to go back a certain distance from Stern Drive and leave a big buffer for ponding area and landscaping adjacent to the existing houses along there. And we're only asking for rezoning on that lot that was created and not on the area that's adjacent to the existing residential development. That will stay undeveloped with no buildings or anything on it for certain.

I believe the property was originally zoned equestrian estates because there's a gentleman that owns a property right on Boutz Road. His name is Ken Mills and he kept horses back there. And he would graze those horses on our property. And for the record, I'm one of the owners of this property besides being the applicant and the representative. But we allowed him to graze horses back there forever.

But now, we've sold the RV park. We've sold the parcel to U-Haul. We sold the parcel to USDA and this is the last piece of property on that area that we still own that we need to dispose of, to sell and have developed as a commercial site. I don't know if I have anything more to add to that or not, but I would appreciate an affirmative vote. Thank you.

Kaiser: Thank you very much. All right. Any questions or comments from the Commission? All right. Seeing none. We'll turn to the public now. Is there anybody in the audience who wishes to speak on this item? Please raise your hand. All right. Seeing none. We'll come back to the Commission and looking for a motion.

Vega: I'll make a motion to approve item 9.2.

Murray: I'll second.

Baum: Board Member Acosta.

Acosta: I vote yes based on staff recommendation.

Baum: Board Member Smith.

Smith: I'll vote yes based on site visit and staff recommendation.

Baum: Board Member Vega.

Vega: I vote yes based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation. This meets the neighborhood character and compatibility Elevate Las Cruces and purpose and intent of the code.

Baum: Board Member Murray.

Murray: I vote yes based on staff recommendation.

Baum: Chair Kaiser.

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

Baum: Motion passes.

9.3 Case No. 23VO0500101: A variance request to deviate twenty-four (24) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4093 Winters Street. The property is approximately 0.12 + acres in size and zoned R-1bC (Single-Family High Density- Conditional). Submitted by Catherine Silva, property owner. Council District 1.

Kaiser: Okay, moving onto item 9.3. This is a variance request to deviate from the front yard setback at 4093 Winters Street. Staff, all yours.

Gonzales: Good evening, Commission. Sara Gonzales, Senior Planner, City of Las Cruces. This is for a variance request for 4093 Winters Street. Currently, the property is about 649 feet north of its intersection with Holly Drive and Winters Street. It is approximately 0.12 acres in size. The property was rezoned to R-1bC back in 2006, which is single-family high density conditional. At that time, there was six acres left and the developer wanted to reduce the lot sizes in order to fit in 35 more single-family homes.

As stated, this does have a single-family residence on the property. Here's an aerial map of the subject property. These are the properties that went into essentially a higher density as opposed to the surrounding neighbors. They are probably about a third to half an acre in size and then we move into a mobile home park that's located on the west side.

Here's a zoning map of the surrounding area. As you can see, it is primarily single-family residential. We do have a few nodes of multifamily on the south side. However, those are also developed with single-family residences.

Per chapter 38 of the 2001 Zoning Code, setbacks for an R-1b zoning designation for a garage or carport is to be at 25 feet. The applicant is seeking to retain the carport addition to the existing dwelling that was placed in the front yard of the property. The variance would allow the applicant to maintain a one-foot setback from the property line. Here's a site plan of the property. As you can see within this area, this designation here shows that this is 25 feet back already originally for the original garage. So with that, with the 25 foot setback, you essentially take up that entire space covered with a carport structure leaving one foot. One of the concerns, and I'm only bringing it up now and I'll reiterate it later is that there is a 12-foot utility easement that runs along the front of the property. Structures, buildings are not permitted to be within those utility easements as you have line connections, El Paso Electric. Anything that has to be done there would have to be modified. So as part of our recommendation, I will provide those findings and to elaborate later.

Here are the site photos of the property. As you can see it is extended out. This would be where we measure from whenever we actually measure carports. It's never to the edge of it, it is to the actual overhang because that is the part that is actually extending up to the furthest point of the property line. The posts are pushed back. However, we do only have about one foot to that property line.

The applicant did provide a letter that was provided within your staff packets that she was unaware that the codes and regulations were going to require the building permit or the status of that application or to them to be permitted to be put into place. There are medical reasons in which she has requested that carport to be maintained and it also protects vehicles from weather damage.

As identified, staff did not see any health, safety, or welfare issues. Our only identification was that the utility easement is in place and that structures are not to be within a utility easement. However, we also analyzed that the 24-foot variance to the minimum required 25-foot setback does not meet the criteria for a variance. Whenever you look at variances, we are looking at topographic constraints on a property. We are looking at does it spur economic development? Is there a monetary hardship on a property in which you would be forced to do something that's going to cost you more than what you would need as far as putting it in a different location?

So with that staff is recommending denial as it does not meet the criteria outlined in the 2001 Zoning Code to meet 25-foot setback. We are also saying that it does not follow the standards for criteria to approve the variance based on the three criteria listed: topographic constraints, spur

economic development, and then monetary hardship. And the carport was constructed unfortunately without a building permit.

Notice was sent to the surrounding properties. The only phone call that I ever received as far as the carports being in placed is if this one were to be approved does everybody in the neighborhood now get one? The response I did provide to the person who contacted me via phone was that every variance case is a case-by-case basis. We are looking at every request that comes in here as a single case. The adjacent property owners do not set precedence. We are not looking for those to move forward. Variances stay with the land and it's based on the justification provided by the applicant.

If the P&Z Commission decides to approve the case, staff is recommending that these conditions be placed upon it. Both of the sides of the structure remain open just for visibility whenever you back up into the oncoming traffic. The structure does need to be attached to the residence as you are not permitted to have accessory structures located within your front yard. Making it attached makes it now an addition to your structure. They must obtain a building permit and require all inspections, and we are requesting that it be built or cut down to meet the 12-foot setback out of that utility easement.

With that your options are to vote "yes" and approve, if you choose to vote and approve, please provide new findings of fact as everything presented to you this evening has been in denial. You can vote "no" and deny, you can vote "yes" with conditions, or you can vote to table. The applicant is here as well. And then I do believe there is public to speak on behalf. And if you have any questions, I stand for those as well.

Kaiser: Thank you very much. Any questions or comments from the Commission?

Bennett: How much of that needs to be cut off for the utility easement? Just a ballpark.

Gonzales: Mr. Chair, Commissioner Bennett. That would be 11 feet just because we only have …

Bennett: Thank you.

Gonzales: That one foot. So to get out of that 12 feet, we have that 11 foot deviation.

Murray: And then are these underground utilities or above ground?

Gonzales: Mr. Chair, Commissioner Murray. These are going to be underground utilities. A lot of times in the 12-foot utilities what we find are El Paso Electric, Comcast, Quest, Lumen, your phone, your electrics.

Kaiser: All right. Thank you. Any other questions or comments? Commissioner Smith.

Smith: Could you go back to the photo of the vehicles underneath the carport? Thank you.

Kaiser: All right. If the applicant wishes to speak, you're welcome to come forward before we get a public comment. You're not obligated to. And before you begin can you please state your name?

Silva: Catherine G. Silva.

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

Silva: I do.

Kaiser: Please go ahead.

Silva: Well, the reason I did it it's because for my daughter's protection. She's on medication. She can't be under the sun because of her medication. It's medical reasons. And when it's raining, we can't be running into our vehicle and slip and fall besides myself too. I'm injured too. So that's why I got it done and it's expensive. And to remove it, it's another expense for myself and I'm a single parent. So hopefully, I get it approved and it's for her protection.

And I don't have no shade for her and I can't keep her inside the house all the time. And that's the only place I take her outside. She loves to color so I take her outside on a chair and she colors out there. And that's all I have to say.

Kaiser: Okay. Thank you very much.

Silva: Okay.

Kaiser: All right. Is there anybody in the audience who wishes to speak? Please raise your hand. Okay. Yes, ma'am. Please come forward. I'll give you three minutes. We have a timer here. It will count down but I've been told the beeper sound doesn't work so if you hear this gentleman here beep that's your time. Before you begin can you please state your name for the record?

Chavez: My name is Bertha Chavez.

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

Chavez: I do.

Kaiser: Go ahead.

Chavez: What I wanted to add as they need just a caregiver for Ms. Silva's daughter. And I do take her outside. She loves to color. She loves to be outside for a while but due to her medical condition I can only keep her out for a while. So this was serving a purpose and a need for her daughter and also Ms. Silva. That's all I have to say. Thank you.

Kaiser: Thank you very much. All right. Anybody else in the audience who wishes to speak on this item? Okay. Seeing none. We'll come back to the Commission. Any final comments? Commissioner Smith.

Smith: I just have a question for the applicant. Did you hire a commercial contractor to build this? Was this something that was done by a family member who is capable of building it?

Silva: It was done from a family member's friend. That was it. It wasn't a contractor or nobody.

Smith: So this person is not a contractor themselves?

Silva: No.

Smith: Okay. Thank you.

Silva: But he did a good job. It's welded.

Smith: The reason I ask that question is that I mean any type of structure that's being built like this requires a permit and is something that any contractor would definitely know and should inform you of. And even if it's a family member if they're capable of building something like this, they should know that a permit is …

Silva: Well, we didn't know. I didn't know I had to get …

Smith: Required. All right. Thank you, ma'am.

Silva: I didn't know I had to get a permit.

Kaiser: All right. Any other comments or questions from the Commission? We're looking for a motion to approve.

Bennett: I make a motion to approve 9.3.

Vega: I second.

Baum: Board Member Acosta.

Acosta: I vote no to deny based on staff recommendation.

Baum: Board Member Smith.

Smith: Sorry. I vote no to deny based on staff recommendation.

Baum: Board Member Vega.

Vega: I vote no based on staff recommendation.

Baum: Board Member Bennett.

Bennett: I vote to approve based on monetary hardship and medical reasons.

Baum: Board Member Murray.

Murray: I vote is to approve based on medical reasons and monetary hardship.

Baum: Board Member Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denied.

9.4 Case No. 23VO0500106: A variance request to deviate twenty (20) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4053 Winters Street. The property is approximately 0.108 + acres in size and zoned R-1bC (Single-Family High Density- Conditional). Submitted by Tracie Stevenson, property owner. Council District 1.

Kaiser: Okay. Moving onto item 9.4. This is another variance request from the front yard setback. This time 4053 Winters Street. Back to you staff.

Gonzales: Sara Gonzales, Senior Planner once again for the record. This is a variance request for 4053 Winters Street. The property is approximately 200 feet

north of its intersection of Holly Drive and Winters Street. The property is 0.108 acres in size. Once again, is zone R-1bC which is single-family, high density conditional and there is currently a single-family residence on the property.

Here's an aerial map of the subject property. As you can see the carport is highlighted essentially in white as to its location. Surrounding neighborhood is residential in nature as all the adjacent properties are either single-family, mobile home, or multifamily to the south.

Per code, Chapter 38, 2001 Zoning Code, the property is required to meet the 25-foot yard setback for a garage or carport. And the applicant is seeking to retain the carport addition that was put up into the front of the property for the existing dwelling. The variance would allow the applicant to maintain a five-foot setback from the property line. Here is a site plan of the subject property. You can see we do have the 12-foot utility easement that also runs along the front of Winters continuously through the subdivision. The building or the structure is a 20 x 20 so that's why you have a five-foot deviation as far as it coming from that 25-foot setback. So all garages in this area were built at a 25-foot setback leaving no additional room for any of these carports to be placed onto the property.

Here is an image of the property, as far as you can see here is the structure. It is pushed back a little bit further. As you can tell there is a five-foot setback from this property boundary. The applicant has provided the justification in the letter that was provided within your staff report. It was an anniversary gift to the applicant as part of the, for their anniversary to protect their vehicles from weather damage. Once the structure did go up, it did provide some type of safety as far as the applicant was concerned once it was in place.

Staff did not identify any health, safety, or welfare issues. Once again, there is that condition of where we see the 12-foot utility easement in which structures are not to be constructed upon. We did see that the 20-foot variance does not meet the criteria that is outlined within a variance. There are no topographic constraints. We do not see any spur of economic development, and the monetary hardship would be essentially from not receiving a building permit prior to where they would be notified that the monetary value would be essential.

Monetary hardship is definitely determined by if you had to do something outside or make it impossible to reconstruct or build something on a property then that is considered a monetary hardship. We had a previous case to where it is, in order to construct a home, you had to move the well, that is a monetary hardship constraint.

So with this staff is recommending denial based on the carport does not meet the requirement of the 25-foot setback with any residential zoning district. We also are saying that it does not meet the essential guidelines to permit a variance request for the three identified as topographic, monetary, or for a spur of economic development, and it was constructed without a building permit.

Public notice was sent out. The same phone call was in direction to both as these neighborhoods are very close to one another. Notification was sent to everybody essentially twice. And so, it gave two opportunities for everyone to be notified within the neighborhood.

Once again if Commission decides to approve this case, please be aware to add the conditions as to the structure must remain open. The structure needs to be attached to the home as it is not considered accessory structure. It needs to be added. Must obtain a building permit and all required inspections and be removed up until the 12-foot utility easement.

Your options are to vote "yes" and approve. If you choose to vote to approve you do need to find new facts of finding not found within your staff report. Vote "no" and deny, vote "yes" with conditions, or vote to table. The applicant is here as well and I stand for any additional questions.

Kaiser: All right. Thank you. Coming to the Commission. Any questions?

Smith: Once again would you please go back to the photo of the, thank you. I have a question for the applicant. Was this carport constructed by the same people, person, because they look almost identical?

T. Stevenson: No, they are. They do …

Kaiser: Before you answer that question, ma'am. Can you please state your name for the record?

T. Stevenson: My name is Tracie Stevenson.

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

T. Stevenson: Yes, I do.

Kaiser: Go ahead.

T. Stevenson: This isn't, we don't have the same person who built, mine went up first in our neighborhood. And actually, the way this all came about was back in January my husband wanted to give, we were going to plan something for

our 43rd wedding anniversary. And I told him I'm putting this on you because I plan them all and he said he'll do it.

And then didn't hear anything. February comes rolling around. I don't see anything happening. Like he hasn't made any plans. And we had an automotive business here in town and he was a very, very busy man. March comes rolling around and March 3rd is a Friday and we were having breakfast and he was getting ready for work, and he comes back in and he has a massive heart attack right in front of me. And all my attempts to try to save him were gone.

And you go through all the motions of a funeral and all and then I did. April comes running around. My anniversary was April 12th. April comes around, the first week of April and I get somebody rang my doorbell. I go to the door and it was a grandfather, a father, and a son, and they said that they were here to put up an awning for me. Well you can imagine how excited I was because this was something we always wanted, both of us. And I know Roger. Roger always liked to do things correct. He never, if he knew he was supposed to have a permit, I know he would have looked into that because he was very adamant about that kind of a thing.

And so, you can imagine how excited I was. I said yes, please put it up. I was thrilled. A permit never even crossed my mind. It was just, I literally got weak at the knees. Well next morning comes, I was there. They came and put it up and I watched them. They did the first two poles there; I saw them dig the holes. It's three feet down into the ground with, they put a lot of cement. It's bolted towards the end of the garage very securely. I mean it's not going anywhere. It's structurally sound.

And so, I was thrilled and then of course I was, codes comes probably about three days later. I guess he said he was going through the neighborhood and saw it. And he put a notice on my door. And so, then I right away called here and said what do I need to do to get a permit for this? And he sent me through all the motions and I did them all because I want to keep it. It's the last gift I'll ever receive from my late husband and he was like my best friend. And I just really feel, I just really don't want to see it dismantled and taken away. It's that special.

Now, she said it didn't provide any safety features. Now, this does provide safety features. Last winter, I actually slipped outside while we were clearing off our windshields. And it does provide elements from the weather. I mean it's a 20 x 20 and it's structurally, has beautiful curb appeal. And I also presented some letters from my surrounding neighbors that it did not even propose a threat to them. They were absolutely thrilled about it and didn't give me any heartache about it whatsoever. I was just, I didn't know.

So I just thought I would come here today and just kind of give you a little bit of insight how special it really is to me. And I hope I'm able to keep it and I hope you all can find it in your hearts to allow me to have it and maybe purchase a permit and be able to keep it. We all don't know how long we're going to be here. I mean everything we have can be gone just like that. And I just want to present my case and see if that's obtainable.

Now it's not attached but I did get a contractor to come over and look at it. And he said that is attachable. He said it's just so close and he said that he would do that for me. So I'm willing to do what I have to do to keep it and enjoy it for as long as I can. I don't plan on selling my home. I plan on living in it. And now that I'm alone, it does provide some safety for me. I stand up here literally broken going through all this. And I just have to let you know that if you would allow me to obtain a permit, I would be forever grateful respectfully. Thank you.

Kaiser: Thank you. Any other questions? Commissioners Smith.

Smith: Ma'am I just wanted to offer my deepest condolences to you and your family for the loss of your husband. And I know that this carport means a lot to you. It's difficult for us as a Commission here. We get many cases where carports are built in the City without permission and it's a challenging job for codes because they're doing their job. And although this has special meaning to you, the carport is no different than the previous applicant as far as the amount of the variance that you're requesting.

And so, our hearts are with you and your family. We have a decision that we'll have to make and so it will be a difficult one but we'll make the best decision that this Commission can make based on the information we've been provided.

Vega: I also want to say that regardless of what decision we come to you can always appeal to the City Council; is that correct? So that's just something else to share with you as well.

Kaiser: I also extend my condolences as somebody who unexpectedly lost a family member within the last year. I certainly understand what you've been going through. I think the difficulty here is there's rules in place and it's the responsibility of all of us to be aware. I know this seems like something you probably would never think of but the reality is these types of home projects they are regulated.

And honestly hearing you explain what they did to put the posts in the ground, I'm just very thankful nobody hit something they would regret hitting

especially if they were not aware. So call before you dig. But I think this is just kind of unfortunate but there are rules in place. So that's all I'll say.

Is there anybody in the audience who wishes to speak on this item? Yes, ma'am. Please come forward and please state your name for the record.

Vulco: Sarah Vulco.

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

Vulco: Yes, sir.

Kaiser: I'll give you three minutes.

Vulco: Okay. So when Tracie called me and asked me to look at the scenario that had been presented to her from the City, I was of course wanted to help in any way that I could. My background is that I am a general contractor and I'm also a civil engineer. I work for the City at one point in the Public Works Department. And then at this point, I'm a Regional Project Manager for the State of New Mexico.

Based on my background what I wanted to present respectfully is that in the case of building $30 to $50 million structures for the State of New Mexico, there are situations where User Department buys a plat of land and there is a utility easement right down the middle of the property. And so, at that point we're coming together and collaborating with the design professional saying, my gosh, how do we build anything on this plat of land?

And so, we try to take a more ethical approach. And what we do is often times we'll build a building maybe with an outdoor courtyard that's over that easement. And what we tell the User Department at that time is that we will build the structure but they will have to resume the cost of remove and replacement in the case that the utility easement, a project comes through that requires them to access the utility easement.

And so, a lot of times we construct these buildings like I said with the courtyard in the middle and that's the portion that's over the easement so that it's predominantly flat work which is sidewalks things like that. So the User Department would then tear that up and remove and replace it. And so, there's an addendum to the contract when we do something like that.

My request is that if Tracie would be willing to sign some sort of an addendum or some sort of paperwork that would say in the case of these utilities needing to be accessed that she would remove and resume the cost of removing the carport at that time. This isn't saying that she keeps the

carport for 20 years. It's not saying that she keeps the carport forever. It's saying during this time when emotions are raw and there's newly broken hearts that they would be able to keep the carport. And that's my request. Thank you for your time and consideration.

Kaiser: Thank you. Anybody else in the audience that wishes to speak? Yes, ma'am. Please come forward. Please state your name for the record.

Morgan: My name is Vicki Morgan.

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

Morgan: Yes.

Kaiser: You have three minutes. Please go ahead.

Morgan: I am writing this letter on behalf of Tracie, my dear friend since grade school, to attest to her impeccable character and extraordinary circumstances surrounding the awning in question.

Throughout our years of friendship, Tracie has consistently shown herself to be an individual of outstanding character. She possesses a rare combination of qualities that can only be described as extraordinary. She is caring, always placing the needs and concerns of others above her own. She exudes positivity even when faced with challenges that would overwhelm many. Her resilience, her generosity and her kindness are qualities I have witnessed firsthand for many years.

The awning which stands at the heart of dispute represents more than just a mere structure to her. It was one of the last gifts given to her by her late husband before his untimely passing. Every time she looks at it, she is reminded of the love they shared and the memories they created together. It's a testament to their bond and an emblem of the life they built. While some may view it as just an awning, for Tracie it holds profound sentimental value.

Furthermore, beyond the emotional significance, the financial burden of removing the awning would be undue and harsh especially given the heartache she has already endured. I kindly request that you consider the exceptional circumstances of this case. Removing the awning would not only be financially expensive for Tracie but would also mean erasing a tangible reminder of her husband. I sincerely hope that a compassionate resolution can be reached in this matter taking into account both the character of my dear friend and the significant emotional implications of

removing such a treasured memento. Thank you for your time and consideration.

Kaiser: Thank you very much. Anybody else that wishes to speak? Yes, ma'am. Please come forward. State your name for the record.

Gennings: Hi. My name is Lindsey Ray Gennings.

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

Gennings: Yes, I do.

Kaiser: Please go ahead.

Gennings: All right. So everybody has kind of hit upon the emotional aspect of Tracie losing her husband which was very sad. But I would like to provide a different perspective on the structure.

So I work for Wet Dog Mobile Grooming Services. And I am out there probably at least once a month for the last seven years to groom her dogs, make sure they're nice and clean. And I've never seen a weed in her yard. Her house is always kept up really nice. That structure is really nicely built. I complimented her on it the first time I came out and saw it. I was like this is really nice.

It doesn't really block anybody's view. And it's so hot in Las Cruces that Tracie likes to put out water for the stray cats in the neighborhood. And it's very nice for me to see someone taking initiative to prevent unneeded cruelty to the cats, where Las Cruces takes them and spays them, neuters them and then places them back where they found them. We don't need to be cruel to the cats so it's nice to see.

I've been out there several times. I get to see the cats getting a nice cool drink of water. It provides shade for her car so the paint doesn't get eaten. And it seems to me that if the utilities are underground already, they're going to have to go under the concrete slab so I don't think that it's a problem having the carport there. And I'm sure that if it is for the utilities in the future that she would be willing to remove it or replace it or whatnot.

And I'm sure that she didn't know about a permit because of her husband being the last gift that she was given from him. So I would like to see Tracie be able to keep the carport. That's it.

Kaiser: Thank you. Anybody else? Please state your name for the record.

Allen: My name is James Allen.

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

Allen: I do.

Kaiser: Go ahead.

Allen: So I do not know Ms. Tracie by any means or length measure. I did listen to her testimony and narrative. There were some things that were brought up to me knowing now she was in her emotional state after having recently lost her husband. She was presented by three gentlemen. I know that in Las Cruces having had family members who are small business contractors, she was presented as that this was something that was arranged for her.

She has stated that she is willing to retain a permit and take care of any fees that were unnecessarily missed with this. But I do question, she was presented with three individuals who were stated that they were contracted to do this job. So with her emotional state at the time and with her knowledge, I mean most people in town do not know building code but it seems that she may have been led to believe that this was a permitted job at the time. And she later found out that she did not have proper contractors so I believe that is something to be taken into consideration in this case.

Kaiser: Thank you. Okay. Is there anybody else who wishes to speak? Yes, sir. And before you come up can I just see hands so we just have an idea of, okay. So this gentleman is going to be the last one. Please come forward. Please state your name for the record.

B. Stevenson: Hi. My name is Brent Stevenson.

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

B. Stevenson: Yes.

Kaiser: Go ahead.

B. Stevenson: Yes. Well, I'm up here just to kind of talk. This is my mother and I do know that my father after hearing or seeing that she did fall in the driveway. I mean I know you took it upon himself to make sure that it will never happen again. And I'm sure that's the reason why he did purchase this awning.

As her son and the rest of her family, we're concerned about her, about her safety of course. And now that she does live alone, we are concerned that we just want her to be safe. And I think that if you're able to grant this variance I mean I know that she'll be more than grateful. We'll all be grateful and we'll do whatever it takes to conform with your policies and everything if that were possible. It does protect the driveway from its elements, from snow, from rain, from the heat. I just see more positives with this and I just wanted to talk about that. Thank you.

Kaiser: Thank you. Okay. Coming back to the Commission. Commissioner Smith.

Smith: I just have one more question for staff. Did you state that there was also a 12-foot easement with this property also, or it was just the previous proposal?

Gonzales: Mr. Chair, Commissioner Smith. There is a 12-foot utility easement that runs along every property within this subdivision in the front of those property boundaries. A lot of times what we see in newer subdivisions is that is essentially where all the utilities are being placed. There used to be in the old part of town where we would get utility easements in the back, on the side of the properties. Now everything is generally ran through the front of the properties and it's 12 feet wide as generally the distance we see.

Smith: Okay. Thank you.

Kaiser: All right. Any other questions, comments? All right. Looking for a motion to approve.

Vega: I make a motion to approve item 9.4.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve with the conditions that the City staff had outlined.

Kaiser: You need to provide a …

Acosta: Sorry, can I go back to that page if that's the case? So I guess it would just be all four lines of that. Should I read that out?

Kaiser: No. I was just looking for there, based on what was your rationale for voting to approve with the conditions.

Acosta: I'm sorry about that. Okay. So just based on the emotional impact and the willingness to work with City staff to keep the structure alive in whatever

compliant capacity and willingness to pay for that. So I think if they'd be willing to work under that condition then they need to perhaps preserve a structure that had that much more sentimental value.

Baum: Board Member Smith.

Smith: I vote yes to approve. I know that this case is very similar to the previous applicant. There are some extraordinary circumstances I think in this particular case based on the fact that the homeowner was not aware that she was even going to be receiving the carport. And that the people who presented it, who arrived to construct it may not have told her that whether they were actually contractors or not. And there is room for compassion, there is room for just the circumstances under which this particular carport was constructed as opposed to the previous one. And so, that is why I'm voting yes to approve.

Baum: Board Member Vega.

Vega: I echo Commissioner Smith's comments. I also vote yes to approve based not only on the financial hardship. Also, the suggestion for easement. I have an easement in my backyard, it's totally different but always something to consider. Thanks.

Vega: Board Member Bennett.

Bennett: I vote to deny based on staff recommendation.

Vega: Board Member Murray.

Murray: I vote to deny based on staff recommendation.

Vega: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denies due to a tie.

9.5 Case No. 23VO0500107: A variance request to deviate one (1) freestanding sign to the maximum permitted two (2) freestanding signs and a to deviate seven (7) feet to the minimum required fifteen (15) foot freestanding sign front yard setback for a property located at 1300 El Paseo. The property is 5.50 + acres in size and zoned C-3 (Commercial High Intensity). Submitted by Burke Sign Company, LLC., representative. Council District 3.

Kaiser: All right. Our final item this evening is item 9.5. A variance to request to deviate from the maximum permitted signs. This is at 1300 El Paseo. And do we have staff to make a presentation?

Ochoa: Sorry for the delay. Adam Ochoa, Senior Planner, Community Development Department for the record. The last case we have tonight for you folks is case number 23VO0500107. It is a request for a variance for a property located at 1300 El Paseo Road.

A little case specifics of the subject property. It is located on the southwest corner of El Paseo Road and Idaho Avenue. Currently zoned C-3 commercial, high intensity encompasses roughly 5.5 acres in size. There is an existing business/shopping center on the property. And just a reference are two existing previously permitted freestanding signs on the property.

Here's showing the property on the zoning map here. A large parcel here is zoned C-3 and in what is just a sea of commercial zoning, so definitely one of our major commercial hubs in the City of Las Cruces with a lot of traffic going off El Paseo and Idaho Avenue.

Showing here on the aerial map the shopping center, if you will, kind of L-shapes along the back with parking along the front. The two existing freestanding signs that were permitted previously, a number of years ago of course, is one located right on the corner of Idaho and El Paseo and another one essentially right around here in the entry along El Paseo.

The third sign which we'll be discussing here today is located off of Idaho. Here are the pictures of the two distant signs as they currently exist. And I just wanted to bring up the fact as well that what is the Planet Fitness sign itself does conform with current requirements for a freestanding sign. The larger sign to the left of all the different tabs in it, that's a nonconforming sign, so just a little bit of reference for you all.

So what we're looking at today is in Chapter 36, the Las Cruces sign code. We're looking at two different sections because this is essentially two different variances under this case. One is Article 2, Section 36-46 (b) (6). This is essentially dictating the number of freestanding signs allowed for what are C-2, C-3 in our industrial zoning designations where essentially it states in the City of Las Cruces each commercial property is allowed to have one freestanding sign with the exception with lots that exceed a frontage of 600 linear feet which this property does. In those cases, those properties are allowed up to two freestanding signs. That is the absolute max that is permitted by code.

The other that we're looking at here is under Appendix 1, Table 2, also of the Las Cruces sign code. There is a minimum of 15-foot front yard setback required for all freestanding signs located along what are collector roadways and arterial roadways which are El Paseo and Idaho Avenue.

Here's a picture of that sign that has been constructed that third freestanding sign. So again, so the variance would be a variance of one freestanding sign to allow for three freestanding signs on the subject property and a variance of eight feet to allow the sign to stay where it is existing at its current location which is roughly about seven feet from the front property line there on Idaho Avenue.

A little bit of analysis, a little bit of what happened essentially here is essentially the sign was permitted and issued by error by staff, some misinterpretations, some misinformation unfortunately was provided and the sign permit application was essentially approved by staff and it was issued. The sign permit application was missing some information. It did not show the existing two freestanding signs on the site plan nor did it show setbacks on there. Something staff should have taken the consideration but like I said it was issued by error.

The applicant was unaware of these requirements, essentially of the requirements as stated. And after he was made aware of the issuing of the permit, he was made aware of the error of the sign being the third sign and its setback, was made aware after we issued the permit and he already installed the sign.

So additional analysis. So the way you approve a variance under the 2001 Zoning Code on Article 2, Section 38-K. Staff kind of went back and forth on this one. Where we could see both ways how this variance could potentially be denied or approved. First, of course, I want to touch base on your physical hardship which is relative to the property. The first thing that staff looked at and we saw there's no real topographical constraints, any right-of-way takes or anything that would impinge on them having to meet code. But we also saw the potential of a, if we go back here, how the layout of this existing shopping center exists. How this back row kind of lies along the back instead of closer to the street. We could potentially see that the business is located in that further back portion from the street of El Paseo could potentially benefit. And so that's kind of a physical hardship being located further back away from the street. So we saw that as a potential physical hardship so just keep that in mind.

Second, the spurring of additional economic development. This may not considering the shopping center is existing. It's fully built out, that's what staff saw essentially. But the potential for now those businesses in the back which as a person who reviews all business permits that come in from a

building standpoint, we get a number of them, a lot of turnaround in the back portion of this shopping center so it potentially for business opportunities or economic opportunities for those in those suites located in the back portion of the property.

And third, of course, for monetary hardship. There is the cost of the already built and erected sign that was located on the property due to error unfortunately.

With that note, staff does still recommend kind of a soft denial for this case. That being said, staff does not see any significant safety, health, or welfare issues associated or identified for the proposed variance. Findings stated here in you find in your staff report, essentially the two code requirements, maximum two freestanding signs, required setback. And of course staff in the end after much deliberation came with a soft denial because we feel it does not meet the Section 38-10J of the 2001 Zoning Code.

I did want to mention, staff did also send out a public notification to the surrounding property owners. We received nothing until yesterday morning. We did get a phone call from; they didn't want to state who they were or what business they were but they're a business in that shopping center. They have their name on that sign and they find to get a little more flow into their business now. So they appreciate the sign as they stated. Again, no name, no business unfortunately.

But with that the Commission's options tonight, one to vote "yes" and approve the proposed variance. Again, new findings will be required if you do vote to approve. Two, to vote "no" and deny as recommended by staff. Three, to vote "yes" with conditions. And four, table or postpone and direct staff and the applicant accordingly. The applicant and I believe her representative who erected the sign are here if you have any questions for them. I stand for questions as well.

Kaiser: All right. Thank you. Any questions, comments from the Commission?

Smith: I just have a comment. I'm very familiar with this shopping area. I live very close to El Paseo and Idaho. And the other businesses are setback from El Paseo. Of course, the Planet Fitness has their own sign. It is also a sign that they share with some of the other businesses there. It's kind of a unique shopping plaza or property because you have a business that's on the corner. You have a gym that's very prominent. And as far as accessing the other businesses there, I mean you have several entrances but not of them are very easy to see the other businesses. So it was just a comment I wanted to make just based on the signing where it's located and also the fact that they have the other businesses listed there.

Kaiser: Soft denial. It's a new one.

Ochoa: I didn't want to be too harsh.

Kaiser: I'm just trying to understand here. So basically, the order of events were the applicant submitted an application for a permit to install this third sign. And during the course of staff's review, it was not caught that they were already at their maximum. And it was also not noticed that they're missing specific information related to the placement of the sign. So staff approved it. The applicant went and built it. And now, six months later staff is saying you need to come back for a variance and we're recommending the soft denial. Is that …

Ochoa: Mr. Chair. That kind of sums it all up. That is correct.

Kaiser: Okay. So my next question is …

Ochoa: I would say yes, but …

Kaiser: Did the applicant, did they pay any fees for this variance application?

Ochoa: Mr. Chair. Yes, they did pay all required application fees as well as public notification fees which includes notice letters, signage, and advertisement in Sun News as well as all associated sign permit fees as well.

Kaiser: Okay. So they paid for a variance application. If it's to be denied tonight then the result would be removal of the sign, correct? Which would cost additional money out of their pocket?

Ochoa: Mr. Chair. That is correct. And then they would also, they'll have the option to appeal the denial to City Council which would be further costs. Not only the fee, advertisement requirements as well, sir.

Kaiser: Okay. So basically, they have a situation where staff messed up and the applicant's bearing all the cost?

Ochoa: I believe that's fair to say. Yes, sir.

Kaiser: I have a problem with that.

Ochoa: Definitely don't disagree with you with that on that, sir. And staff did, I guess supervisory staff did discuss this issue with staff so, yes, sir, understood.

Kaiser: Okay. I mean based on that I think it's; I mean we just got done talking about sort of homeowners doing their due diligence on whether or not they need a building permit for a carport. And now we have sort of the opposite.

The City didn't do their due diligence and now the applicant is paying the price for all of that. I personally think that this is one that we've got to own. And I think in my opinion the applicant should be able to retain that sign and I think I'm going to vote to approve this variance so those are just my thoughts. Please go ahead.

Pitts: Tim Pitts, Deputy Director for Community Development. I think that's a reasonable compromise. And I think a condition that says the extra sign goes away when one of them comes down. That way the business isn't harmed by the thing but we will gain compliance at some point in the future.

Kaiser: So in other words, what you're saying is if the business that's there now with the sign on this new sign goes away that the new business doesn't get to put a new sign up?

Pitts: No, the third sign goes away. So if over the time they decide they wish to take one down for whatever reason, until that time, we're not talking about the faces on the sign, we're talking about the sign itself. That when that sign gets approved for redevelopment purposes, they come in and they want to do something and a sign comes down, we wouldn't allow it to go back up. But if all they do is replace the face of the sign which is the name of the businesses, I think it would be a fair thing because I think the business did everything they thought they needed to. And if that's the will of the Commission I think that staff did make a mistake. And it's tough to want to punish a business for staff's mistake.

Kaiser: Okay. Yes, I understood. So do you have any recommendation for language in that condition?

Ochoa: Yes. Mr. Chair. If I could? You could always vote to approve with the conditions that at any time in the future if any one of the three freestanding signs voluntarily gets removed, they will only be allowed to have the two freestanding or a total of two freestanding signs on the property.

Kaiser: Okay. Thank you.

Ochoa: Apologies, Chair. I did talk to the property owner and their representative and they are amenable to that condition, just to clarify.

Kaiser: Okay. Thank you. I think that's fair from our perspective. Before we go to the public, Commissioner Smith do you have a comment?

Smith: Just a clarification as far as our options. We can still vote yes to approve or we can vote yes with the conditions, either one of those. They're still on the table, correct?

Ochoa: Mr. Chair, Commissioner Smith. That is correct. You can just vote yes or when you do your motions, whoever does the motion, they could do, that's where it needs to start. When you do your motion, whoever is going to do the initial motion will have to do a motion with conditions and state that condition. The second will be, and then you'll take the vote with that. If not, whoever wants to make a motion just to approve, they could just make a motion to approve, second it, and so on and so forth.

Kaiser: Okay. I'm going to go to public comment now. Is there anybody in the audience who wishes to speak on this item? Okay. Seeing none. We'll come back unless there's any additional comments we'll go ahead and make a motion to approve.

Bennett: I'm just going to make a motion to approve 9.5.

Vega: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on monetary hardship and the potential to spur economic business.

Baum: Board Member Smith.

Smith: I vote yes to approve based on frequent site visits. Also based on the hardship because of the error. And also, having driven down Idaho many times that that is actually a well-placed sign to help promote those businesses that are located within that plaza.

Baum: Board Member Vega.

Vega: I vote yes to approve based on the financial hardship and the staffing errors.

Baum: Board Member Bennett.

Bennett: I vote to approve based on physical and monetary hardship.

Baum: Board Member Murray.

Murray: I vote to approve based on monetary hardship and staff error.

Baum: Chair Kaiser

Kaiser: Yes, based on monetary hardship and staff error.

Baum: Motion passes.

Kaiser: Okay. Thanks for all the presentations tonight.

10. DISCUSSION

Kaiser: Is there any discussion or staff announcements?

Ochoa: Any discussion with the Commission you need to bring up? Is no.

11. STAFF ANNOUNCEMENTS

Ochoa: Okay, so staff announcements. It is almost that time of year. It's still hot but the holidays are coming around. So staff did want to bring up the November Planning and Zoning Commission meeting and the December Planning and Zoning Commission meeting. As of now, we still have them scheduled for the fourth Tuesday of the month which would essentially be November 28th which would be the Tuesday after Thanksgiving. And then in December, it would be on December 26th which that's definitely going to be an issue because staff will not be here.

So I guess if we could come to a decision tonight if we wanted to move one, both then to the third Tuesday or potentially even moving the November one to the fifth Tuesday of the month that's a possibility as well. So we leave that up to the Commission with what they would like to do.

Kaiser: So I think the 28th works. It's after the Thanksgiving holiday. I think that's more than fine. Yes, okay. So we'll keep the 28th. And then yes definitely would agree with the 26th. I think probably move it to before so that would be the 19th. I think that's obviously fair for staff and certainly the public. I think that's amenable as well.

Ochoa: Sounds good. We'll go ahead and make those changes, sir. And so you all will be getting either packets and everything either earlier or later than usual on those two months so just keep an eye on them those for them.

Also, I just wanted to update. We are finalizing you all's flash drives. So those flash drives should be delivered probably with your next P&Z packets for the next meeting. So they're pretty cool. Economic Development bot us these really nice wooden ones so they're not junky. They look pretty cool. So sorry Commissioner Vega, but thank you so much for being here though. Thank you ma'am. Appreciate your time here.

Vega: I didn't expect to cry at my last Planning and Zoning meeting but thank you for the opportunity to serve and work with all of you. It's been a pleasure. I really appreciate it. And however, I can help in finding a replacement I certainly will.

Kaiser: Awesome. Well, once again best of luck and we'll see you out on the bicycle.

12. ADJOURNMENT (7:52)

Kaiser: All right. Go ahead and need a motion to adjournment tonight.

Murray: I make a motion to adjourn tonight's meeting.

Smith: I second.

Kaiser: All in favor?

MOTION PASSES UNANIMOUSLY.

Kaiser: Thank you all for coming out tonight.

_____

Chairperson

ATTACHMENT "B" – Staff Report

CITY OF LAS CRUCES

ZONING

Planning & Zoning Commission 9/26/2023
CASE 23ZO0500006: STERN DRIVE REZONING

STAFF CONTACT:	Vincent Banegas, (575) 528-3058, vbanegas@las-cruces.org
OWNER:	Michael Clute, Hacienda RV LLC
REPRESENTATIVE:	Ted Scanlon, Borderland Engineers and Surveyors
DISTRICT:	District #4
SITE ADDRESSES:	780 Stern Drive
EXISTING ZONING:	EE (Single-Family Equestrian Estate and Agriculture)
REQUEST:	Rezone from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity).
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 23ZO0500006:
A zone change request from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for property ± 1.78 acres in size and located at 780 Stern Drive. Submitted by Ted Scanlon, Borderland Engineers, and Surveyors on behalf of Michael Clute, Hacienda RV LLC.

SUMMARY OF RECOMMENDATION:
Staff is recommending **APPROVAL** based on the findings listed below:

- The subject property is vacant and there are no imminent plans for development.
- The subject property falls within the Suburban Neighborhood place type. This classification provides for low-to-moderate density residential land uses intermixed with areas of commercial development.
- The request is consistent with what the Suburban Neighborhood place type provides.

- Currently, land uses along Stern Drive from Avenida de Mesilla south to Boutz Road consist of residential (RV Park), office (Agricultural Dept. and a "spec" building), regional commercial/service (RV sales and service) and vacant land. No neighborhood commercial retail exists currently along that segment.
- The northwest boundary for the Suburban Neighborhood place type is shared with the adjacent Regional Commercial place type.
- 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:

The property owner is seeking rezoning from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) to accommodate the applicant's desire to market the property as commercial. This request is speculative in nature in that there are presently no plans for development.

The property owner, through his representative, is aware that upon development, all applicable regulations will need to be met including those requiring buffers/screens to adjoining properties that either have less intensive uses or zoning designations if vacant. The purpose of these buffers/screens is to help lessen potential development impacts between said uses.

To help facilitate this zone change request, staff required that the applicant carry out early notification to the surrounding neighborhood pursuant to code. To date, staff are not aware of any input received that would indicate opposition to this request.

LAND USE HISTORY:

The subject property is part of the Hacienda de Mesilla No. 6 subdivision, approved circa 2019. The property is undeveloped and is currently zoned primarily for larger lot (1-acre min.) residential development.

ZONING DECISION CRITERIA AND POLICIES

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

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
In large part, the area surrounding the subject property (west and south) consists primarily of low-density residential lots. In fact, Banmoor Estates, an approximately 20-acre subdivision, is the newest development approved in that area. Residential (RV park), office and commercial/service (RV sales and service) uses exist to the north. Zoning in this area is comprised of R-1a, R-1aC, R-4, C-3, and C-3C, A-2, RE-C. Given the development pattern described, there should be limited impact to the surrounding neighborhood in terms of use, development 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 parcel falls within the Suburban Neighborhood place type. This place type is characterized as providing for low-to-moderate density residential land uses intermixed with areas of commercial development.

The following goals, polices, 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.
    - Policy CE-1.2. – Promote investment within older areas of the city through redevelopment.
      - Action CE-1.2.3 - Partner with property owners of vacant land for infill opportunities.
    - Policy CE-2.1. – Promote infill development strategies to sustain the City's established neighborhoods and historic residential areas.
- Community Prosperity:
  - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
    - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
  - Goal CP-3: Entrepreneurship – Create a nurturing regulatory environment that generates entrepreneurship and small business investment.
- 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 proposed zoning for the subject property is congruous to the Suburban Neighborhood place type and is supported by various comprehensive goals and policies, staff feels the application is justified and should pose no significant conflict with the existing neighborhood.

COMPLIANCE WITH THOROUGHFARE PLAN:
Access to the subject property will come from Stern Drive. Stern Drive is an improved minor arterial roadway that provides adequate right-of-way (ROW) width, curb, gutter, sidewalks, and lighting. Please note that some infrastructure will be installed upon development of adjacent properties. Stern Drive has approximately 43 feet of paved width. Access to this portion of Stern Drive will primarily come from Avenida de Mesilla or Boutz Road which are principal and minor arterial roadways respectively. Collectively, these three roadways will provide all necessary access to the property irrespective of the use ultimately developed on site.

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.
D. Encourage mixed-land uses to decrease the length of trips for work and/or shopping and encourage the consolidation of trips and alternative modes of travel.
K. Encourage development of vacant properties within established areas.
L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
M. Foster a more rational relationship between different land uses for the mutual benefit of all.
N. Conserve the value of buildings and land.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed district will be in keeping with the surrounding area per section 38-2 of the 2001 Zoning Code, as amended.

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 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 recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate with a recommendation of approval.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently zoned EE. This zoning district allows for large lot residential development by right. Given the lot size of the parcel in question, only one lot can be developed pursuant to code, two if a variance to the one-acre lot size minimum is sought and approved. With the different land uses in the area, the EE district can be seen as providing a land use transition between the non-residential uses to the north and the low-density residential uses to the south and west. That said, the EE zone can also be seen as somewhat out of character to the surrounding area when considering the property's proximity to heavily travelled arterials in the vicinity.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

If the subject property is rezoned as proposed, the size of the lot and the road access allow development of future yet to be determined commercial to take place. All development would then follow the requirements of the C-3 zoning district.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water and gas is currently in proximity of the subject property and is accessible to the property owner. The available city utilities will not be negatively impacted by this zone change request and any of the proposed uses being considered.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has not received any input regarding the pending zone change action as of packet preparation.

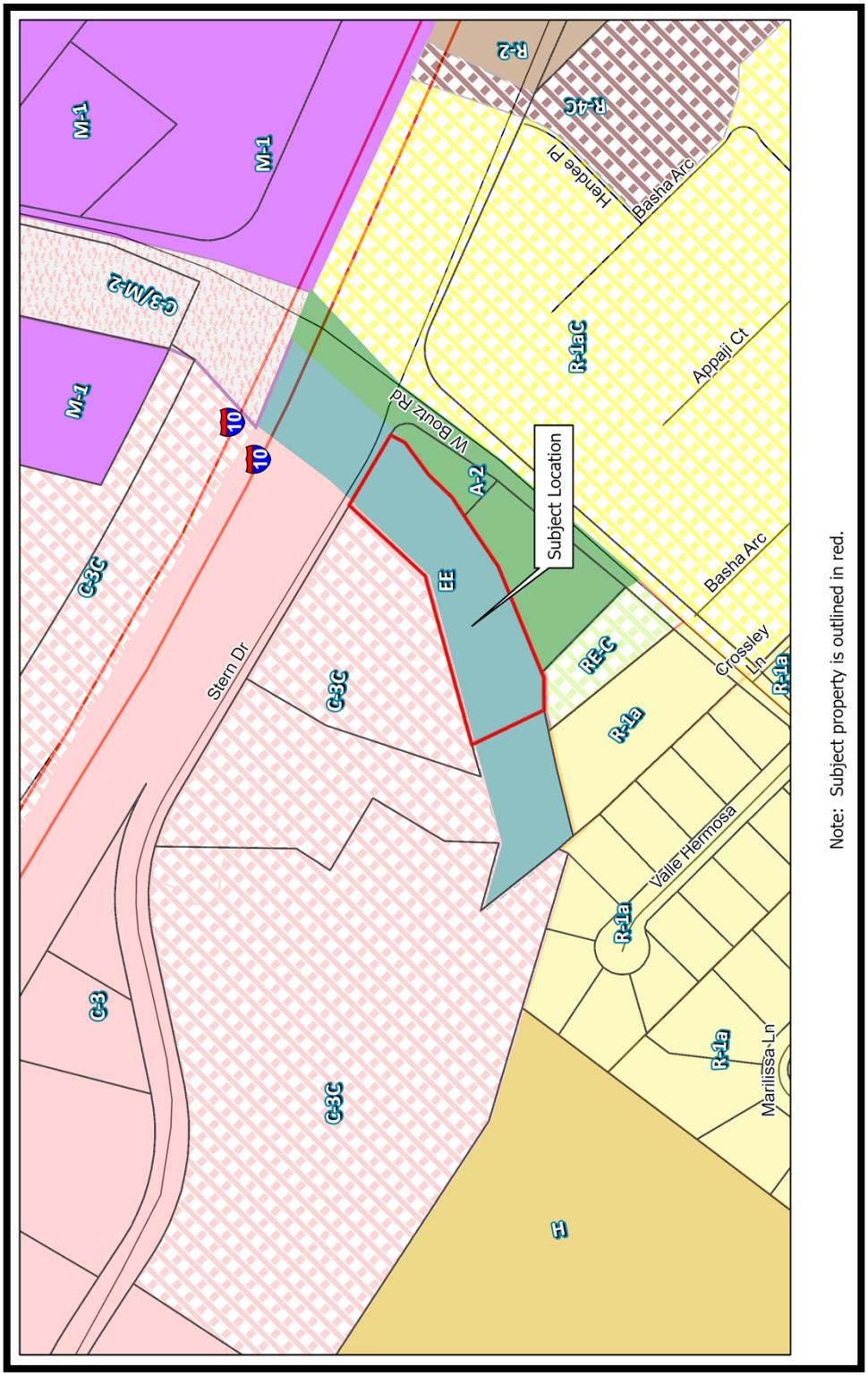
STAFF COMMENTS:

There were no reviewing department comments that would prohibit consideration of this request by the Planning and Zoning Commission.

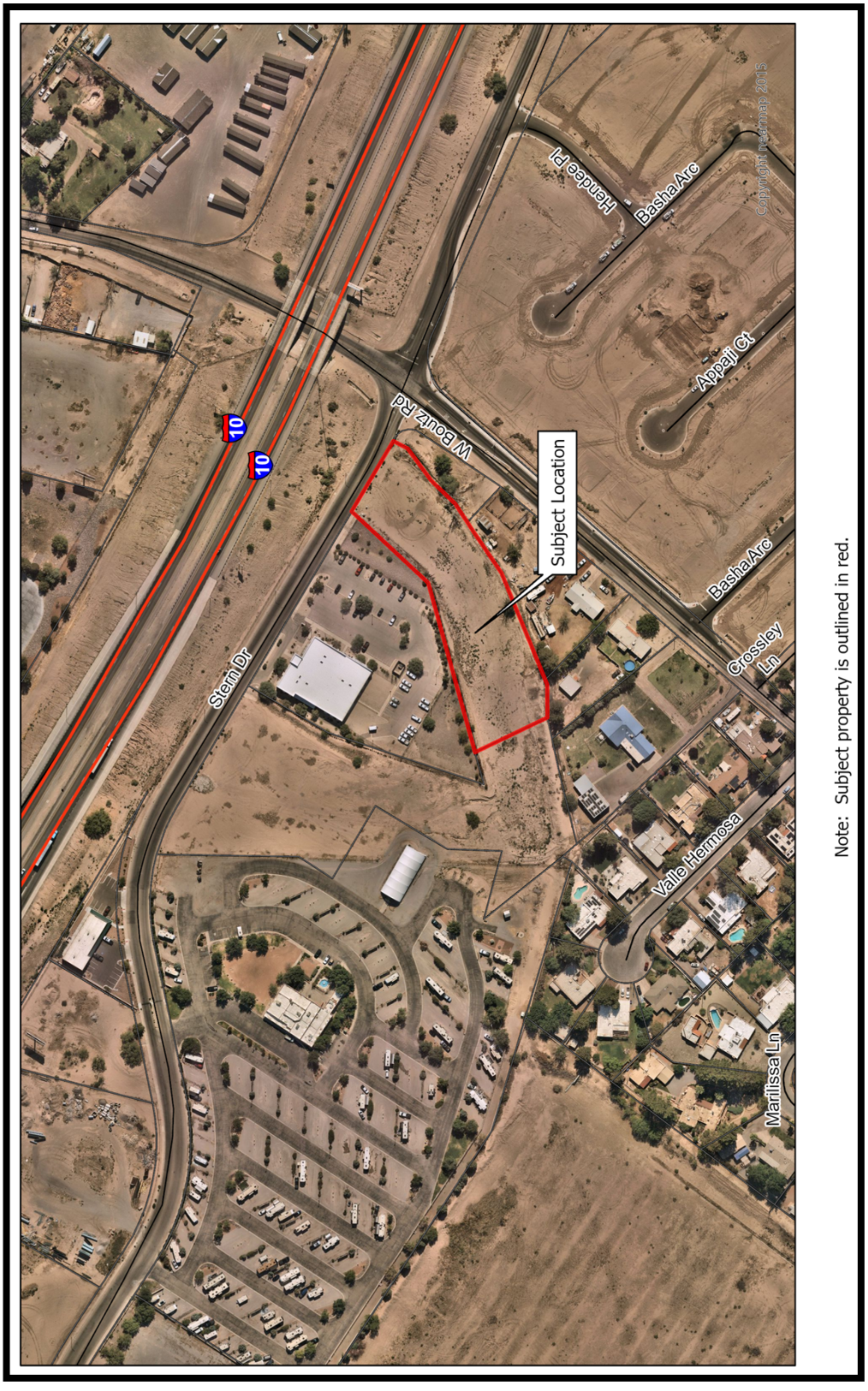
ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Department Review Comments

ATTACHMENT 1
Zoning Map



ATTACHMENT 2
Aerial Map



ATTACHMENT 3
Department Review Comments

Department: Planning

Status: APPROVED

Department: Transportation

Status: NOT REQUIRED.

Department: Engineering

Status: NOT REQUIRED

Recreation

Department: Utility

STATUS: APPROVED

Department: Fire

Status: APPROVED

Department: MPO

Status: NOT REQUIRED

Department: Flood Review

Status: APPROVED W/ CONTINGENCY

Department: Econ Dev

Status: NOT REQUIRED

3056; Council Bill 24-014

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☒ **1** ☐ **2** ☐ **3** ☐ **4** ☐ **5** ☐ **6** ☐ **N/A**		
1st Reading:	December 18, 2023	**Adopted:**	January 2, 2024
Drafter:	Vince Banegas	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **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.**

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 a zone change from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity) for property approximately ± 0.402 acres in size and located at 806 East Bowman Avenue within the South Mesquite Overlay (SMO) district. The property owners require the zone change in that a vast majority of the property is R-2 (small portion adjacent to the alley is C-2) and the R-2 district does not allow for the desired cottage industry and retail uses the applicants wish to establish on-site in addition to the residential component already in place. For clarity's sake, a cottage industry is defined within the 2001 Las Cruces Zoning Code, as amended as any manufacturing, compounding, and/or assembly process, including food preparation, which is subordinate to a primary use of retail sales or service. This use is not to be confused with or treated as a home occupation. The cottage industry in this case will involve the small-scale manufacturing of hand-crafted furniture products that will be sold on the premises. The retail sale of natural nutrition products and home goods will also take place on-site. All uses will follow the applicable provisions authorized in the C-2 zoning district within the SMO if this zone change request is approved. Additionally, the property will be required to meet all applicable access, parking, and landscaping requirements pursuant to code in that the proposed use represents a change in use for the property.

The proposed zone change is consistent with the Elevate Las Cruces Comprehensive Plan and several goals, policies and actions contained therein. Policy supporting the request speaks in part to encourage the reuse of vacant/underutilized property, promoting investment in older areas of the city, and promoting infill opportunities to sustain established neighborhoods and historic residential areas. The property is within the Urban Neighborhood place type which encourages a variety of housing styles in medium to high densities with low-to-

moderate density residential land uses intermixed with areas of commercial development. The proposed use is consistent with the intent of the Urban Neighborhood place type.

Per the requirements of the zoning code, the proposed zone change required a recommendation consideration by the Historic Preservation Commission (HPC) to the Planning and Zoning Commission (P&Z). On September 21, 2023, staff received a letter of support for the request by the HPC which was shared with P&Z.

On September 26, 2023, this case was heard by P&Z at their regular meeting with an approval recommendation on consent by a vote of 6-0-0 (one Commissioner absent). It should be noted that prior to the P&Z meeting, the applicant carried out early notification pursuant to Code and neither the applicant, nor staff received any input regarding the request.

SUPPORT INFORMATION:

EXHIBIT "A" - Vicinity Map
EXHIBIT "B" - Findings
ATTACHMENT "A" - Approved 9.26.23 P&Z Minutes
ATTACHMENT "B" - Staff Report

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Historic Preservation, 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. The subject property located at 806 E. Bowman Avenue will be rezoned from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity).
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 require the property owner to seek an alternative zoning designation for their purposes.
3. Vote to "Amend"; this would allow the City Council to modify the Ordinance by adding conditions as deemed appropriate.
4. Vote to "Table"; this would allow the City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3056; COUNCIL BILL 24-014

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.

The City Council is informed that:

WHEREAS, Nicole E. and Philip Ehrgott, property owners, have submitted a request for a zone change from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity); and

WHEREAS, the subject property is approximately 0.402 acres in size, developed, and requires the requested zone change in order to facilitate the development vision the owners have put forth; and

WHEREAS, the proposed C-2 (Commercial Medium Intensity) zone change is consistent with the Urban Neighborhood place type per the Elevate Las Cruces Comprehensive Plan and is supported by various goals, policies, and actions contained therein; and

WHEREAS, the proposed zone change meets 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 September 26, 2023, recommended via the consent agenda, that the zone change request be approved by a vote of 6-0-0 (one Commissioner absent).

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 C-2 (Commercial Medium Intensity).

(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)

THATCity 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:

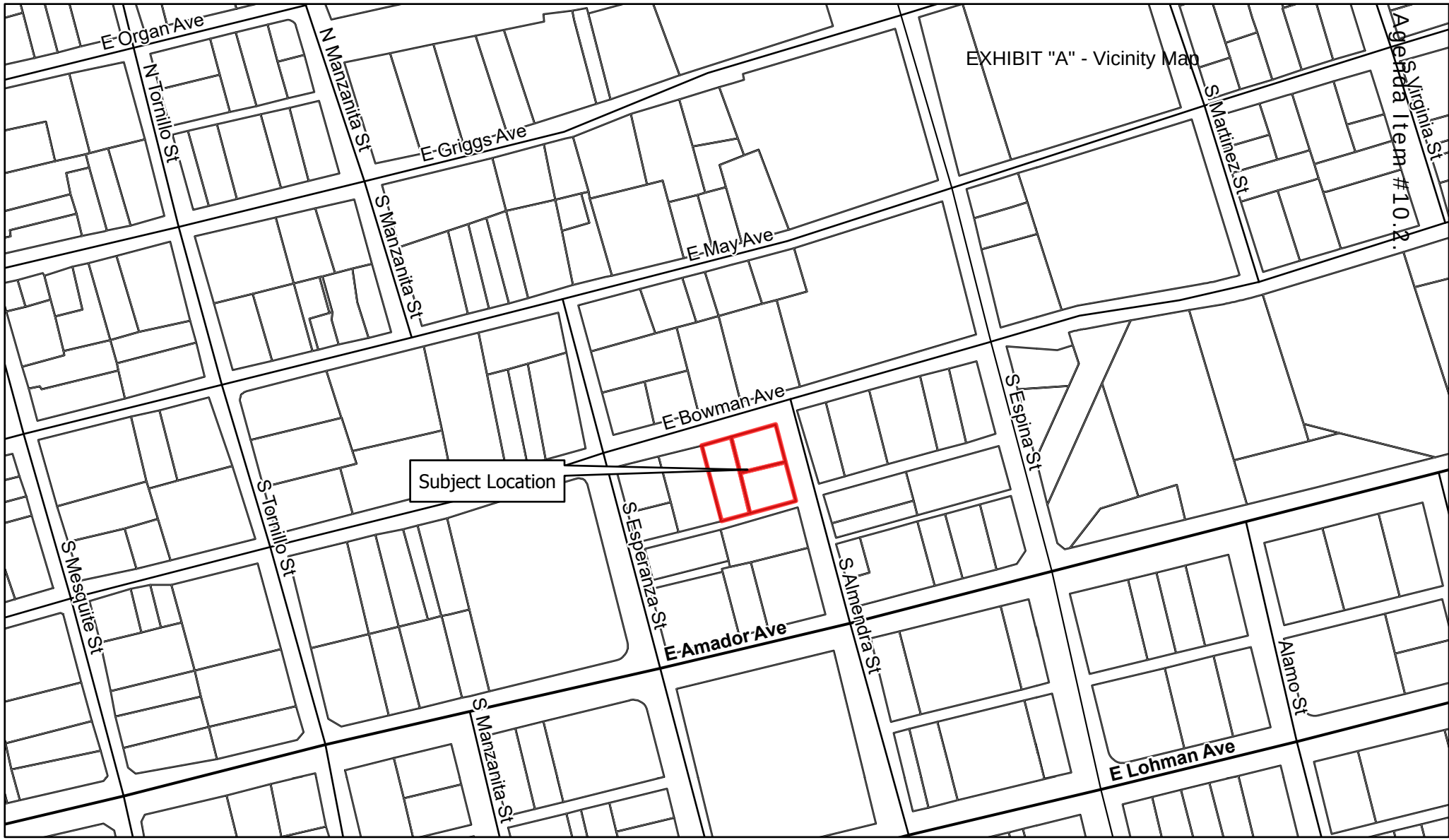
_____

Moved by:

Seconded by:

AYES

NAYS



Note: Subject property is outlined in red.

Legend

- parcel
- RoadCenterline
- Road Class
  - Major Arterial
  - Collector
  - Local Streets
- DAC_Parcel
- Heather Hills Zoning

N W E S

0 0.01 0.03 0.06 0.09 0.12 Miles

Exhibit "B" – Findings

- The property under consideration is within the South Mesquite Overlay District (SMO).
- This overlay establishes land use and architectural/site design criteria which will be met by the property owners when preparing the subject property for commercial/residential use.
- Previously, the property was used as a residence, office, and contractor's yard in what staff believes was a violation of the 2001 Las Cruces Zoning Code, as amended. The intended use via this request seeks to remedy compliance issues.
- The Historic Preservation Commission (HPC) Chair, on behalf of the HPC, has provided a letter of support for the request as presented. Said letter will be provided during staff presentation in that preparation of the letter followed compilation of this report.
- The property owners wish to reside and establish commercial retail and a cottage

industry uses on the premises all of which is consistent with the C-2 zoning district and its application within the SMO.

- The subject property falls within the Urban Neighborhood Place Type. This classification is characterized by a variety of residential housing types at medium to high densities and areas of supporting neighborhood commercial development. The classification is consistent with what the C-2 (SMO) provides and what the property owners seek to accomplish.
- 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).
- The surrounding area immediately north, east, and west is primarily residential in use and zoned R-2 (SMO). Areas south of the subject property are residential and commercial within a C-2 zone (SMO).

CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
September 26, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Vanessa Vega, Member
Joaquin Acosta, Member
Connor Murray, Member

BOARD MEMBERS ABSENT:

Vanessa Porter, Member

STAFF PRESENT:

Tim Pitts, Deputy Director Building Development
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Vincent Banegas, Interim Planner
Brad Douglas, Deputy City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening. It is 6:00 p.m. on September 26th and we will go ahead and call this meeting to order. It is the City of Las Cruces Planning and Zoning Commission meeting. Before we get started, we've got a couple of housekeeping items tonight. The first is I've been informed that I believe that big screen up there is out of order but we do have this smaller screen on either side of me so if you do want to move up or feel like you need to move up to be able to see the presentations tonight, I encourage you to do so.

The second item is I want to extend my thanks and gratitude to Commissioner Smith for covering last month while I was out. First month as Vice Chair and threw you into the deep end, and so I appreciate you covering for me and really did a great job. So thank you.

And then finally, if the rumors are true this is Commissioner Vega's final meeting with us here on the Commission. I speak for myself but certainly colleagues of up here, it's been a pleasure working with you the last year-

plus for myself, and certainly longer for others. And we wish you all the best and hope to see you around town.

Vega: You will, on my bike.

Kaiser: Sounds great. All right.

2. CONFLICT OF INTEREST

Kaiser: So with that we will go ahead. Are there any conflicts of interest from the Commission tonight? All right. Seeing none.

3. APPROVAL OF MINUTES – July 25, 2023

Kaiser: We'll go to the approval of minutes. Before we do that were there any corrections or edits that folks would like to make? I just have a couple just to clarify on the attendance. It should be Commissioner Bennett listed as the Secretary and Commissioner Smith listed as the Vice-Chair. So we can make those corrections and then looking for a motion to approve.

Bennett: I make a motion to approve the minutes.

Smith: I second.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: I abstain. I was not here.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: I abstain as I was absent.

Baum: Thank you. Passes.

4. POSTPONEMENTS

Kaiser: All right. Moving onto the acceptance of the agenda, or I actually should clarify there are no postponements tonight; is that correct?

Ochoa: Nothing tonight, sir. No.

5. ACCEPTANCE OF THE AGENDA

Kaiser: So go ahead and looking for a motion approve tonight's agenda?

Ochoa: I make a motion to approve tonight's agenda.

Murray: I second.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

6. PUBLIC PARTICIPATION

Kaiser: All right. Moving onto public participation. Is there anybody in the audience who wishes to speak on an item that is not on tonight's agenda? Please raise your hand. Okay. Seeing none.

7. CONSENT AGENDA

Kaiser: We will move onto the consent agenda in which we have three, yes, three items on the consent agenda. Can I get a motion to approve tonight's consent agenda?

Vega: I make a motion to approve the consent agenda.

Smith: I second.

Baum: Board Member Acosta.

Acosta: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

8. OLD BUSINESS

Kaiser: Okay. Moving on. We do not have any old business tonight.

9. NEW BUSINESS

9.1 Case No. 22ZO0500085: A zone change request from R-4 (Multi-Dwelling High Density and Limited Retail and Office) to C-3 (Commercial High Intensity) for a property located at 3250 Northrise Drive and encompassing 2.5 acres in size. Submitted by Mark Heck, property owner. Council District 6.

Kaiser: So we'll move onto new business and begin with item 9.1, A zone change request from R-4 to C-3 located at 3250 Northrise Drive. Staff, please take it away.

Banegas: Good evening, Commissioners. Vincent Banegas, Interim Planner for the record, presenting tonight's case involving 3250 Northrise Drive. It is a zone change request seeking zone change from R-4 to C-3. It is Case 22ZO0500085.

Current conditions on the case at hand, the zoning is R-4 which is our multi dwelling, high density and limited retail and office zone. Limited retail and office in the sense that there are perhaps more office uses than retail and retail home occupation that type of thing is allowed. But otherwise, it's well suited for the multi dwelling component of our land use spectrum. It is roughly 2.5 acres in size and it was rezoned from A-2 to R-4 back in 2014.

The property is currently vacant and from a grading or elevation perspective it does sit lower than some of the properties around it. In fact to that end, there's some fill dirt being requested to help elevate the site so that it is more developable, easier to develop in that regard.

It is one of several of 2.5 acre lots that were annexed back in the day with the East Mesa U.S. 70 annexation that took place in 1986. The A-2 zone was used quite extensively during that time. And for many of these parcels as a placeholder, if you will, in that future consideration, future development was going to be thought through and then a rezoning would be brought forth at that time. So there's still several that are A-2 in nature and that's what prompted the rezoning back in 2014 for this particular parcel.

Many of the properties in question around the subject property and including the subject property were platted with access easements serving as a legal method to gain access to the property. But from a broader perspective doesn't provide any great surety in completing or providing for a suitable road network further south of Northrise.

The property in question has approximately 35 feet of Northrise Drive frontage, barely enough to comply with the ingress/egress requirements of the code or design standards. The transportation issue going back to that because there is a general lack of roadway system south of Northrise, a

blueprint to address those type of issues is currently underway. In fact, the City has hired a consultant to aid in that effort and they are holding a meeting I believe tomorrow if I'm not mistaken. And the expected completion date is approximately four months from now, so end of year.

The property currently sits in the suburban neighborhood place type and as we now know that supports low to moderate residential densities and allows pockets of commercial development. The property is directly south and west of the regional commercial neighborhood place type. In fact, the majority of that place type sits north of Northrise Drive and then does wrap around on the southwest corner of Rinconada Boulevard and Northrise.

The current R-4 zoning helps address some of the housing related issues that we are well aware of through the planning efforts of late. Specifically, the missing middle housing that we are trying to fill the gap for, and also housing affordability. So those are a couple of the housing related issues that play a role in this current request.

The surrounding neighborhood is multifamily residential both west and southwest, office and commercia, north, northeast and east and southeast, and vacant to the south of the subject property. The supporting zoning for those uses is an alphabet soup, as you can see there's PUD, R-4, EE, A-2, and so on. There's no immediate plans to develop the property. Certainly, none that were mentioned to staff.

So here's a zoning map that shows the location of the subject parcel here. Northrise Drive sits here. And the property as shown is currently R-4. You do have EE which is our equestrian estates and agriculture zoning district allowing up to one dwelling unit on a minimum of a one-acre lot size. The other A-2 zone parcels kind of speak to that zoning effort back in the '80s and based on what I know from the efforts back then those are the placeholders.

You do have some plethora of other uses up in here. Some vacant, some are developing right now but you have some office and commercial uses further west of the property along Roadrunner. And of course, you do have significant commercial uses beginning further east of the property along Northrise out towards Rinconada with Walmart, etc., taking place in that region.

The aerial view of the subject property. You do have this area here which is not currently serviced, that's the area that is being referenced when I speak of lack of road network. Connectivity for any roadway from Northrise down to Calle Jitas intersection with Sonoma Ranch for instance once you get past that it's kind of no man's land. There is the school further south of subject property, an arroyo that separates some of the land in question.

A lot of these parcels, these 2.5-acre parcels are individually owned and some have a grouping in terms of ownership. We refer to one as the tetras parcel which has a shape of a tetra's game piece and has multiple 2.5-acre lots assembled under a single ownership.

So the proposal given is R-4 to C-3 speculative in nature. Speculative in the sense that that's a necessary step to get to market the property and ultimately develop the property. Staff is aware of that but the applicant has indicated that there's a need to change the zoning to commercial to help offset some of the costs that are associated with grading and making the parcel marketable and developable.

This is a plat showing the parcel in question. It's a little hard to read but you see that small amount of frontage right along Northrise Drive which runs at this location here. And you do see some of the easements, road easement, in this case it looks to be a 33-foot road and utility easement here. A lot of those parcels have very similar easements identified.

Some of the photos taken out on site. Here's the sign that's seeking clean fill to help elevate the parcel. There is a fairly significant drop depending where you stand from the top of surface here adjacent to Northrise Drive on down to the subject parcel. Another shot. And then looking at either direction both west and east along Northrise Drive and that's what these photos represent. A lot of vacant land or underdeveloped land.

So in terms of analysis, there's no health, safety, or welfare issues that are identified by staff through the review process. However, we do consider the fact that the proposed zoning maybe compatible to some of the properties east of the subject location. What I'm referring to are some of the commercial properties there but again the regional commercial place type that starts looping down along Rinconada lends credence to that compatibility.

Staff feels that allowing further intrusion, if you will, of the regional commercial or commercial uses I should say in an area that's already identified as a suburban place type kind of minimizes the importance of that suburban placed type and may provide added pressure for additional property owners to seek rezoning to a commercial designation. So staff feels that the areas north of Northrise Drive and east, south at the southwest corner of Rinconada and Northrise Drive already allow commercial and so limiting commercial to those areas is prudent.

So the property is within that suburban place type. We do encourage a variety of residential development at low to moderate densities with areas of commercial as we have identified in previous cases. I've also stipulated

that the deficient road network is a concern and the planning effort underway at the present time will hopefully shed some light on how we can handle that for future development.

The proposed zoning that is being requested in terms of the C-3 does allow residential densities. I don't want to lead you to believe that it will not. It does allow a minimum of 10 dwelling units per acre and up to 40 dwellings units per acre as well. So that can be done. The question is will it be done or will we see additional commercial development? Again, based on the grading issues and the information provide, staff would suspect that commercial would probably be a likely development scenario for that lot.

In terms of public notice and input, notice was sent in accordance with the 2001 Zoning Code as amended. And we really did not receive any feedback from property ownership within the 500 feet of the subject property.

Staff recommendation and findings. This is going to be a little different than most cases that you hear. Staff is recommending denial based on the following findings. Property south of the subject property do not have adequate road network to service those properties. Many of the properties are platted with access easements which provide legal access but no surety of developing right-of-way and efficient connectivity.

The CLC consultant is currently studying developing the blueprint in an area concentrating on transportation issues and needs. And that hasn't come to fruition yet so we feel rezoning is a little premature at this point given that. The property is in the suburban neighborhood place type. Again, low to moderate residential densities with supporting commercial.

The regional commercial place type primarily takes place north of Northrise Drive, directly north of the subject property wrapping around to Rinconada and Northrise. And so commercial areas and opportunities for development already exist. The further introduction of commercial in this suburban neighborhood place type kind of minimizes its purpose, that's kind of how we feel. There's an ongoing need for apartments which the R-4 can satisfy addressing the missing middle and housing affordability.

And so, we feel that the proposal is not substantially supported by Elevate Las Cruces Comprehensive Plan in that it doesn't meet the purpose and intent of the 2001 Las Cruces Zoning Code. The subject property is surrounded largely by commercial, office, multifamily, and vacant property, and zoned a variety of zoning designations. So a little different here in terms of options. Staff would recommend you vote in affirmative like you would any other case. But in this case if you vote yes, you're voting to approve the zone change to C-3 in which case the findings that I've already identified in the presentation you need to know do not support the request so you'd

have to identify findings of fact that are different from those I've just presented. If you vote no, then you deny the request and you can also vote yes amend with conditions, or you vote to table. And that concludes that presentations. And I stand for question. And I know the property owner's in attendance might want to say a few words regarding his request.

Kaiser: All right. Well, before we come to the Commission, would the applicant, property owner wish to make a presentation or provide statements? Before you start can you state your name for the record so I can swear you in?

Heck: Full name is John Mark Heck.

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

Heck: Yes.

Kaiser: Okay. Please go ahead, sir.

Heck: Good afternoon. Good evening. He failed to mention that that is a massive sewer line across the, what I would call the southwest portion of the property. It's already in existence. It's probably an 18-inch sewer line. It serves Walmart and all the commercial area on upstream.

There's also an easement on what I would call the northeast side which is a utility easement with an existing powerline. It's the only property in that entire area that fronts Northrise. And it's also one of the deepest points along Northrise elevation and topographical, so it needs to be filled in, and you're talking approximately 35 to 40 feet of fill on 2.5 acres, that is a considerable amount of fill. That's going to be incredibly expensive in most cases.

Also, he did not mention that there is an existing arroyo that often flows that goes around what I would call the west point of the property. That's going to have to be addressed. I do not think that residential property can be built on that area that would overcome those expenses that's why we need to go commercial in that property. And I do have a prospective restaurant that has looked at it and were thinking about it, but we don't know what the zoning is going to be and we don't know whether they would qualify or not.

It seems like that's all I can think of that needs to be addressed. Other than there's nothing but commercial property on both sides of it except for the south portion and across the road it's all commercial in that area. I don't understand why it has to be residential when you have so much other property there and when they address the access needs that that could not be developed more efficiently and at a lower cost. Thank you.

Kaiser: Thank you. All right. Coming to the Commission, are there any questions or comments?

Acosta: I've got one. So looking at the, a statement you said Vincent about it being perhaps too premature. In terms of the steps that would need to be making it appropriate for rezoning could you clarify that for me?

Banegas: Certainly. Mr. Chairman, Commissioner Acosta. The statement of being premature is referring to the planning effort for the blueprint in terms of identifying how to provide for transportation networks, road networks in that southern area. It could be that as Mr. Heck indicated that the property in question that has perhaps the only access at least for some of those A-2 zoned and EE zoned parcels that's the only one that has the frontage could be impacted in some form or fashion in terms of the provision for access.

So we don't know what's going to come from the planning effort. We truly don't. We would like to wait and see and see what they come up with policy wise, idea wise in terms of road network.

Acosta: And so just to clarify that, it comes from the City of Las Cruces before a property owner could do what he needs to do as far as developing that? Or can property owner, or if he sells it somebody come in there and do the blueprints or propositions?

Banegas: The City of Las Cruces in working with the consultant have made contact to the various property owners in the vicinity trying to assemble them, trying to setup a meeting. In fact, that meeting as I recall talking with Sara about, will take place tomorrow. And so the purpose is to convey what is being proposed and start assembling some of the ideas and the thoughts of those property owners in terms of making this a reality, making the road network a reality for this region.

Acosta: Okay. Thank you.

Kaiser: Yes. Go ahead, Commissioner Smith.

Smith: I have a question or concern. I did a site on this area and it is highly commercial and now looking at the zoning map, seeing that this one parcel that's zoned residential. What is the likelihood that that area would be developed for residential? I know of course the property owner would have to sell it and then someone would have to purchase it and decide to build residences there but what is that likelihood because of the highly commercial and the fact that it's zoned EE and also A-2 that that would happen sooner than say zoning it for commercial and having another business there?

Banegas: Mr. Chairman, Commissioner Smith. That's a difficult question and the only thing I can point to is some areas that have previously undergone master planning that have identified multifamily as a use on property as part of the master plan. Staff has received in the past immense pressure to convert those parcels that were identified as multifamily over to a commercial designation from a use perspective and then change the zoning to support that. Staff has resisted that in the past and it took a while but we finally got apartments exactly where the master plan intended them to be. And this was an area along Sonoma Ranch.

In this case, it's likely. I can't indicate that some of these areas that are south of the subject property will not ever be multifamily in nature. Keep in mind that the suburban neighborhood place type encourages residential with pockets of commercial. So commercial isn't outright banned. It's allowed but we want to see, from our perspective residential is often, especially multifamily is often the stepchild of master plans. Those tend to come last.

Smith: All right. Thank you.

Kaiser: I just want to go back to Commissioner Acosta's question. So as it stands right now R-4 is the current zoning. So if they wanted to move ahead with a residential project is it staff's position that at this time due to the circulation constraint concerns that it would also be premature to develop that type of project now as well?

Banegas: Mr. Chairman. Based on the fact that the existing zoning is in place, staff would encourage them to hold on but we wouldn't restrict them from proceeding with development plans.

Kaiser: Okay. Thank you. And if you could go back to the slide that showed the easement.

Banegas: If I could find it. Let's see. There.

Kaiser: That one, yes. So if I'm reading this correctly, the easements I guess would be the eastern edge of the parcel, correct?

Banegas: That's correct.

Kaiser: So I'm just trying to think because that would be if they were to develop say a residential project right now. Would that presumably be the access point? I mean because they would have access, I'm assuming through that easement back to Northrise.

Banegas: Mr. Chairman, Commissioners. You might also reference this little detail. Based on that detail, I'd have to assume that their intent for primary access to this property will be right at that frontage. The detail kind of illustrates a driveway detail that is being at least proposed per this plat. I don't know if that's going to change in terms of their development proposal, they would ultimately submit but.

Kaiser: Okay. Thank you. Yes. This seems like a headache to be honest given the lack of circulation there. I do want to kind of touch on the point that Commissioner Smith kind of alluded to. And part of my concern is that, and staff I think you've made this point in your presentation that we only ever see these zone changes from residential to commercial on our multifamily parcels. And I'm really concerned about that because we don't have a lot of that to begin with. And every single time we do these, one instance. It's always one instance. Well soon we're at 1,000 instances and we've lost a tremendous amount of opportunity to develop multifamily and the missing middle types of housing that the comprehensive plan is wanting to see.

We never see the opposite. We never see commercial being proposed to be rezoned for multifamily residential, and we sure as heck do not see single-family being rezoned either to commercial or multifamily. So I am very concerned that by us giving this away it's another two acres. I mean back in July I think we had another zone change off of multifamily residential to commercial in urban core. It's just another example of this maybe one, 2.5-acre parcel but you do that 25 times, 30 times, 40 times suddenly we're left with nothing else.

And so, I'm just very concerned. I'm also concerned that I mean I think you've got to do some sort of master plan here. It sounds like the blueprint may address some of it but I just think there's got to be some bigger vision aside from just one, 2.5-acre parcels. So that's just my perspective there. Any other questions or comments from, yes, Commissioner Smith?

Smith: Would you once again just clarify how we're to vote on this proposal?

Banegas: Yes.

Smith: Thank you.

Banegas: If I could before I leave this slide, Mr. Chairman, Commissioner Smith. I just wanted to point out that this EE is the tetras piece that I mentioned. They're knocking. Okay, they've already come and they're aware of the planning effort but they're holding off until that goes through. Okay..

So going back to Commissioner Smith's question. The report that you've read and my presentation are recommending denial. Staff would like for

you to vote. Make a motion in the affirmative and if you do so the findings that I presented are based on a denial position. So you'd have to come up with findings of fact that would support approval. Now, I do have some standard ones that are in our com plan that could support that if you feel it's warranted. But otherwise, if you vote no, you're siding with the packet, you're siding with this presentation and you're denying the request. Okay. Is that clear, because it is a little convoluted.

So if you want to approve it, these are some of the elements in our comprehensive plan that speak to commercial development growth, development of not necessarily older areas but vacant areas infill development generating employment opportunities. Those are some of the ones that we've used in the past. So I offer them up but staff recommends denial.

Kaiser: Okay. I'm going to go to the public now. Are there anyone in the audience who wishes to speak on this item? Please raise your hand. All right. Seeing none. We'll come back to the Commission. Any final questions or comments? All right. Looking for a motion to approve.

Bennett: I make a motion to approve 9.1.

Vega: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on some of the findings that he had given us there, balanced growth I would say, and I think infill development as well would support my vote.

Baum: Board Member Smith.

Smith: I vote no based on staff recommendation. I feel that this needs to be more of a master plan for this entire zoning area.

Baum: Board Member Vega.

Vega: I vote no based on staff recommendation.

Baum: Board Member Bennett.

Bennett: I vote no based on staff recommendation.

Baum: Board Member Murray.

Murray: No based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion fails.

9.2 Case No. 23ZO0500006: A zone change request from EE (Single-Family Equestrian Estate and Agriculture) to C-3 (Commercial High Intensity) for one parcel located at 780 Stern Drive and encompassing 1.78 acres in size. Submitted by Ted Scanlon, Borderland Engineers and Surveyors on behalf of Michael Clute, Hacienda RV LLC. Council District 4.

Kaiser: Okay, moving onto item 9.2. This is a zone change request from EE to C-3 located at 780 Stern Drive and I'll turn it over to staff.

Banegas: Once again, Mr. Chairman, Commissioners. Vincent Banegas for the record, Interim Planner presenting tonight's case involving 780 Stern Drive. The property is currently zoned EE and they are seeking the designation to C-3. And you may draw some I guess the proper term would be corollaries from what we just heard to this case. And if you have any questions, I think I can answer them as to why one is denial and this one is approval.

But this case has the following current conditions. It's located along Stern Road between Boutz Road to the south and the Avenida de Mesilla to the north. It's 1.78-acre parcel and it's our equestrian estate and agricultural district. Again, allowing one dwelling unit for a minimum of one acre lot size. It's within the suburban neighborhood place type per the Elevate Las Cruces Comprehensive Plan and immediately adjacent on the north side of this property is our commercial place type, literally just due north.

The applicant's request in this case at least early discussions with them are speculative in nature. But like the last case, we do recognize it's a necessary step in the marketing, sale, and development of property. The existing EE as indicated can be developed residentially, in fact that's what it calls for. But given the minimum lot sizes, you're going to see one lot based on the current acreage of this property developed unless they were to seek a variance to allow additional homes on the property.

The area has limited commercial office uses that exist between Avenida de Mesilla and Boutz. The commercial uses are largely coming from the RV sales right off of Avenida de Mesilla. Office uses, you have the Department of Agriculture not too far from this subject property. And you do have other I think it's a spec building on the east side of Stern. I didn't see any signs and couldn't come up with a specific use but it looks to be a spec building at this point in time, perhaps also for an office.

Stern Drive and Avenida de Mesilla are both minor arterials. Boutz Road is a major collector. So you have adequate road infrastructure in this case to support the commercial zoning that is immediately northwest of the subject property. In fact, the zoning here is C-3C and you have additional C-3 not too far off of Stern.

Now, in here you have what some of you may recall Banmore Estates, a residential subdivision that was approved by you all, single-family detached homes. You have an existing neighborhood in here. All this is R-1aC in terms of zoning. Some of the existing older properties in the area, you have fairly large R-1a tract here. I think some of that was used for agricultural purposes as well. You have an A-2 sliver right up against Boutz Road and right along the south boundary of the EE existing parcel in question. So you do have much of that is underutilized property at the present time. So again, even though you have C-3 zoning a lot of that is office and/or service related.

Here is an aerial view of the subject property. You can see Banmore Estates is well on its way. The Department of Ag building, RV park which is residential in nature but nonetheless an RV park, RV sales further down the road there. This is that spec building that I couldn't identify as to what it is.

Staff is of the understanding that U-Haul seeks to develop here on this portion, this lot. To my knowledge, we haven't seen any plans submitted yet but that's what we hear is coming. So the proposal is to rezone to C-3. Again, staff has not been informed of any specific development proposal for this lot in question. The staff feels that this proposed zoning is in accordance with Elevate Las Cruces. The early notification efforts that staff requested of the applicant's representative were undertaken and to the best of my knowledge staff did not receive any input from the neighborhood as a result of that effort. And as I recall the representative indicated they had received none as well.

A couple of photos. This was right off of Stern looking west. A vacant property right now. This is part of that A-2 strip on the south side of the property line. You can kind of tell what's going on there. Looking down Stern Drive due north, the Department of Ag building. And looking south there's Banmore Estates going in right here, right at the corner of Boutz and Stern.

So staff did not identify any health, safety, or welfare issues related to this proposal. We do find that the zoning district that is being proposed provides some compatibility with existing uses in the surrounding neighborhood. It is within the suburban place type and would offer the commercial

component that is allowed as per the suburban place type, and as such it is found to be consistent with Elevate.

As we know it's low to moderate density residential development with intermixed commercial uses. There are some buffers that will have to be maintained if this property goes to a C-3 designation and those are anywhere adjacent to lower density or less intense parcels. For instance, those residential parcels on the southside. So regardless of the zone change if it goes through that is an element of protection that can be maintained pursuant to code for those residential single-family or lesser zoned properties.

Public input notice was carried out as indicated. Early notification efforts were conducted. Staff's efforts, we sent out letters pursuant to code. We did not receive any inquiry as of this meeting date. So staff's recommendation and finding is approval based on the following findings. The property is 1.78 acres in size and has limited development potential for providing a significant buffer, if you will, between the regional commercial place type and the suburban place type. So since it's immediately adjacent, we felt that impacts would be rather limited.

The applicant has no imminent plans for development. And if approved the supporting road network, Stern Drive, etc., Boutz Road and Avenida de Mesilla could easily provide for access to the property. And we all know suburban supports that. Several goals, policies, and actions from Elevate are identified for support of the proposed request as well as the 2001 Las Cruces Zoning Code in terms of its purpose and intent.

And your options this evening with this one is to vote "yes" and approve, vote "no" and deny, in which case you'd have to come up with your own findings of fact, you could vote "yes" with conditions, or vote to table. And that concludes staff's that presentation. And I believe the owner and/or representative are in attendance if they'd like to speak to their case.

Kaiser: All right. Thank you very much. Would the owner/applicant wish to speak before we turn this over for Q&A? If you could just state your name for the record.

Scanlon: My name is Ted Scanlon. Address 2990 North Main Street.

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

Scanlon: I do.

Kaiser: Go ahead.

Scanlon: Okay. I don't have a whole lot to add to Vince's very concise and thorough presentation here but it was -- one thing I wanted to bring up is the fact that we subdivided this property and created that lot to go back a certain distance from Stern Drive and leave a big buffer for ponding area and landscaping adjacent to the existing houses along there. And we're only asking for rezoning on that lot that was created and not on the area that's adjacent to the existing residential development. That will stay undeveloped with no buildings or anything on it for certain.

I believe the property was originally zoned equestrian estates because there's a gentleman that owns a property right on Boutz Road. His name is Ken Mills and he kept horses back there. And he would graze those horses on our property. And for the record, I'm one of the owners of this property besides being the applicant and the representative. But we allowed him to graze horses back there forever.

But now, we've sold the RV park. We've sold the parcel to U-Haul. We sold the parcel to USDA and this is the last piece of property on that area that we still own that we need to dispose of, to sell and have developed as a commercial site. I don't know if I have anything more to add to that or not, but I would appreciate an affirmative vote. Thank you.

Kaiser: Thank you very much. All right. Any questions or comments from the Commission? All right. Seeing none. We'll turn to the public now. Is there anybody in the audience who wishes to speak on this item? Please raise your hand. All right. Seeing none. We'll come back to the Commission and looking for a motion.

Vega: I'll make a motion to approve item 9.2.

Murray: I'll second.

Baum: Board Member Acosta.

Acosta: I vote yes based on staff recommendation.

Baum: Board Member Smith.

Smith: I'll vote yes based on site visit and staff recommendation.

Baum: Board Member Vega.

Vega: I vote yes based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation. This meets the neighborhood character and compatibility Elevate Las Cruces and purpose and intent of the code.

Baum: Board Member Murray.

Murray: I vote yes based on staff recommendation.

Baum: Chair Kaiser.

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

Baum: Motion passes.

9.3 Case No. 23VO0500101: A variance request to deviate twenty-four (24) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4093 Winters Street. The property is approximately 0.12 + acres in size and zoned R-1bC (Single-Family High Density- Conditional). Submitted by Catherine Silva, property owner. Council District 1.

Kaiser: Okay, moving onto item 9.3. This is a variance request to deviate from the front yard setback at 4093 Winters Street. Staff, all yours.

Gonzales: Good evening, Commission. Sara Gonzales, Senior Planner, City of Las Cruces. This is for a variance request for 4093 Winters Street. Currently, the property is about 649 feet north of its intersection with Holly Drive and Winters Street. It is approximately 0.12 acres in size. The property was rezoned to R-1bC back in 2006, which is single-family high density conditional. At that time, there was six acres left and the developer wanted to reduce the lot sizes in order to fit in 35 more single-family homes.

As stated, this does have a single-family residence on the property. Here's an aerial map of the subject property. These are the properties that went into essentially a higher density as opposed to the surrounding neighbors. They are probably about a third to half an acre in size and then we move into a mobile home park that's located on the west side.

Here's a zoning map of the surrounding area. As you can see, it is primarily single-family residential. We do have a few nodes of multifamily on the south side. However, those are also developed with single-family residences.

Per chapter 38 of the 2001 Zoning Code, setbacks for an R-1b zoning designation for a garage or carport is to be at 25 feet. The applicant is seeking to retain the carport addition to the existing dwelling that was placed in the front yard of the property. The variance would allow the applicant to maintain a one-foot setback from the property line. Here's a site plan of the property. As you can see within this area, this designation here shows that this is 25 feet back already originally for the original garage. So with that, with the 25 foot setback, you essentially take up that entire space covered with a carport structure leaving one foot. One of the concerns, and I'm only bringing it up now and I'll reiterate it later is that there is a 12-foot utility easement that runs along the front of the property. Structures, buildings are not permitted to be within those utility easements as you have line connections, El Paso Electric. Anything that has to be done there would have to be modified. So as part of our recommendation, I will provide those findings and to elaborate later.

Here are the site photos of the property. As you can see it is extended out. This would be where we measure from whenever we actually measure carports. It's never to the edge of it, it is to the actual overhang because that is the part that is actually extending up to the furthest point of the property line. The posts are pushed back. However, we do only have about one foot to that property line.

The applicant did provide a letter that was provided within your staff packets that she was unaware that the codes and regulations were going to require the building permit or the status of that application or to them to be permitted to be put into place. There are medical reasons in which she has requested that carport to be maintained and it also protects vehicles from weather damage.

As identified, staff did not see any health, safety, or welfare issues. Our only identification was that the utility easement is in place and that structures are not to be within a utility easement. However, we also analyzed that the 24-foot variance to the minimum required 25-foot setback does not meet the criteria for a variance. Whenever you look at variances, we are looking at topographic constraints on a property. We are looking at does it spur economic development? Is there a monetary hardship on a property in which you would be forced to do something that's going to cost you more than what you would need as far as putting it in a different location?

So with that staff is recommending denial as it does not meet the criteria outlined in the 2001 Zoning Code to meet 25-foot setback. We are also saying that it does not follow the standards for criteria to approve the variance based on the three criteria listed: topographic constraints, spur

economic development, and then monetary hardship. And the carport was constructed unfortunately without a building permit.

Notice was sent to the surrounding properties. The only phone call that I ever received as far as the carports being in placed is if this one were to be approved does everybody in the neighborhood now get one? The response I did provide to the person who contacted me via phone was that every variance case is a case-by-case basis. We are looking at every request that comes in here as a single case. The adjacent property owners do not set precedence. We are not looking for those to move forward. Variances stay with the land and it's based on the justification provided by the applicant.

If the P&Z Commission decides to approve the case, staff is recommending that these conditions be placed upon it. Both of the sides of the structure remain open just for visibility whenever you back up into the oncoming traffic. The structure does need to be attached to the residence as you are not permitted to have accessory structures located within your front yard. Making it attached makes it now an addition to your structure. They must obtain a building permit and require all inspections, and we are requesting that it be built or cut down to meet the 12-foot setback out of that utility easement.

With that your options are to vote "yes" and approve, if you choose to vote and approve, please provide new findings of fact as everything presented to you this evening has been in denial. You can vote "no" and deny, you can vote "yes" with conditions, or you can vote to table. The applicant is here as well. And then I do believe there is public to speak on behalf. And if you have any questions, I stand for those as well.

Kaiser: Thank you very much. Any questions or comments from the Commission?

Bennett: How much of that needs to be cut off for the utility easement? Just a ballpark.

Gonzales: Mr. Chair, Commissioner Bennett. That would be 11 feet just because we only have …

Bennett: Thank you.

Gonzales: That one foot. So to get out of that 12 feet, we have that 11 foot deviation.

Murray: And then are these underground utilities or above ground?

Gonzales: Mr. Chair, Commissioner Murray. These are going to be underground utilities. A lot of times in the 12-foot utilities what we find are El Paso Electric, Comcast, Quest, Lumen, your phone, your electrics.

Kaiser: All right. Thank you. Any other questions or comments? Commissioner Smith.

Smith: Could you go back to the photo of the vehicles underneath the carport? Thank you.

Kaiser: All right. If the applicant wishes to speak, you're welcome to come forward before we get a public comment. You're not obligated to. And before you begin can you please state your name?

Silva: Catherine G. Silva.

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

Silva: I do.

Kaiser: Please go ahead.

Silva: Well, the reason I did it it's because for my daughter's protection. She's on medication. She can't be under the sun because of her medication. It's medical reasons. And when it's raining, we can't be running into our vehicle and slip and fall besides myself too. I'm injured too. So that's why I got it done and it's expensive. And to remove it, it's another expense for myself and I'm a single parent. So hopefully, I get it approved and it's for her protection.

And I don't have no shade for her and I can't keep her inside the house all the time. And that's the only place I take her outside. She loves to color so I take her outside on a chair and she colors out there. And that's all I have to say.

Kaiser: Okay. Thank you very much.

Silva: Okay.

Kaiser: All right. Is there anybody in the audience who wishes to speak? Please raise your hand. Okay. Yes, ma'am. Please come forward. I'll give you three minutes. We have a timer here. It will count down but I've been told the beeper sound doesn't work so if you hear this gentleman here beep that's your time. Before you begin can you please state your name for the record?

Chavez: My name is Bertha Chavez.

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

Chavez: I do.

Kaiser: Go ahead.

Chavez: What I wanted to add as they need just a caregiver for Ms. Silva's daughter. And I do take her outside. She loves to color. She loves to be outside for a while but due to her medical condition I can only keep her out for a while. So this was serving a purpose and a need for her daughter and also Ms. Silva. That's all I have to say. Thank you.

Kaiser: Thank you very much. All right. Anybody else in the audience who wishes to speak on this item? Okay. Seeing none. We'll come back to the Commission. Any final comments? Commissioner Smith.

Smith: I just have a question for the applicant. Did you hire a commercial contractor to build this? Was this something that was done by a family member who is capable of building it?

Silva: It was done from a family member's friend. That was it. It wasn't a contractor or nobody.

Smith: So this person is not a contractor themselves?

Silva: No.

Smith: Okay. Thank you.

Silva: But he did a good job. It's welded.

Smith: The reason I ask that question is that I mean any type of structure that's being built like this requires a permit and is something that any contractor would definitely know and should inform you of. And even if it's a family member if they're capable of building something like this, they should know that a permit is …

Silva: Well, we didn't know. I didn't know I had to get …

Smith: Required. All right. Thank you, ma'am.

Silva: I didn't know I had to get a permit.

Kaiser: All right. Any other comments or questions from the Commission? We're looking for a motion to approve.

Bennett: I make a motion to approve 9.3.

Vega: I second.

Baum: Board Member Acosta.

Acosta: I vote no to deny based on staff recommendation.

Baum: Board Member Smith.

Smith: Sorry. I vote no to deny based on staff recommendation.

Baum: Board Member Vega.

Vega: I vote no based on staff recommendation.

Baum: Board Member Bennett.

Bennett: I vote to approve based on monetary hardship and medical reasons.

Baum: Board Member Murray.

Murray: I vote is to approve based on medical reasons and monetary hardship.

Baum: Board Member Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denied.

9.4 **Case No. 23VO0500106:** A variance request to deviate twenty (20) feet from the required twenty-five (25) foot front yard setback for a carport addition to a home located at 4053 Winters Street. The property is approximately 0.108 + acres in size and zoned R-1bC (Single-Family High Density- Conditional). Submitted by Tracie Stevenson, property owner. Council District 1.

Kaiser: Okay. Moving onto item 9.4. This is another variance request from the front yard setback. This time 4053 Winters Street. Back to you staff.

Gonzales: Sara Gonzales, Senior Planner once again for the record. This is a variance request for 4053 Winters Street. The property is approximately 200 feet

north of its intersection of Holly Drive and Winters Street. The property is 0.108 acres in size. Once again, is zone R-1bC which is single-family, high density conditional and there is currently a single-family residence on the property.

Here's an aerial map of the subject property. As you can see the carport is highlighted essentially in white as to its location. Surrounding neighborhood is residential in nature as all the adjacent properties are either single-family, mobile home, or multifamily to the south.

Per code, Chapter 38, 2001 Zoning Code, the property is required to meet the 25-foot yard setback for a garage or carport. And the applicant is seeking to retain the carport addition that was put up into the front of the property for the existing dwelling. The variance would allow the applicant to maintain a five-foot setback from the property line. Here is a site plan of the subject property. You can see we do have the 12-foot utility easement that also runs along the front of Winters continuously through the subdivision. The building or the structure is a 20 x 20 so that's why you have a five-foot deviation as far as it coming from that 25-foot setback. So all garages in this area were built at a 25-foot setback leaving no additional room for any of these carports to be placed onto the property.

Here is an image of the property, as far as you can see here is the structure. It is pushed back a little bit further. As you can tell there is a five-foot setback from this property boundary. The applicant has provided the justification in the letter that was provided within your staff report. It was an anniversary gift to the applicant as part of the, for their anniversary to protect their vehicles from weather damage. Once the structure did go up, it did provide some type of safety as far as the applicant was concerned once it was in place.

Staff did not identify any health, safety, or welfare issues. Once again, there is that condition of where we see the 12-foot utility easement in which structures are not to be constructed upon. We did see that the 20-foot variance does not meet the criteria that is outlined within a variance. There are no topographic constraints. We do not see any spur of economic development, and the monetary hardship would be essentially from not receiving a building permit prior to where they would be notified that the monetary value would be essential.

Monetary hardship is definitely determined by if you had to do something outside or make it impossible to reconstruct or build something on a property then that is considered a monetary hardship. We had a previous case to where it is, in order to construct a home, you had to move the well, that is a monetary hardship constraint.

So with this staff is recommending denial based on the carport does not meet the requirement of the 25-foot setback with any residential zoning district. We also are saying that it does not meet the essential guidelines to permit a variance request for the three identified as topographic, monetary, or for a spur of economic development, and it was constructed without a building permit.

Public notice was sent out. The same phone call was in direction to both as these neighborhoods are very close to one another. Notification was sent to everybody essentially twice. And so, it gave two opportunities for everyone to be notified within the neighborhood.

Once again if Commission decides to approve this case, please be aware to add the conditions as to the structure must remain open. The structure needs to be attached to the home as it is not considered accessory structure. It needs to be added. Must obtain a building permit and all required inspections and be removed up until the 12-foot utility easement.

Your options are to vote "yes" and approve. If you choose to vote to approve you do need to find new facts of finding not found within your staff report. Vote "no" and deny, vote "yes" with conditions, or vote to table. The applicant is here as well and I stand for any additional questions.

Kaiser: All right. Thank you. Coming to the Commission. Any questions?

Smith: Once again would you please go back to the photo of the, thank you. I have a question for the applicant. Was this carport constructed by the same people, person, because they look almost identical?

T. Stevenson: No, they are. They do …

Kaiser: Before you answer that question, ma'am. Can you please state your name for the record?

T. Stevenson: My name is Tracie Stevenson.

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

T. Stevenson: Yes, I do.

Kaiser: Go ahead.

T. Stevenson: This isn't, we don't have the same person who built, mine went up first in our neighborhood. And actually, the way this all came about was back in January my husband wanted to give, we were going to plan something for

our 43rd wedding anniversary. And I told him I'm putting this on you because I plan them all and he said he'll do it.

And then didn't hear anything. February comes rolling around. I don't see anything happening. Like he hasn't made any plans. And we had an automotive business here in town and he was a very, very busy man. March comes rolling around and March 3rd is a Friday and we were having breakfast and he was getting ready for work, and he comes back in and he has a massive heart attack right in front of me. And all my attempts to try to save him were gone.

And you go through all the motions of a funeral and all and then I did. April comes running around. My anniversary was April 12th. April comes around, the first week of April and I get somebody rang my doorbell. I go to the door and it was a grandfather, a father, and a son, and they said that they were here to put up an awning for me. Well you can imagine how excited I was because this was something we always wanted, both of us. And I know Roger. Roger always liked to do things correct. He never, if he knew he was supposed to have a permit, I know he would have looked into that because he was very adamant about that kind of a thing.

And so, you can imagine how excited I was. I said yes, please put it up. I was thrilled. A permit never even crossed my mind. It was just, I literally got weak at the knees. Well next morning comes, I was there. They came and put it up and I watched them. They did the first two poles there; I saw them dig the holes. It's three feet down into the ground with, they put a lot of cement. It's bolted towards the end of the garage very securely. I mean it's not going anywhere. It's structurally sound.

And so, I was thrilled and then of course I was, codes comes probably about three days later. I guess he said he was going through the neighborhood and saw it. And he put a notice on my door. And so, then I right away called here and said what do I need to do to get a permit for this? And he sent me through all the motions and I did them all because I want to keep it. It's the last gift I'll ever receive from my late husband and he was like my best friend. And I just really feel, I just really don't want to see it dismantled and taken away. It's that special.

Now, she said it didn't provide any safety features. Now, this does provide safety features. Last winter, I actually slipped outside while we were clearing off our windshields. And it does provide elements from the weather. I mean it's a 20 x 20 and it's structurally, has beautiful curb appeal. And I also presented some letters from my surrounding neighbors that it did not even propose a threat to them. They were absolutely thrilled about it and didn't give me any heartache about it whatsoever. I was just, I didn't know.

So I just thought I would come here today and just kind of give you a little bit of insight how special it really is to me. And I hope I'm able to keep it and I hope you all can find it in your hearts to allow me to have it and maybe purchase a permit and be able to keep it. We all don't know how long we're going to be here. I mean everything we have can be gone just like that. And I just want to present my case and see if that's obtainable.

Now it's not attached but I did get a contractor to come over and look at it. And he said that is attachable. He said it's just so close and he said that he would do that for me. So I'm willing to do what I have to do to keep it and enjoy it for as long as I can. I don't plan on selling my home. I plan on living in it. And now that I'm alone, it does provide some safety for me. I stand up here literally broken going through all this. And I just have to let you know that if you would allow me to obtain a permit, I would be forever grateful respectfully. Thank you.

Kaiser: Thank you. Any other questions? Commissioners Smith.

Smith: Ma'am I just wanted to offer my deepest condolences to you and your family for the loss of your husband. And I know that this carport means a lot to you. It's difficult for us as a Commission here. We get many cases where carports are built in the City without permission and it's a challenging job for codes because they're doing their job. And although this has special meaning to you, the carport is no different than the previous applicant as far as the amount of the variance that you're requesting.

And so, our hearts are with you and your family. We have a decision that we'll have to make and so it will be a difficult one but we'll make the best decision that this Commission can make based on the information we've been provided.

Vega: I also want to say that regardless of what decision we come to you can always appeal to the City Council; is that correct? So that's just something else to share with you as well.

Kaiser: I also extend my condolences as somebody who unexpectedly lost a family member within the last year. I certainly understand what you've been going through. I think the difficulty here is there's rules in place and it's the responsibility of all of us to be aware. I know this seems like something you probably would never think of but the reality is these types of home projects they are regulated.

And honestly hearing you explain what they did to put the posts in the ground, I'm just very thankful nobody hit something they would regret hitting

especially if they were not aware. So call before you dig. But I think this is just kind of unfortunate but there are rules in place. So that's all I'll say.

Is there anybody in the audience who wishes to speak on this item? Yes, ma'am. Please come forward and please state your name for the record.

Vulco: Sarah Vulco.

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

Vulco: Yes, sir.

Kaiser: I'll give you three minutes.

Vulco: Okay. So when Tracie called me and asked me to look at the scenario that had been presented to her from the City, I was of course wanted to help in any way that I could. My background is that I am a general contractor and I'm also a civil engineer. I work for the City at one point in the Public Works Department. And then at this point, I'm a Regional Project Manager for the State of New Mexico.

Based on my background what I wanted to present respectfully is that in the case of building $30 to $50 million structures for the State of New Mexico, there are situations where User Department buys a plat of land and there is a utility easement right down the middle of the property. And so, at that point we're coming together and collaborating with the design professional saying, my gosh, how do we build anything on this plat of land?

And so, we try to take a more ethical approach. And what we do is often times we'll build a building maybe with an outdoor courtyard that's over that easement. And what we tell the User Department at that time is that we will build the structure but they will have to resume the cost of remove and replacement in the case that the utility easement, a project comes through that requires them to access the utility easement.

And so, a lot of times we construct these buildings like I said with the courtyard in the middle and that's the portion that's over the easement so that it's predominantly flat work which is sidewalks things like that. So the User Department would then tear that up and remove and replace it. And so, there's an addendum to the contract when we do something like that.

My request is that if Tracie would be willing to sign some sort of an addendum or some sort of paperwork that would say in the case of these utilities needing to be accessed that she would remove and resume the cost of removing the carport at that time. This isn't saying that she keeps the

carport for 20 years. It's not saying that she keeps the carport forever. It's saying during this time when emotions are raw and there's newly broken hearts that they would be able to keep the carport. And that's my request. Thank you for your time and consideration.

Kaiser: Thank you. Anybody else in the audience that wishes to speak? Yes, ma'am. Please come forward. Please state your name for the record.

Morgan: My name is Vicki Morgan.

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

Morgan: Yes.

Kaiser: You have three minutes. Please go ahead.

Morgan: I am writing this letter on behalf of Tracie, my dear friend since grade school, to attest to her impeccable character and extraordinary circumstances surrounding the awning in question.

Throughout our years of friendship, Tracie has consistently shown herself to be an individual of outstanding character. She possesses a rare combination of qualities that can only be described as extraordinary. She is caring, always placing the needs and concerns of others above her own. She exudes positivity even when faced with challenges that would overwhelm many. Her resilience, her generosity and her kindness are qualities I have witnessed firsthand for many years.

The awning which stands at the heart of dispute represents more than just a mere structure to her. It was one of the last gifts given to her by her late husband before his untimely passing. Every time she looks at it, she is reminded of the love they shared and the memories they created together. It's a testament to their bond and an emblem of the life they built. While some may view it as just an awning, for Tracie it holds profound sentimental value.

Furthermore, beyond the emotional significance, the financial burden of removing the awning would be undue and harsh especially given the heartache she has already endured. I kindly request that you consider the exceptional circumstances of this case. Removing the awning would not only be financially expensive for Tracie but would also mean erasing a tangible reminder of her husband. I sincerely hope that a compassionate resolution can be reached in this matter taking into account both the character of my dear friend and the significant emotional implications of

removing such a treasured memento. Thank you for your time and consideration.

Kaiser: Thank you very much. Anybody else that wishes to speak? Yes, ma'am. Please come forward. State your name for the record.

Gennings: Hi. My name is Lindsey Ray Gennings.

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

Gennings: Yes, I do.

Kaiser: Please go ahead.

Gennings: All right. So everybody has kind of hit upon the emotional aspect of Tracie losing her husband which was very sad. But I would like to provide a different perspective on the structure.

So I work for Wet Dog Mobile Grooming Services. And I am out there probably at least once a month for the last seven years to groom her dogs, make sure they're nice and clean. And I've never seen a weed in her yard. Her house is always kept up really nice. That structure is really nicely built. I complimented her on it the first time I came out and saw it. I was like this is really nice.

It doesn't really block anybody's view. And it's so hot in Las Cruces that Tracie likes to put out water for the stray cats in the neighborhood. And it's very nice for me to see someone taking initiative to prevent unneeded cruelty to the cats, where Las Cruces takes them and spays them, neuters them and then places them back where they found them. We don't need to be cruel to the cats so it's nice to see.

I've been out there several times. I get to see the cats getting a nice cool drink of water. It provides shade for her car so the paint doesn't get eaten. And it seems to me that if the utilities are underground already, they're going to have to go under the concrete slab so I don't think that it's a problem having the carport there. And I'm sure that if it is for the utilities in the future that she would be willing to remove it or replace it or whatnot.

And I'm sure that she didn't know about a permit because of her husband being the last gift that she was given from him. So I would like to see Tracie be able to keep the carport. That's it.

Kaiser: Thank you. Anybody else? Please state your name for the record.

Allen: My name is James Allen.

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

Allen: I do.

Kaiser: Go ahead.

Allen: So I do not know Ms. Tracie by any means or length measure. I did listen to her testimony and narrative. There were some things that were brought up to me knowing now she was in her emotional state after having recently lost her husband. She was presented by three gentlemen. I know that in Las Cruces having had family members who are small business contractors, she was presented as that this was something that was arranged for her.

She has stated that she is willing to retain a permit and take care of any fees that were unnecessarily missed with this. But I do question, she was presented with three individuals who were stated that they were contracted to do this job. So with her emotional state at the time and with her knowledge, I mean most people in town do not know building code but it seems that she may have been led to believe that this was a permitted job at the time. And she later found out that she did not have proper contractors so I believe that is something to be taken into consideration in this case.

Kaiser: Thank you. Okay. Is there anybody else who wishes to speak? Yes, sir. And before you come up can I just see hands so we just have an idea of, okay. So this gentleman is going to be the last one. Please come forward. Please state your name for the record.

B. Stevenson: Hi. My name is Brent Stevenson.

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

B. Stevenson: Yes.

Kaiser: Go ahead.

B. Stevenson: Yes. Well, I'm up here just to kind of talk. This is my mother and I do know that my father after hearing or seeing that she did fall in the driveway. I mean I know you took it upon himself to make sure that it will never happen again. And I'm sure that's the reason why he did purchase this awning.

As her son and the rest of her family, we're concerned about her, about her safety of course. And now that she does live alone, we are concerned that we just want her to be safe. And I think that if you're able to grant this variance I mean I know that she'll be more than grateful. We'll all be grateful and we'll do whatever it takes to conform with your policies and everything if that were possible. It does protect the driveway from its elements, from snow, from rain, from the heat. I just see more positives with this and I just wanted to talk about that. Thank you.

Kaiser: Thank you. Okay. Coming back to the Commission. Commissioner Smith.

Smith: I just have one more question for staff. Did you state that there was also a 12-foot easement with this property also, or it was just the previous proposal?

Gonzales: Mr. Chair, Commissioner Smith. There is a 12-foot utility easement that runs along every property within this subdivision in the front of those property boundaries. A lot of times what we see in newer subdivisions is that is essentially where all the utilities are being placed. There used to be in the old part of town where we would get utility easements in the back, on the side of the properties. Now everything is generally ran through the front of the properties and it's 12 feet wide as generally the distance we see.

Smith: Okay. Thank you.

Kaiser: All right. Any other questions, comments? All right. Looking for a motion to approve.

Vega: I make a motion to approve item 9.4.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve with the conditions that the City staff had outlined.

Kaiser: You need to provide a …

Acosta: Sorry, can I go back to that page if that's the case? So I guess it would just be all four lines of that. Should I read that out?

Kaiser: No. I was just looking for there, based on what was your rationale for voting to approve with the conditions.

Acosta: I'm sorry about that. Okay. So just based on the emotional impact and the willingness to work with City staff to keep the structure alive in whatever

compliant capacity and willingness to pay for that. So I think if they'd be willing to work under that condition then they need to perhaps preserve a structure that had that much more sentimental value.

Baum: Board Member Smith.

Smith: I vote yes to approve. I know that this case is very similar to the previous applicant. There are some extraordinary circumstances I think in this particular case based on the fact that the homeowner was not aware that she was even going to be receiving the carport. And that the people who presented it, who arrived to construct it may not have told her that whether they were actually contractors or not. And there is room for compassion, there is room for just the circumstances under which this particular carport was constructed as opposed to the previous one. And so, that is why I'm voting yes to approve.

Baum: Board Member Vega.

Vega: I echo Commissioner Smith's comments. I also vote yes to approve based not only on the financial hardship. Also, the suggestion for easement. I have an easement in my backyard, it's totally different but always something to consider. Thanks.

Vega: Board Member Bennett.

Bennett: I vote to deny based on staff recommendation.

Vega: Board Member Murray.

Murray: I vote to deny based on staff recommendation.

Vega: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion denies due to a tie.

9.5 Case No. 23VO0500107: A variance request to deviate one (1) freestanding sign to the maximum permitted two (2) freestanding signs and a to deviate seven (7) feet to the minimum required fifteen (15) foot freestanding sign front yard setback for a property located at 1300 El Paseo. The property is 5.50 + acres in size and zoned C-3 (Commercial High Intensity). Submitted by Burke Sign Company, LLC., representative. Council District 3.

Kaiser: All right. Our final item this evening is item 9.5. A variance to request to deviate from the maximum permitted signs. This is at 1300 El Paseo. And do we have staff to make a presentation?

Ochoa: Sorry for the delay. Adam Ochoa, Senior Planner, Community Development Department for the record. The last case we have tonight for you folks is case number 23VO0500107. It is a request for a variance for a property located at 1300 El Paseo Road.

A little case specifics of the subject property. It is located on the southwest corner of El Paseo Road and Idaho Avenue. Currently zoned C-3 commercial, high intensity encompasses roughly 5.5 acres in size. There is an existing business/shopping center on the property. And just a reference are two existing previously permitted freestanding signs on the property.

Here's showing the property on the zoning map here. A large parcel here is zoned C-3 and in what is just a sea of commercial zoning, so definitely one of our major commercial hubs in the City of Las Cruces with a lot of traffic going off El Paseo and Idaho Avenue.

Showing here on the aerial map the shopping center, if you will, kind of L-shapes along the back with parking along the front. The two existing freestanding signs that were permitted previously, a number of years ago of course, is one located right on the corner of Idaho and El Paseo and another one essentially right around here in the entry along El Paseo.

The third sign which we'll be discussing here today is located off of Idaho. Here are the pictures of the two distant signs as they currently exist. And I just wanted to bring up the fact as well that what is the Planet Fitness sign itself does conform with current requirements for a freestanding sign. The larger sign to the left of all the different tabs in it, that's a nonconforming sign, so just a little bit of reference for you all.

So what we're looking at today is in Chapter 36, the Las Cruces sign code. We're looking at two different sections because this is essentially two different variances under this case. One is Article 2, Section 36-46 (b) (6). This is essentially dictating the number of freestanding signs allowed for what are C-2, C-3 in our industrial zoning designations where essentially it states in the City of Las Cruces each commercial property is allowed to have one freestanding sign with the exception with lots that exceed a frontage of 600 linear feet which this property does. In those cases, those properties are allowed up to two freestanding signs. That is the absolute max that is permitted by code.

The other that we're looking at here is under Appendix 1, Table 2, also of the Las Cruces sign code. There is a minimum of 15-foot front yard setback required for all freestanding signs located along what are collector roadways and arterial roadways which are El Paseo and Idaho Avenue.

Here's a picture of that sign that has been constructed that third freestanding sign. So again, so the variance would be a variance of one freestanding sign to allow for three freestanding signs on the subject property and a variance of eight feet to allow the sign to stay where it is existing at its current location which is roughly about seven feet from the front property line there on Idaho Avenue.

A little bit of analysis, a little bit of what happened essentially here is essentially the sign was permitted and issued by error by staff, some misinterpretations, some misinformation unfortunately was provided and the sign permit application was essentially approved by staff and it was issued. The sign permit application was missing some information. It did not show the existing two freestanding signs on the site plan nor did it show setbacks on there. Something staff should have taken the consideration but like I said it was issued by error.

The applicant was unaware of these requirements, essentially of the requirements as stated. And after he was made aware of the issuing of the permit, he was made aware of the error of the sign being the third sign and its setback, was made aware after we issued the permit and he already installed the sign.

So additional analysis. So the way you approve a variance under the 2001 Zoning Code on Article 2, Section 38-K. Staff kind of went back and forth on this one. Where we could see both ways how this variance could potentially be denied or approved. First, of course, I want to touch base on your physical hardship which is relative to the property. The first thing that staff looked at and we saw there's no real topographical constraints, any right-of-way takes or anything that would impinge on them having to meet code. But we also saw the potential of a, if we go back here, how the layout of this existing shopping center exists. How this back row kind of lies along the back instead of closer to the street. We could potentially see that the business is located in that further back portion from the street of El Paseo could potentially benefit. And so that's kind of a physical hardship being located further back away from the street. So we saw that as a potential physical hardship so just keep that in mind.

Second, the spurring of additional economic development. This may not considering the shopping center is existing. It's fully built out, that's what staff saw essentially. But the potential for now those businesses in the back which as a person who reviews all business permits that come in from a

building standpoint, we get a number of them, a lot of turnaround in the back portion of this shopping center so it potentially for business opportunities or economic opportunities for those in those suites located in the back portion of the property.

And third, of course, for monetary hardship. There is the cost of the already built and erected sign that was located on the property due to error unfortunately.

With that note, staff does still recommend kind of a soft denial for this case. That being said, staff does not see any significant safety, health, or welfare issues associated or identified for the proposed variance. Findings stated here in you find in your staff report, essentially the two code requirements, maximum two freestanding signs, required setback. And of course staff in the end after much deliberation came with a soft denial because we feel it does not meet the Section 38-10J of the 2001 Zoning Code.

I did want to mention, staff did also send out a public notification to the surrounding property owners. We received nothing until yesterday morning. We did get a phone call from; they didn't want to state who they were or what business they were but they're a business in that shopping center. They have their name on that sign and they find to get a little more flow into their business now. So they appreciate the sign as they stated. Again, no name, no business unfortunately.

But with that the Commission's options tonight, one to vote "yes" and approve the proposed variance. Again, new findings will be required if you do vote to approve. Two, to vote "no" and deny as recommended by staff. Three, to vote "yes" with conditions. And four, table or postpone and direct staff and the applicant accordingly. The applicant and I believe her representative who erected the sign are here if you have any questions for them. I stand for questions as well.

Kaiser: All right. Thank you. Any questions, comments from the Commission?

Smith: I just have a comment. I'm very familiar with this shopping area. I live very close to El Paseo and Idaho. And the other businesses are setback from El Paseo. Of course, the Planet Fitness has their own sign. It is also a sign that they share with some of the other businesses there. It's kind of a unique shopping plaza or property because you have a business that's on the corner. You have a gym that's very prominent. And as far as accessing the other businesses there, I mean you have several entrances but not of them are very easy to see the other businesses. So it was just a comment I wanted to make just based on the signing where it's located and also the fact that they have the other businesses listed there.

Kaiser: Soft denial. It's a new one.

Ochoa: I didn't want to be too harsh.

Kaiser: I'm just trying to understand here. So basically, the order of events were the applicant submitted an application for a permit to install this third sign. And during the course of staff's review, it was not caught that they were already at their maximum. And it was also not noticed that they're missing specific information related to the placement of the sign. So staff approved it. The applicant went and built it. And now, six months later staff is saying you need to come back for a variance and we're recommending the soft denial. Is that …

Ochoa: Mr. Chair. That kind of sums it all up. That is correct.

Kaiser: Okay. So my next question is …

Ochoa: I would say yes, but …

Kaiser: Did the applicant, did they pay any fees for this variance application?

Ochoa: Mr. Chair. Yes, they did pay all required application fees as well as public notification fees which includes notice letters, signage, and advertisement in Sun News as well as all associated sign permit fees as well.

Kaiser: Okay. So they paid for a variance application. If it's to be denied tonight then the result would be removal of the sign, correct? Which would cost additional money out of their pocket?

Ochoa: Mr. Chair. That is correct. And then they would also, they'll have the option to appeal the denial to City Council which would be further costs. Not only the fee, advertisement requirements as well, sir.

Kaiser: Okay. So basically, they have a situation where staff messed up and the applicant's bearing all the cost?

Ochoa: I believe that's fair to say. Yes, sir.

Kaiser: I have a problem with that.

Ochoa: Definitely don't disagree with you with that on that, sir. And staff did, I guess supervisory staff did discuss this issue with staff so, yes, sir, understood.

Kaiser: Okay. I mean based on that I think it's; I mean we just got done talking about sort of homeowners doing their due diligence on whether or not they need a building permit for a carport. And now we have sort of the opposite.

The City didn't do their due diligence and now the applicant is paying the price for all of that. I personally think that this is one that we've got to own. And I think in my opinion the applicant should be able to retain that sign and I think I'm going to vote to approve this variance so those are just my thoughts. Please go ahead.

Pitts: Tim Pitts, Deputy Director for Community Development. I think that's a reasonable compromise. And I think a condition that says the extra sign goes away when one of them comes down. That way the business isn't harmed by the thing but we will gain compliance at some point in the future.

Kaiser: So in other words, what you're saying is if the business that's there now with the sign on this new sign goes away that the new business doesn't get to put a new sign up?

Pitts: No, the third sign goes away. So if over the time they decide they wish to take one down for whatever reason, until that time, we're not talking about the faces on the sign, we're talking about the sign itself. That when that sign gets approved for redevelopment purposes, they come in and they want to do something and a sign comes down, we wouldn't allow it to go back up. But if all they do is replace the face of the sign which is the name of the businesses, I think it would be a fair thing because I think the business did everything they thought they needed to. And if that's the will of the Commission I think that staff did make a mistake. And it's tough to want to punish a business for staff's mistake.

Kaiser: Okay. Yes, I understood. So do you have any recommendation for language in that condition?

Ochoa: Yes. Mr. Chair. If I could? You could always vote to approve with the conditions that at any time in the future if any one of the three freestanding signs voluntarily gets removed, they will only be allowed to have the two freestanding or a total of two freestanding signs on the property.

Kaiser: Okay. Thank you.

Ochoa: Apologies, Chair. I did talk to the property owner and their representative and they are amenable to that condition, just to clarify.

Kaiser: Okay. Thank you. I think that's fair from our perspective. Before we go to the public, Commissioner Smith do you have a comment?

Smith: Just a clarification as far as our options. We can still vote yes to approve or we can vote yes with the conditions, either one of those. They're still on the table, correct?

Ochoa: Mr. Chair, Commissioner Smith. That is correct. You can just vote yes or when you do your motions, whoever does the motion, they could do, that's where it needs to start. When you do your motion, whoever is going to do the initial motion will have to do a motion with conditions and state that condition. The second will be, and then you'll take the vote with that. If not, whoever wants to make a motion just to approve, they could just make a motion to approve, second it, and so on and so forth.

Kaiser: Okay. I'm going to go to public comment now. Is there anybody in the audience who wishes to speak on this item? Okay. Seeing none. We'll come back unless there's any additional comments we'll go ahead and make a motion to approve.

Bennett: I'm just going to make a motion to approve 9.5.

Vega: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on monetary hardship and the potential to spur economic business.

Baum: Board Member Smith.

Smith: I vote yes to approve based on frequent site visits. Also based on the hardship because of the error. And also, having driven down Idaho many times that that is actually a well-placed sign to help promote those businesses that are located within that plaza.

Baum: Board Member Vega.

Vega: I vote yes to approve based on the financial hardship and the staffing errors.

Baum: Board Member Bennett.

Bennett: I vote to approve based on physical and monetary hardship.

Baum: Board Member Murray.

Murray: I vote to approve based on monetary hardship and staff error.

Baum: Chair Kaiser

Kaiser: Yes, based on monetary hardship and staff error.

Baum: Motion passes.

Kaiser: Okay. Thanks for all the presentations tonight.

10. DISCUSSION

Kaiser: Is there any discussion or staff announcements?

Ochoa: Any discussion with the Commission you need to bring up? Is no.

11. STAFF ANNOUNCEMENTS

Ochoa: Okay, so staff announcements. It is almost that time of year. It's still hot but the holidays are coming around. So staff did want to bring up the November Planning and Zoning Commission meeting and the December Planning and Zoning Commission meeting. As of now, we still have them scheduled for the fourth Tuesday of the month which would essentially be November 28th which would be the Tuesday after Thanksgiving. And then in December, it would be on December 26th which that's definitely going to be an issue because staff will not be here.

So I guess if we could come to a decision tonight if we wanted to move one, both then to the third Tuesday or potentially even moving the November one to the fifth Tuesday of the month that's a possibility as well. So we leave that up to the Commission with what they would like to do.

Kaiser: So I think the 28th works. It's after the Thanksgiving holiday. I think that's more than fine. Yes, okay. So we'll keep the 28th. And then yes definitely would agree with the 26th. I think probably move it to before so that would be the 19th. I think that's obviously fair for staff and certainly the public. I think that's amenable as well.

Ochoa: Sounds good. We'll go ahead and make those changes, sir. And so you all will be getting either packets and everything either earlier or later than usual on those two months so just keep an eye on them those for them.

Also, I just wanted to update. We are finalizing you all's flash drives. So those flash drives should be delivered probably with your next P&Z packets for the next meeting. So they're pretty cool. Economic Development bot us these really nice wooden ones so they're not junky. They look pretty cool. So sorry Commissioner Vega, but thank you so much for being here though. Thank you ma'am. Appreciate your time here.

Vega: I didn't expect to cry at my last Planning and Zoning meeting but thank you for the opportunity to serve and work with all of you. It's been a pleasure. I really appreciate it. And however, I can help in finding a replacement I certainly will.

Kaiser: Awesome. Well, once again best of luck and we'll see you out on the bicycle.

12. ADJOURNMENT (7:52)

Kaiser: All right. Go ahead and need a motion to adjournment tonight.

Murray: I make a motion to adjourn tonight's meeting.

Smith: I second.

Kaiser: All in favor?

MOTION PASSES UNANIMOUSLY.

Kaiser: Thank you all for coming out tonight.

_____

Chairperson

CITY OF LAS CRUCES

ZONING

Planning & Zoning Commission 9/26/2023

CASE 22ZO0500108: BOWMAN AVENUE REZONING

STAFF CONTACT:	Vincent Banegas, (575) 528-3058, vbanegas@las-cruces.org
OWNER:	Nicole E. and Philip Ehrgott
REPRESENTATIVE:	Same
DISTRICT:	District #1
SITE ADDRESSES:	806 E. Bowman Avenue
EXISTING ZONING:	R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity)
REQUEST:	Rezone from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity).
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 22ZO0500108:

A request to approve the rezoning of property from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity) for property located at 806 E. Bowman Avenue. The property is ± 0.402 acres in size and is within Council District 1. Submitted by Nicole E. Ehrgott, property owner.

SUMMARY OF RECOMMENDATION:

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

- The property under consideration is within the South Mesquite Overlay District (SMO).
- This overlay establishes land use and architectural/site design criteria which will be met by the property owners when preparing the subject property for commercial/residential use.
- Previously, the property was used as a residence, office, and contractor's yard in what staff believes was a violation of the 2001 Las Cruces Zoning Code, as amended. The intended use via this request seeks to remedy compliance issues.

- The Historic Preservation Commission (HPC) Chair, on behalf of the HPC, has provided a letter of support for the request as presented. Said letter will be provided during staff presentation in that preparation of the letter followed compilation of this report.
- The property owners wish to reside and establish commercial retail and a cottage industry uses on the premises all of which is consistent with the C-2 zoning district and its application within the SMO.
- The subject property falls within the Urban Neighborhood Place Type. This classification is characterized by a variety of residential housing types at medium to high densities and areas of supporting neighborhood commercial development. The classification is consistent with what the C-2 (SMO) provides and what the property owners seek to accomplish.
- 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).
- The surrounding area immediately north, east, and west is primarily residential in use and zoned R-2 (SMO). Areas south of the subject property are residential and commercial within a C-2 zone (SMO).

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The property owner is seeking rezoning from R-2/C-2 (Multi-Dwelling Low Density/Commercial Medium Intensity) to C-2 (Commercial Medium Intensity) to accommodate the applicant's desire to reside and conduct a retail and retail related business (cottage industry) on the premises. The cottage industry will involve the small-scale manufacturing of hand-crafted furniture products that will be sold on the premises. The retail sale of natural nutrition products and home goods will also take place on site. All uses will follow applicable provisions authorized in the C-2 zoning district within the SMO. The property will be required to meet all applicable access, parking, and landscaping requirements pursuant to code in that the proposed use represents a change in use for the property thereby triggering the need.

To help facilitate this request, staff requested that the applicant carry out early notification to the surrounding neighborhood. To date, staff is not aware of any input that would indicate opposition to request.

LAND USE HISTORY:

The subject properties are part of the Lohman La Point 107 Subdivision which is within the Mesquite Street - Original Townsite Historic District (State of NM boundary). The property is developed and contains a residence and a detached garage.

ZONING DECISION CRITERIA AND POLICIES

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

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:
In large part, the area surrounding the subject property consists of residential lots on the north side of Bowman Avenue and immediately east and west of the subject properties. R-2 zoning supports these uses. South of the subject property uses tend to transition from residential to commercial the closer one gets to Amador Avenue. C-2 and C-3 zoning support these uses. Given the development pattern described, there should be limited impact to the surrounding neighborhood in terms of use, development 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 parcel falls within the Urban Neighborhood Place Type. The Urban Neighborhood Place Type is characterized as providing a variety of housing styles in medium to high densities with low-to-moderate density residential land uses intermixed with areas of commercial development.

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

- Urban Neighborhood Place Type Development Strategies
    - Provide transitions in development scale between the major thoroughfare and surrounding neighborhoods.
    - Transition between land uses at intersecting streets and alleys and avoid incompatible uses facing each other.
- Community Environment:
    - Goal CE-1: Balanced Growth – Encourage efficient 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-1.2.3 - Partner with property owners of vacant land for infill opportunities.
        - Policy CE-2.1. – Promote infill development strategies to sustain the City's established neighborhoods and historic residential areas.
    - 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.
            - Action CE-5.1.2 – Provide gradual transitions between developments with residential lots of varying size and building heights.
- Community Prosperity:
    - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.

        - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
    - Goal CP-3: Entrepreneurship – Create a nurturing regulatory environment that generates entrepreneurship and small business investment.
        - Policy CP-3.1 – Encourage entrepreneurship by creating programs that support residents wishing to start a business.
    - 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 proposed for the subject property are congruous to the urban place type and are well supported by various comprehensive goals and policies, staff feels the application is justified and should pose no conflict with the existing neighborhood.

COMPLIANCE WITH THOROUGHFARE PLAN:
Access to the subject property will come from either Bowman Avenue or Almendra Street. Both are improved local roadways that provide adequate right-of-way (ROW), curb, gutter, sidewalks, and lighting. Both roadways have approximately 30 feet of paved width. Access to these roadways will primarily come from Amador Avenue, a fully improved principal arterial roadway located south of the subject property. These roadways will provide all necessary access to the property, and they are adequate to accommodate the intended uses proposed for this location.

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.
B. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
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.
M. Foster a more rational relationship between different land uses for the mutual benefit of all.
N. Conserve the value of buildings and land.

Review by City of Las Cruces staff determined the proposed zone change would not adversely impact the surrounding area. Future uses that may be authorized by the proposed district will be in keeping with the surrounding area per section 38-2 of the 2001 Zoning Code, as amended. Additionally, the proposed action will eliminate the issue with the property's non-conforming issues thus, allowing development pursuant to code.

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 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 recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate with a recommendation of approval.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently zoned R-2/C-2. This zoning district exists with a vast majority of the property zoned R-2. The C-2 component is located on the south side of the property and appears to be a result of the adjacent C-2 zoning boundary encroaching past the alley instead of ending midway in the alley right-of-way as code would otherwise dictate. Due to the uncertainty with this boundary, the zone change as presented is being put forth which will allow the proposed uses as described and help clean up these zoning district boundary issue.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

If the subject property is rezoned as proposed, the size of the lot and the access provided via Almendra Street and Bowman Avenue allow development of the proposed uses as envisioned by the property owner to take place. All development would then follow the requirements of the C-2 zoning district.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas, and sewer services are currently provided to the subject property. The available city utilities will not be negatively impacted by this zone change request and any of the proposed uses being considered.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has not received any input regarding the pending zone change action as of packet preparation.

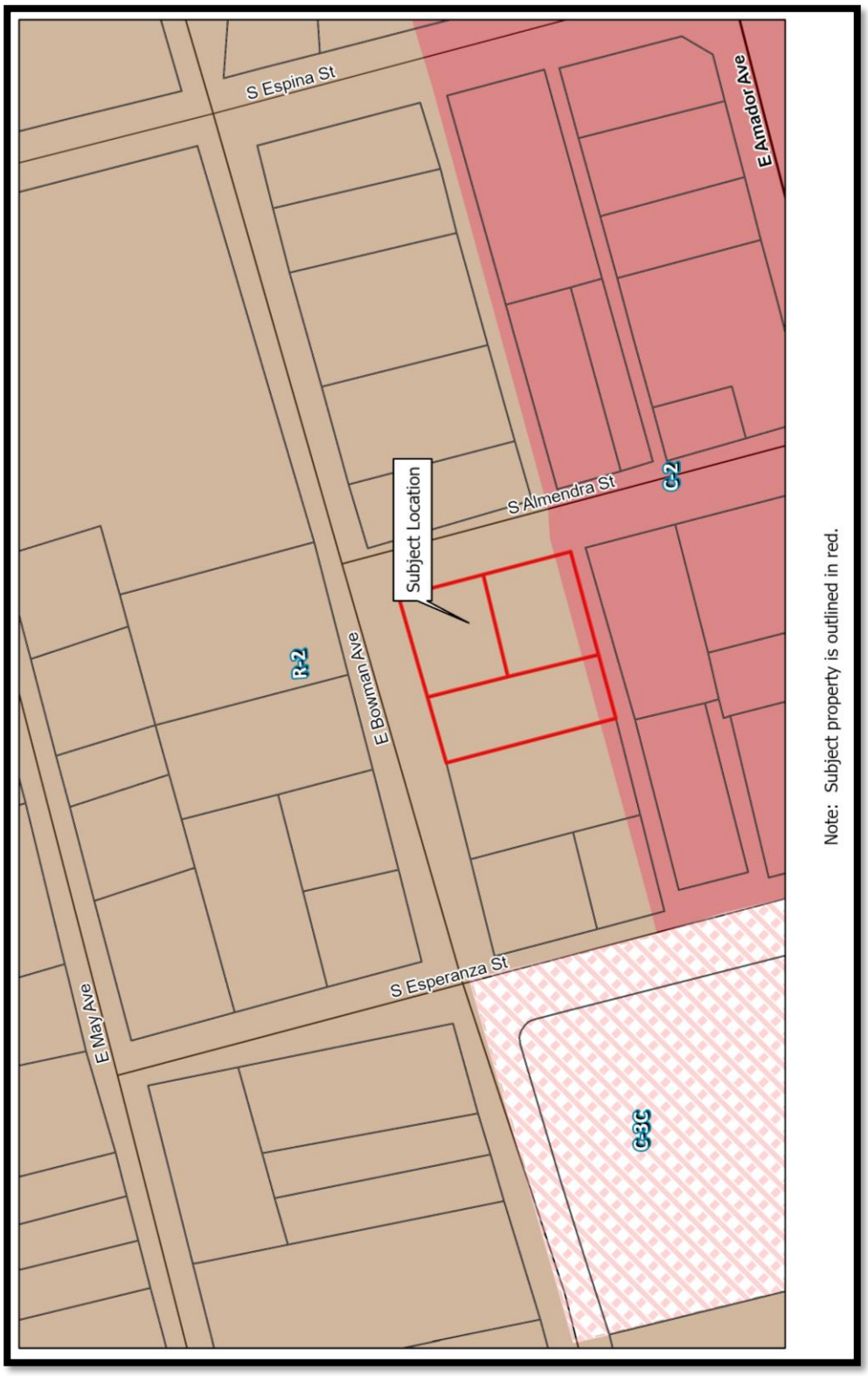
STAFF COMMENTS:

There were no reviewing department comments that would prohibit consideration of this request by the Planning and Zoning Commission. All requested changes,

ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Request Letter
4. Department Review Comments

ATTACHMENT 1
Zoning Map



ATTACHMENT 2
Aerial Map



ATTACHMENT 3
Request Letter

NICOLE & PHILIP **EHRGOTT**
806 E Bowman Ave Las Cruces, NM 88001 · (210)2439172
Email · Nicole.ehrgott@gmail.com

Dear Members of the Community Development Team, Zoning Board, & City Council:

We are writing to seek a zoning change for our proposed business at 806 E Bowman Ave, Las Cruces, NM 88001. Currently the property consists of a home dwelling, a parking lot, and a commercial business building divided into a workshop, office, and a showroom. The previous owners used the property as their home and ran Econopro Painters from the workshop/commercial building on the property.

Current zoning rules place this property as an R-2 zoned property. We are to understand that the previous owners operated their business under a legal non-conforming status, and that we must bring this property into compliance in order to open the proposed businesses.

We are excited to contribute to the local landscape and business offerings in this beautiful and historic neighborhood. Our plan is to operate a retail store (The Local Nut LLC) selling natural nutrition products and home goods from the office and showroom end of the building, leaving the workshop space as a woodworking studio for Flip Studio LLC. We feel that this offering will fit perfectly into the area adding value to the current business offerings that are developing in this unique area of downtown Las Cruces. We have both owned and operated like businesses previously and look forward to beginning this new endeavor here in Las Cruces.

We are requesting a zoning change for this property as a C-2 property in order to utilize the space as stated. We hope that you will see the value in our offerings and grant us this zoning change so that we may begin doing business in this beautiful city we now call home.

Respectfully Submitted,

Nicole Ehrgott Philip Ehrgott

Nicole & Philip Ehrgott

ATTACHMENT 4
Department Review Comments

Department: Planning

Status: APPROVED

Department: Transportation

Status: REVISIONS REQUIRED (underway)
1) Driveway aprons due to their width require one-way identification per code and pkg lot design.
2) Proximity of driveway aprons to applicable street centerline will require engineering variance.

Department: Engineering

Status: APPROVED

Department: Utility

STATUS: APPROVED

Department: Fire

Status: APPROVED

Department: MPO

Status: NOT REQUIRED

Department: Flood Review

Status: APPROVED W/ CONTINGENCY

Department: Econ Dev

Status: NOT REQUIRED

3057; Council Bill 24-015

City Council Action and Executive Summary

Type of Action:
☐ **Resolution**
☒ **Ordinance**
☐ **TIDD Resolution**

District:	☐ 1 ☒ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☐ N/A		
1st Reading:	December 18, 2023	**Adopted:**	January 2, 2024
Drafter:	John Castillo	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning

Title: **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.**

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 Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulations uniformly govern the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density) to C-3 (Commercial Medium Intensity) on a partially developed parcel of land located at 2460 Missouri Avenue. The purpose for the proposed zone change is to bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended as it currently does not meet the maximum gross floor square footage of 2,500 as outlined in the development standards of the C-1 zoning district and is considered a legal non-conforming property that has two buildings that encompass 6,276.88 ± square feet in total. In addition, it will allow for expansion of the commercial development that exists on the property spurring economic development, as well as provide an expansion of uses for both non-residential and residential development.

The property is zoned C-1 (Commercial Low Intensity) which has a 2,500 sq ft maximum building gross floor area requirement as outlined in the development standards Section 38-32D (Table) as well as, having an R-3 zoning district. The proposed zone change request will allow for the increase in attraction and retention of businesses at this location while bringing the property into compliance with the 2001 Zoning Code, as amended as the developed site exceeds the maximum gross floor area requirement. The surrounding neighborhood has a mixture of retail, office and residential land uses. Based on the existing neighborhood, the proposed zone change is compatible with the surrounding area, specifically the commercial corridor, and would be in harmony with Section 38-2 of the 2001 Zoning Code.

The proposed zone change is consistent with the intent and purpose of Elevate Las Cruces Comprehensive Plan and several of its Goals, Policies, and Actions. Missouri Avenue and Triviz Drive are classified as arterial roadways by Elevate Las Cruces' Future Thoroughfare Map and by the Mesilla Valley MPO Future Thoroughfare Plan. The subject property is also located within the Urban Neighborhood Place Type, as indicated by Elevate Las Cruces' Future Development Map. The Urban Place Type is defined as a variety of housing types with medium-to-high densities and areas of supporting neighborhood commercial development. The Urban Place Type accommodates small-scale commercial uses or mixed-use buildings on major thoroughfares and provides a transition in development scale between major thoroughfares and surrounding neighborhoods.

On October 24, 2022 the Planning and Zoning Commission (P&Z), per Section 38-10 B. 2. B. of the 2001 Zoning Code, as amended, recommended approval of the proposed zone changes by a vote of 6-0-0 (One Commissioner's Seat Vacant) based on the following findings, also reflected in Exhibit "B":

- The zone change request will allow for the attraction and retention of businesses at this location through the expansion of potential uses.
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the subject property (2001 Zoning Code, Section 38-33).
- The subject property is located at the intersection of two minor arterial roadways where it is recommended for C-3 zoning and uses (2001 Zoning Code, Section 38-32 D).
- Based on staff's analysis the proposed zone change request meets the purpose and intent of the Zoning Code and is supported by Elevate Las Cruces Comprehensive Plan.
- The proposed zone change meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).

The case was publicly noticed in accordance with the City's notification provisions; staff received no phone calls in support or remonstrance for the zone change prior or during the P&Z hearing.

SUPPORT INFORMATION:

Exhibit "A"- Site plan
Exhibit "B" - Findings
Attachment "A" - 2460 Missouri Staff Report
Attachment "B" - 10.24.23 P&Z Minutes Approved

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.
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z.
3. Vote to "Amend"; this could allow City Council to modify the Ordinance by adding conditions as determined appropriate.
4. Vote to "Table"; this could allow City Council to table/postpone the Ordinance and direct staff accordingly.

ORDINANCE 3057; COUNCIL BILL 24-015

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.

The City Council is informed that:

WHEREAS, Oscar Luevano, representative, has submitted a request for a zone change from C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density) to C-3 (Commercial High Intensity) for 2460 Missouri Avenue; and

WHEREAS, the proposed C-3 zoning designation will allow for retention of the existing business and the attraction of future businesses, as well as, bring the property into compliance with the 2001 Las Cruces Municipal Code, as amended; and

WHEREAS, the proposed site is in the Urban Neighborhood Place Types as shown on the Future Development Map within Elevate Las Cruces Comprehensive Plan which supports neighborhood commercial development and a variety of residential housing types; and

WHEREAS, the Planning and Zoning Commission, after conducting a public hearing on October 24, 2023, recommended that said zone change request be approved by a vote of 6-0-0 (one Commissioner seat vacant).

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

(I)

THAT the lands, as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-3 (Commercial High Intensity).

(II)

THATthe 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

COLLEGE PARK NO. 3 REPLAT, REPLAT NO. 5,

EXHIBIT "A"

A CONSOLIDATED REPLAT OF A 1.436 ACRE TRACT, BEING LOTS 2 AND 3,
OF COLLEGE PARK NO. 3 REPLAT, REPLAT NO. 3, IN PLAT BOOK 17, PAGE 173, FILED MAY 8, 1992,
AND BEING LOT 1A2, OF COLLEGE PARK NO. 3 REPLAT, REPLAT NO. 4,
IN PLAT BOOK 18, PAGE 271, FILED JUNE 9, 1995,
LOCATED WITHIN A PROJECTED SECTION 21, T. 23 S., R. 2 E.,
N.M.P.M. OF THE U.S.G.L.O. SURVEYS,
LAS CRUCES, DONA ANA COUNTY, NEW MEXICO
SCALE 1"=60' SEPTEMBER 21, 2018

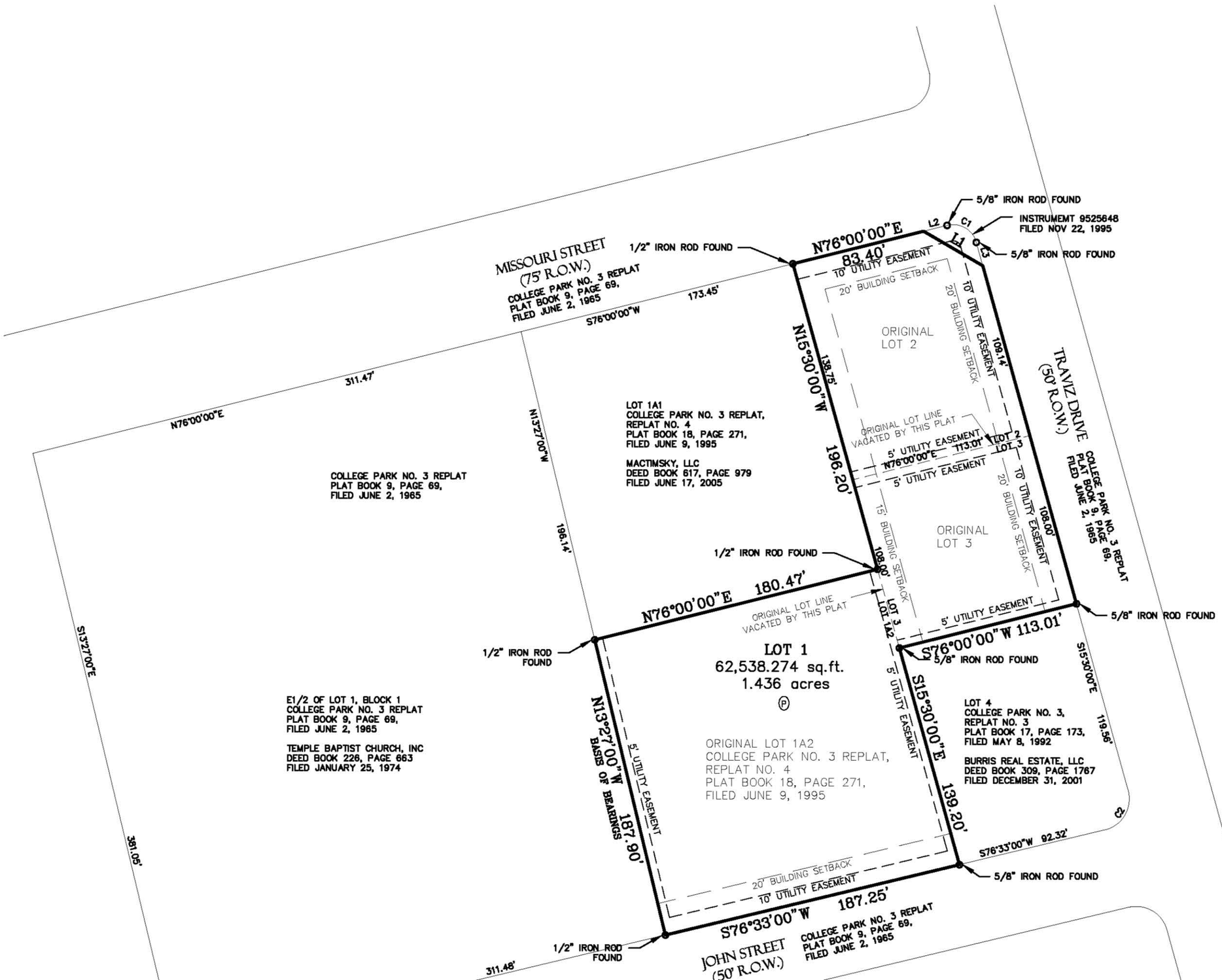


EXHIBIT "B"

FINDINGS

- The zone change request will allow for the attraction and retention of businesses at this location through the expansion of potential uses.
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the subject property (2001 Zoning Code, Section 38-33).
- The subject property is located at the intersection of two minor arterial roadways where it is recommended for C-3 zoning and uses (2001 Zoning Code, Section 38-32 D).
- Based on staff's analysis the proposed zone change request meets the purpose and intent and is supported by Elevate Las Cruces Comprehensive Plan.
- The proposed zone change meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).

ATTACHEMNT "A"

ZONING

City of Las Cruces®
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 10/24/2023

CASE 23ZO0500085: REZONING

STAFF CONTACT:	John Castillo, (575) 541-2288, jcastillo@lascruces.gov
OWNER:	A&M Group LLC
REPRESENTATIVE:	Oscar Luevano
DISTRICT:	District #1
SITE ADDRESS:	2460 Missouri Avenue
EXISTING ZONING:	C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density)
REQUEST:	Rezone to C-3 (Commercial High Intensity)
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 23ZO0500085:
A zone change request application from C-1 (Commercial Low Intensity) and R-3 (Multi-Dwelling Medium Density) to C-3 (Commercial High Intensity) on a property encompassing 1.427 ± acres. The purpose of the rezoning is to bring the property into compliance with the 2001 Zoning Code, as amended, and to expand on the potential uses of the subject property as well as future expansion of the current business on the property.

SUMMARY OF RECOMMENDATION:
Staff is recommending **APPROVAL** based on the findings listed below:

- The zone change request will allow for the attraction and retention of businesses at this location through the expansion of potential uses.
- The expanded uses allowed by this zone change are consistent with existing uses in proximity to the subject property (2001 Zoning Code, Section 38-33).
- The subject property is located at the intersection of two minor arterial roadways where it is recommended for C-3 zoning and uses (2001 Zoning Code, Section 38-32 D).
- Based on staff's analysis the proposed zone change request meets the purpose and intent and is supported by Elevate Las Cruces Comprehensive Plan.

- The proposed zone change meets the purpose and intent of the 2001 Zoning Code, as amended (2001 Zoning Code, Section 38-2).

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The applicant is seeking a zone change to bring the parcel into compliance with current code for future expansion of a cannabis-based business on the property and to allow for potential future development. The subject property is 1.427 ± acres in size with two structures that encompass 6,276.88 ± square feet in size total. Under the existing C-1 zoning designation a maximum building gross floor area of 2,500 square feet cannot be exceeded. Currently the property does not meet this requirement and the cannabis-based business wishes to expand its business.

The proposed zone change to C-3 will bring the property into compliance with the 2001 Zoning Code, as amended. This will allow the current business the ability to grow on the property as well as bring in future development to spur additional economic growth within the City.

LAND USE HISTORY:

The subject property was originally a part of the College No.3 replat subdivision that was recorded in June of 1965. The property underwent several replats and is currently shown in College Park No. 3 Replat, Replat No. 5 that was recorded in July of 2019. The property was originally zoned C-1 and R-3 prior to 1990. Currently the property is underutilized with development at the corner of Missouri Ave. and Triviz Dr. The subject property has direct access from Triviz Drive as well as John Street.

ZONING DECISION CRITERIA AND POLICIES

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

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

Missouri Avenue and Triviz Drive are primarily mixed-use corridors that run through the length of the City providing connections to other major thoroughfares. Missouri Avenue is dominated by a variety of commercial, office, retail and multi-family housing land uses. The subject property has C-2 zoning directly to the north and east of Interstate 25, and R-3 zoning to the west and south. The property is adjacent to offices and a church to the north and west. There is also a large mixed residential neighborhood that currently exists to the south.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

The subject property is located in an area designated as an Urban Neighborhood Place Type as shown on the Future Development Map in the Elevate Las Cruces Comprehensive Plan. The Urban Neighborhood Place Type area includes a variety of

residential housing types at medium to high density and areas of supporting neighborhood retail and office uses.

The following goals, polices, and actions from Elevate Las Cruces are relevant to the proposed zone change:

- Community Environment:
    - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
        - Policy CE-3.2 – Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts.
    - Goal CE-4: Complete neighborhoods - develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
        - Policy CE-4.2: Incorporate employment and shopping nodes into new and redeveloping neighborhoods that incorporate a wide range of recreational, commercial and civic uses.

- Community Prosperity
    - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
        - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
            - Action CP -2.2.2 – Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.
    - Goal CP-4: Diversification - Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
        - Policy CP-4. - Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses, jobs, and students.

The request to rezone the property from C-1 and R-3 to C-3 is not out of context with Elevate Las Cruces. The Urban Neighborhood Place Type encourages a diverse assortment of commercial and professional services that would be made available by allowing a broader spectrum of uses. Also utilizing the following development strategies: "Promote higher development intensities along major thoroughfares, especially those with transit services." and "incorporate small-scale commercial uses or mixed-use building on major thoroughfares."

COMPLIANCE WITH THOROUGHFARE PLANS:

Missouri Avenue and Triviz Drive are designated as minor arterial roadways by both the Elevate Las Cruces Future Thoroughfare Map and the Mesilla Valley Metropolitan Planning Organization (MPO) Future Thorofare Plan. These types of roadways are designed to support the proposed zoning designation and any potential future development.

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.
B. Encourage innovations in land development and redevelopment.
C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
H. Encourage the conservation of energy in the use of structures, buildings, and land.
J. Improve the design, quality, and character of new development.
L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
M. Foster a more rational relationship between different land uses for the mutual benefit of all.
N. Conserve the value of buildings and land.

Review by City staff has determined that the proposed zone change would not adversely impact the surrounding area. Any potential future expansion in uses is in keeping with the surrounding area as per Section 38-2 of the 2001 Zoning Code, as amended.

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 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 a positive recommendation to City Council regarding the zone change request. Staff also considered the Criteria for Decisions stated above during the internal review process and has deemed the zone change request appropriate for recommendation of approval.

NEW MEXICO CASE LAW:

1. There was an error when the existing zoning map pattern was created; or
2. Changed neighborhood or community conditions justify the change; or
3. A different use category is more advantageous to the community, as articulated in the Comprehensive Plan or other applicable City master plan(s), even though criterion (1) or (2) above do not apply because
    a. there is a public need for a change of the kind in question, and
    b. that need will be best served by changing the classification of the particular piece of property in question as compared with other available property.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently partially developed . The existing buildings exceed the maximum gross floor area development standard of the C-1 zoning district, therefore, making the property non-conforming. The R-3 zoned portion of the property can be used for future development of various types of residential development.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

The zone change request to C-3 would allow the applicant to bring the property into compliance with the 2001 Zoning Code, as amended, and allow the current business on the property to further expand. The proposed zone change would also allow for a variety of residential and/or non-residential development to occur on the vacant portion of the subject property. All development standards of the C-3 zoning district shall be required to be met.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas and sewer are currently serving the property and will not be negatively impacted by the zone change request. Missouri Avenue and Triviz Drive provides adequate paved access, sidewalks, and lighting adjacent to the subject property.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notification letters were mailed to property owners within 500 feet of the subject property. Staff has not received any input at the time this was written.

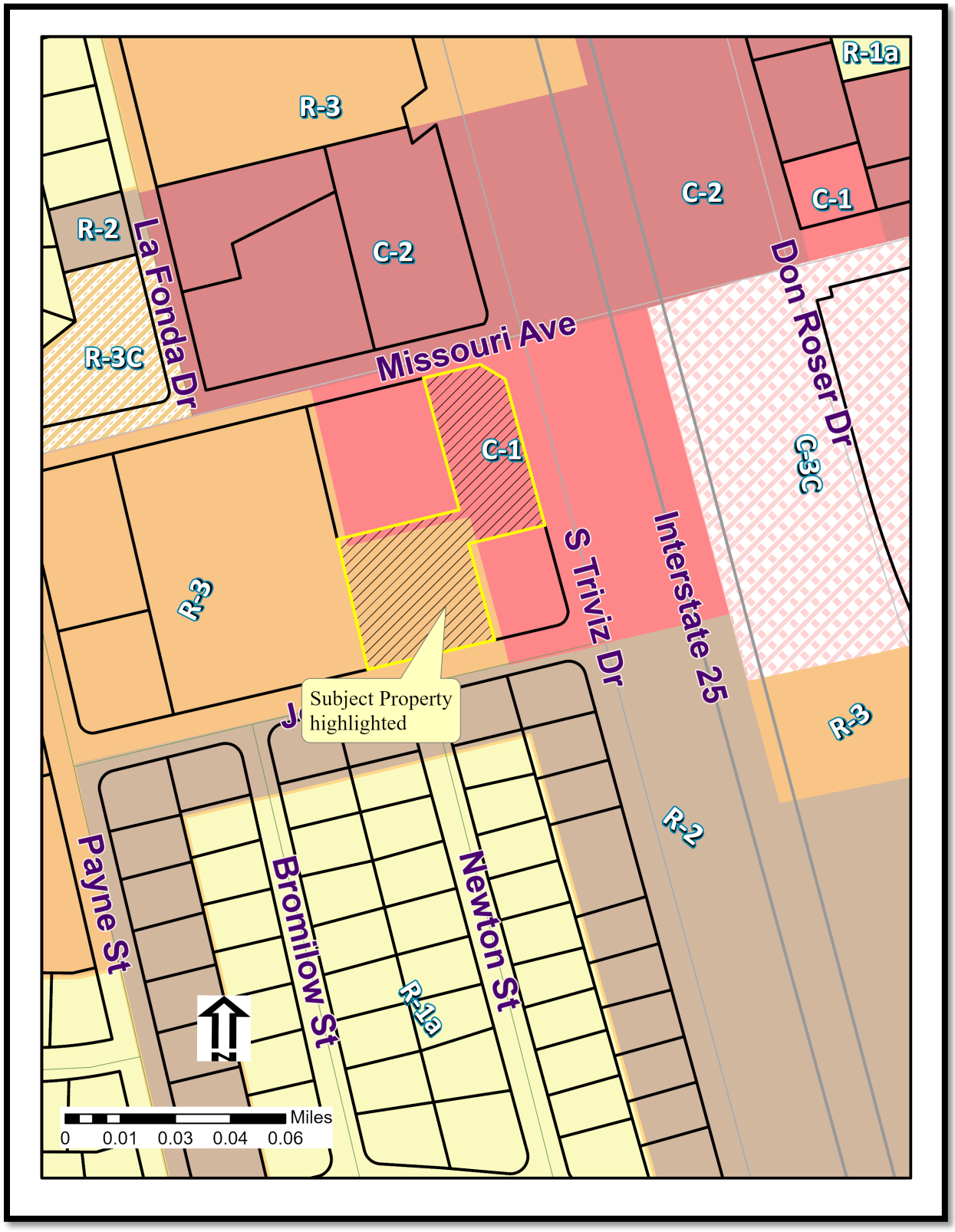
STAFF COMMENTS:

No reviewing department had any negative comments nor have any reviewers objected to the proposed rezoning.

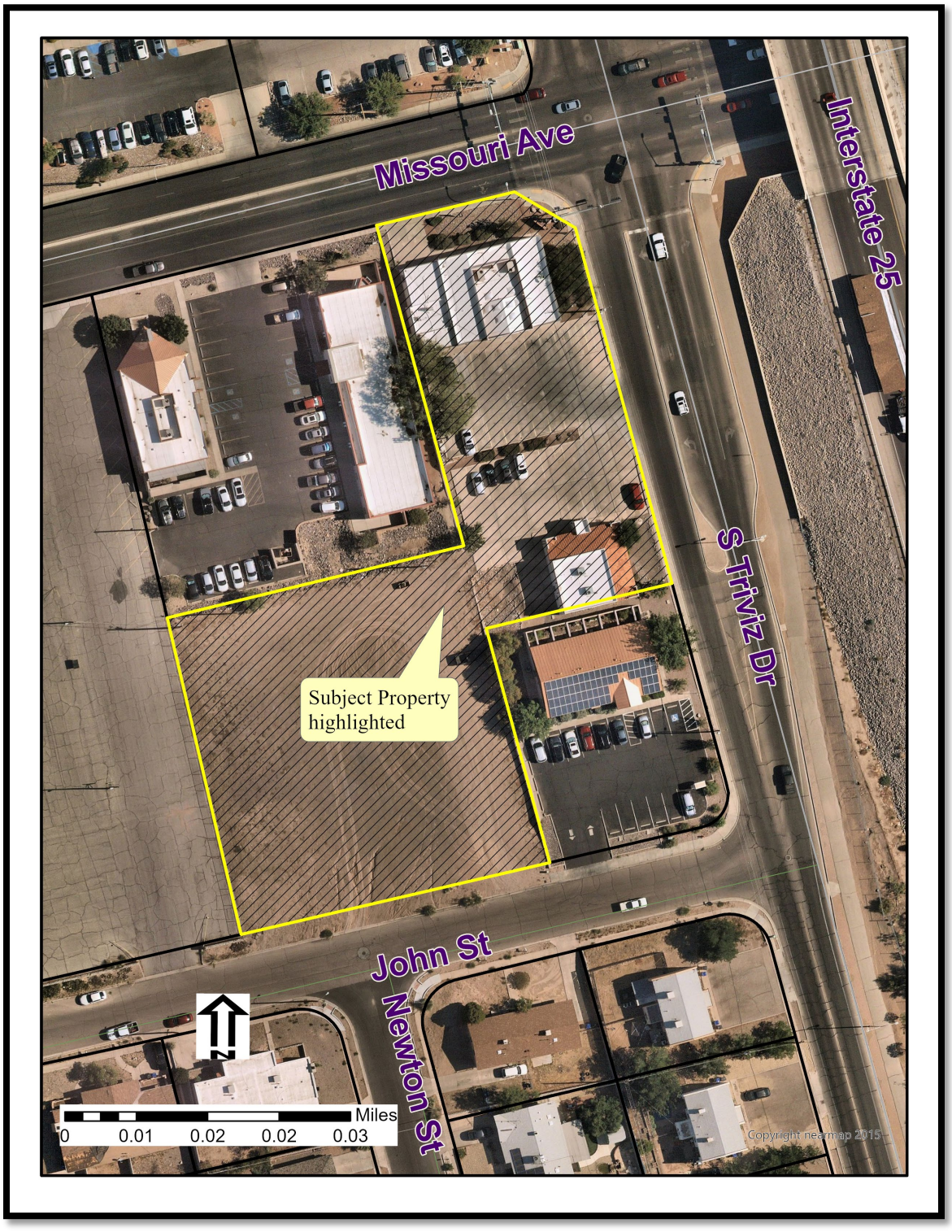
ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Department Review Comments

ATTACHMENT 1
Zoning Map



ATTACHMENT 2
Aerial Map



ATTACHMENT 3
Department Review Comments

Department: Planning

Status: YES

Department: Traffic Engineering

Status: YES

Department: Engineering

Status: YES

Department: Utility Engineering

STATUS: YES

Department: Fire

Status: YES

Department: City MPO

Status: YES

ATTACHMENT "B"

CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
October 24, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Enrico Smith, Vice-Chair
James Bennett, Secretary
Joaquin Acosta, Member
Connor Murray, Member
Vanessa Porter, Member

STAFF PRESENT:

David Weir, Deputy Director Community Planning
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Sara Gonzales, Senior Planner
Vincent Banegas, Interim Planner
John Castillo, Planner
Brad Douglas, Deputy City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening, folks. It is 6:00 p.m. on October 24th. We'll go ahead and call this meeting of the Planning and Zoning Commission to order.

2. CONFLICT OF INTEREST

Kaiser: Do we have any conflicts of interest from the Commissioners tonight? All right. Seeing none.

3. APPROVAL OF MINUTES – September 26, 2023

Kaiser: Are there any comments on the minutes from the September 26th meeting? None. Can I get a motion to approve?

Bennett: I make a motion to approve the September 26th meeting.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Board Member Porter.

Murray: Abstain.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

4. POSTPONEMENTS

Kaiser: Okay. I don't think there's any postponements tonight. Is that correct?

Ochoa: No, sir. None tonight.

Kaiser: All right.

5. ACCEPTANCE OF THE AGENDA

Kaiser: So before we go to the acceptance of the agenda, I'd like to pull item 7.1 and 7.2 from the consent agenda tonight for discussion. So we will make those our first order of business. So with that change can I get a motion to accept the agenda?

Bennett: I make a motion to accept the agenda.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Board Member Porter.

Murray: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

6. PUBLIC PARTICIPATION

Kaiser: Okay. Going to public participation. Is there anybody in the audience tonight who wishes to speak on an item that is not on tonight's agenda please raise your hand? Okay. Seeing none.

We'll go ahead and move forward. So there's no additional items of the consent agenda so we will go ahead and start.

7. OLD BUSINESS

Kaiser: And there's also no old business.

8. CONSENT AGENDA

7.1 Case # 23CS0500158: Moved to New Business.

Kaiser: So we'll go ahead and start with item 7.1. And if staff has a presentation, I'll be happy to entertain that.

Castillo: Good evening, Commission. Staff has created a presentation. If you guys want to hear it, we can. If you would just like to ask any questions about the development, we can also do that as well.

Kaiser: I think I'd prefer a presentation mainly because some of the attachments made it really difficult to sort of reconcile what was in the staff report versus what's on those attachments so a presentation would be great.

Castillo: Sounds good. So this is John Castillo for the record. Tonight, we have all the Organ Mountain Plaza master plan. It's currently located on the northwest corner of Bataan Memorial West and McGuffey Street. The address is 4299 Bataan Memorial West. It's located within Council District 5. It encompasses 9.525 acres. The current zoning designation is a stacked zoning of M-1, M-2 and C-3, which is our industrial standard and commercial high intensity.

As the property sits right now, it's currently a vacant, undeveloped parcel of land. As you can see from the aerial image, the highlighted part is what we're looking at right now. Here is the zoning of the tract of land and these are some street views. It is quite a stretch of land so it was hard to get a lot of pictures in there.

So the master plan proposes a multiphase, nonresidential development. It's going to propose anywhere between 20 to 30 lots for commercial and industrial land uses. The subject property is to be developed in phases utilizing either the alternate summary subdivision process or the preliminary plat process. If the developer wishes to use alternate summary subdivision process, the 9.525 acre parcel will get divided into various lot sizes, meeting either the C-3 development standards or the M-1/M-2 development standards. If they wish to go through forward with the preliminary plat, he can develop in phases either as one single lot or individual lots. Here's an image of the proposed master plan. The item down here at the bottom is what we're looking at.

Public input was sent to all relevant agencies and departments. All of them supported the proposed master plan. Notice was sent to surrounding properties within 500 feet. Staff did receive a couple of phone calls regarding development on the master planned area and just general questions regarding the property as a whole as well as the master planned area.

This went before our Development Review Committee or DRC, which was conducting a meeting on October 4th. The DRC reviews subdivisions from an infrastructure, utilities, and improvement standpoint. There was discussion regarding the proposed access points along Bataan Memorial West and NMDOT's approval of those access points. Based on that discussion staff gave a unanimous approval as a recommendation.

Today staff recommends approval as well as DRC recommending approval based on the following findings. The proposed master plan meets the objectives of a master plan as required by the subdivision code based on relevant City staff review. The proposed master plan complies with all requirements of the 2001 Zoning Code as amended as well as the City of Las Cruces' designs standards. The proposed master plan also fulfills the

intent and purpose of Elevate Las Cruces Comprehensive Plan. It also meets the purpose and intent requirements of Section 38-2 of the Zoning Code as well as the Section 2-382 of the Las Cruces Municipal Code. And DRC also gave their recommendation of approval on October 4th.

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

Kaiser: Thank you. I certainly have some questions but I'll turn to my colleagues first. Does anyone have any questions or comments? So I think my first question is I think you kind of alluded to it just now but it was in the staff report. It says there's 20, the development would allow for 20 to 30 lots in phases but that does not appear to be shown anywhere in the I guess proposed master plan in attachment three, so I'm just wondering if you could clarify what that is? And what that looks like?

Castillo: Mr. Chair, Commission. Speaking with the developer they would be utilizing, like I said before, either the alternate summary subdivision. So based on land uses that would go in, they would parcel out the tract of land into various sized lot sizes which could range anywhere between 20 to 30 lots on the property based on land uses and what the proposed use is going to require.

Kaiser: Okay. So I guess I'm confused as to what is the plan. What are we, I mean I see one giant tract of land that you're saying could be split up in an infinite number of ways depending on what the developer chooses to do in the future, but we're being asked to approve a master plan. What's the plan?

Castillo: Mr. Chair, Commission. So the master plan for the property is to look at the overall utility infrastructure that would be on the property as well as propose any type of infrastructure regarding roadways. They are going to be using shared access points between all of it. I'm going to let Sara speak real quick.

Gonzales: Mr. Chair and Commission. Sara Gonzales with Community Development. The process for a master plan is basically used for developers in order to create an administrative process for subdividing the land. Property is already zoned, it just allows the applicant to come forth and utilize basically the alternate summary process to say this person may need an acre in size.

If we go and develop each piece, they would have to come back to P&Z every time they cut out a portion. So the master plan is used in order to alleviate that process because it already meets the intent of the code and it meets the zoning. So this process is just allowing them to have it zoned and master planned in a way to where they can come in and now utilize the administrative process.

Kaiser: Okay. Thank you for that clarification. I guess along those lines there, let's see. Let me find it on my page here. Yes, here we go. So the purpose of a master plan process is to advance the goals and objectives of the City's Comprehensive Plan and to address a variety of environmental and social issues that are being proposed in the development. So could you speak to what some of those issues might be? And how this master plan addresses them?

Castillo: Mr. Chair, Commission. Keeping in line with Elevate Las Cruces, the southern half of Bataan Memorial East is considered a regional commercial zone. I don't believe it's a part of a mixed use corridor but it is a major thoroughfare within our City. So keeping with that this would enhance that regional commercial corridor moving forward to the north creating a buffer between any type of residential development.

It also provides once again depending on the type of use that goes in, it can fill the need for any type of food desert that maybe there or provide some other kind of amenity to the neighborhood.

Kaiser: Okay. Thank you. All right. I don't have any further questions. I'm just sort of struggling with we're being asked to approve a master plan but there's no plan. But I don't know if that's a flaw in the process or the requirements in the code but it's one lot. We're saying that they can develop it you know 50 different ways to Sunday but we don't what. We're just giving them the go ahead to go ahead and do that. And as long as it adheres to the master plan then they're good to go but I just don't know what the plan is. So I don't know what we can do about it here tonight but that's just a concern I have, so I appreciate it. Thank you.

Are there any other questions or comments from the Commission? No. All right. Going to the public. Is there anybody in the public who wishes to comment on this item? All right. Seeing none. I'll come back to the Commission. If there's no other comments or questions looking for a motion to approve.

Bennett: I make a motion to approve 7.1.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Smith.

Smith: I vote yes based on staff recommendation.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation.

Baum: Board Member Porter.

Porter: I vote yes based on staff recommendations and Elevate Las Cruces.

Baum: Board Member Bennett.

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

Baum: Chair Kaiser.

Kaiser: No, based on the fact that I just I don't have enough information. I don't know what I'm approving as part of this master plan.

Baum: Passes five to one.

7.2 Case # 23ZO0500124: Moved to New Business

Kaiser: Okay. Moving onto item 7.2. This is a zone change request from R-4 to C-2 at 6281 Reynolds Drive. Go ahead, staff. If you have a presentation.

Ochoa: Good evening, Commission. Adam Ochoa with Community Development. I'm actually covering this case for another staff that couldn't make it tonight unfortunately. So bear with me when I go through this for you all and I'll try to answer as many questions as I can to clarify for you all.

So currently the property is zoned R-4 which stands for multi dwelling, high density and limited retail and office. The property encompasses roughly 0.812 acres and is currently undeveloped. Surrounding area which is kind of, we go a little forward first, the southern portion if you will, of Bataan Memorial here between I believe what is Dunn and Porter to the west. It's surrounded commercial properties to the west which are owned by the City to be utilized for the East Mesa campus that's to be developed in the future. Religious institutions, single-family uses, multifamily uses as well. And then vacant multifamily development as well right along that area of Reynolds.

This area is categorized by Elevate Las Cruces and it is suburban place type which actually does encourage that variety of uses, multifamily, single-family, and different ranges of densities. Commercial nodes, if you will, to support those and multifamily zoning as well.

Again, you're showing here the subject property here. Right next to what is that vacant commercial area that is currently zoned by the City of Las Cruces. A little further west you can see the East Mesa Complex there. Highlighted property here, religious institution to the east, multifamily, vacant commercial property that's all City owned, and just a sea of what is large lots, single-family residential lots to the south.

The applicant is proposing to rezone the subject property to C-2 which is commercial medium intensity property. It only requires a C-2 zone designation because it doesn't require a C-3 commercial high intensity because the lot isn't large enough to require that. It will allow for the development of either a commercial shopping center as what the applicant is really trying to propose or possibly a ministorage unit facility as well. A zone change will not eliminate the existing multifamily land use as we all know commercial does allow for multifamily and allows that flexibility if that is wanted in the future at a higher density as well. Here's just a quick site plan of that vacant piece of property. Bataan Memorial to the north. Reynolds to the south.

So when staff analyzed the proposed zone change, we did see no real health, safety, or welfare issues associated with the zone change. The proposed zoning district would provide the capability for, I guess the surrounding area kind of utilize actual commercial area. I don't know if you all had a chance to drive it out there. There's really limited commercial uses, service uses, in this area. So staff saw that this is something that is supported by Elevate Las Cruces and the suburban place type adding this additional commercial property on the actual commercial zoning on the property.

Showing here kind of what I reiterated. To get to any services in the area, it's a limited access highway as we all know. The State of New Mexico, we love our limited access highways. So to get to any type of services, there is a small commercial node here or commercial use, if you will, gas station right on the corner on the north side. But then you'd have to come all the way down to Mesa Grande to really reach any other type of services of commercial land uses for this area. Really everything to the south is either single-family zoning designations or rural single-family zoning designations so just a large cluster of it in this area.

With that staff does recommend approval for the proposed zone change. We believe that it does meet the intent of the 2001 Zoning Code. A zone change will allow for a multitude of commercial land uses on the subject property. It is located along a minor arterial roadway and a local roadway to the south, but would allow additional commercial uses in the area. And the proposed zone change is supported by Elevate Las Cruces

Comprehensive Plan and meets the purpose and intent of Section 38-2 of the 2001 Zoning Code.

Let's see here. City of Las Cruces staff, we did send required public notice to all surrounding properties. We did receive no input from anybody around the area.

With that, ladies and gentlemen, your options tonight is one, vote "yes" to approve the proposal or recommend approval for the proposed zone change to City Council. Two, to vote "no" and deny, recommend denial for the proposal and change. Of course, reminder, any denial - staff findings are for approval, so any vote for a denial will require new findings of fact. Three, to vote "yes" and amend the proposal and change. And four, table or postpone and direct staff accordingly.

The applicant is here if you have any questions for them. And I stand for questions as well.

Kaiser: Thank you. Before I ask my questions, anyone on the Commission have questions or comments? Commissioner Smith.

Smith: I just want a clarification. So basically, this is just giving them an option to maintain a residential zone and also the opportunity to develop as a commercial zone also?

Ochoa: Commissioner Smith, Chairman Kaiser. Correct. It kind of gives them a little step up in the ability to develop this property. As you know, R-4 you're allowed multifamily high density which basically it's the same density that is allowed also in the proposed C-2 zoning. But on top of that R-4 allows limited office and retail. Very limited office and retail on the property. And it requires certain types of development to occur on there, limited uses. But the C-2 would allow a lot more potential commercial land uses as well. So just opens the options for this property to be developed more than what its current zoning designation allows.

Smith: All right. Thank you.

Ochoa: Yes, sir.

Kaiser: Any other Commissioners have questions? Go ahead.

Porter: I wanted to know so we're approving basically either a storage unit or a shopping center, right, basically, that's kind of what he's requesting, right? I know that he's saying that there's not really any other like shopping centers unless you go around to Mesa Grande and this will put this one at Reynolds. But how would we know what we're approving if we're approving a storage

unit or if we're approving another shopping center which would benefit the community on that spot because that's what the presentation is coming off to me. When would we, like that's no clarification to me right now as in if it's a storage unit or if it's going to actually be something that will be able to provide a little bit more for the residents in that area.

Ochoa: Sure. Commissioner Porter, Chairman Kaiser. Those two uses are just what the applicant is currently looking at potentially developing the property for. But really, it's any C-2 use would be allowed on the property. Anywhere from, like I said before, multifamily to that shopping center, the storage unit facility, and a plethora of other things as well. A standalone restaurant could go there. Offices can go there. Even mixed use development can occur over there as well as long as densities and heights and all other development standards will be met. So those are just two examples of what they're thinking of developing, but it's not really set in stone yet.

Porter: Okay. Thank you.

Ochoa: Yes.

Kaiser: So I have very similar concerns as my colleagues up here. I think my biggest concern is that we're not guaranteed residential units under a C-2 zone, right. I mean the applicant is indicating that that's not their intent. And I have serious reservations about that because we already have limited opportunities to develop something other than single-family residential units in this City.

We've got housing affordability issues and you know this is one, I think it's what, less than an acre in size? So we can sit here and say well it's not that big of a deal, it's less than an acre. But the problem in my mind is that everyone of these is just another chip off the block that we no longer have the opportunity to go develop that into residential units. And so, I'm very concerned that we're going to approve this tonight and they're going to go develop a ministorage unit. That's hugely problematic to me.

Even if they decide to do a commercial center, I still have reservations because under the R-4, you're saying that there is limited retail opportunity there. So my question would be what is the applicant not able to get out of that R-4 zone as far as retail or commercial? I mean could they not get or put in a market that would actually serve the residents of this community?

Ochoa: Mr. Chair. The actual list of permitted commercial are service uses under the R-4 is extremely limited. Top of that it is also limited on square footage as well. So it would extremely restrict how much that property can be developed for any type of commercial use. So even if an office went in there or let's say like you stated like a grocery store, the square footage of it would

be extremely limited than just if we went with the C-2 zoning designation. That's the major difference just extreme constraints. And for instance, we currently had …

Kaiser: Do you have your code by any chance?

Ochoa: Let me get those exact numbers for you. If you give me one minute, sir.

Kaiser: Yes. And while we're waiting. I guess I understand the constraints part and I think that's the whole point, right, is we're trying to get the residential units. We're trying to require that. So I understand that there's constraints on the commercial because what we want to see with R-4 zone is residential. You know, I'd be curious to know you know what the applicants thoughts are as far as the R-4 and what may or may not be possible.

The other concern I have is this is next to the west of it, there's already I think there's a C-3 parcel. So I mean there's opportunity already right there to develop a commercial development. Yes. And I think it was earlier in your presentation you had the zoning on it. Yes, there you go. So it is a C-3 already. So I mean there's opportunity there. So I'm concerned that we would be giving up residential opportunities here.

And then also the location next to the park. I mean it just doesn't make sense to me that we would put in a ministorage unit next to a park. I mean that's a perfect opportunity for residential development. So I have a lot of concerns and I think that pretty much covers the extent for me.

From the use perspective while you're looking. I would mainly be curious about the retail pieces of it, like what they could do?

Ochoa: Mr. Chair. To answer your question. So for instance, retail it's even more limited. It's really just services that would be allowed there. Offices use is what would be allowed there. Accountant's office, professional offices so on and so forth. Limiting maximum of either 35% coverage of the property or 1,500 square feet max of the entire property would be allowed for commercial or I guess really office use, if you will.

On top of that though, I did want to clarify that piece of property to the left is owned by the City of Las Cruces, the vacant commercial property, and that's for the future continued growth of what is the East Mesa Complex out there, sir.

Kaiser: Okay. So our plan to do future park improvements expansions is that …

Ochoa: I believe that's still in the plan. Yes, sir.

Kaiser: Okay. So it would be right next door to a park that's expanding. I mean that seems like a great place to have an apartment complex or some other multifamily development. Any other questions or comments from the Commission? All right. Go ahead and go to public comments. Is there anybody in the audience who wishes to speak on this item tonight? Okay. Seeing none. Coming back to the Commission. If there's no additional comments or questions, looking for a motion to approve.

Bennett: I make a motion to approve 7.2.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on staff recommendation and Elevate Las Cruces.

Baum: Board Member Smith.

Smith: I vote yes to approve based on staff recommendation and this is consistent with the purpose and intent of the zoning ordinance.

Baum: Board Member Murray.

Murray: I vote yes based on Elevate Las Cruces and staff recommendation.

Baum: Board Member Porter.

Porter: I vote no due to recent findings.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation.

Baum: Chair Kaiser.

Kaiser: No. Based on the potential impact of affordable housing in this community and the inconsistency with policies of Las Cruces.

Baum: Passes four to two.

9.1 **Case No. 23ZO0500091:** A request to approve a Special Use Permit (SUP) to allow a cannabis-based business less than the required 300-foot buffer distance from another cannabis-based business. The subject property is located at 1760 W. Hadley Avenue, encompassing 1.02 ± acres and is

zoned M-1/M-2 (Industrial Standard). Submitted by Martin Camarena, representative. Council District 4.

Kaiser: Okay. Moving onto item 9.1, a request to approve a Special Use Permit to allow a cannabis-based business within the 300-foot buffer distance at 1760 West Hadley Avenue.

Castillo: Good evening Commission. Once again, this is John Castillo for the record. Today, we have a Special Use Permit located at 1760 West Hadley. This will be a cannabis microbusiness. The current conditions of the property, it's zoned M-1/M-2 which is our industrial standard. It was originally developed as a warehouse storage facility in 1975. And it has had various commercial and industrial land uses go in and out of the property. The property is located 1760 West Hadley and it's approximately 1.02 acres in size.

The surrounding neighborhood contains similar uses to what is being proposed. There are other larger cannabis grow facilities in the area as well as some other microbusinesses within the area. The zoning map here shows the subject property that's highlighted. It's all M-1/M-2, then you have some commercial development within the area as well. The aerial map as you can see once again the highlighted area, we have some commercial buffering, a mobile home park, an already existing RV and I believe mobile home park in the area, as well as a small public park.

So the proposal is to allow a SUP for a grow and manufacturing cannabis that doesn't exceed 200 mature plants. The buffer distance between the cannabis microbusiness area permit or closest cannabis microbusiness area permit boundary is approximately 80 feet which does not meet our 300 foot required buffer. However, this does meet all over buffer distances such as single-family zoning districts and school/daycare properties. They will also follow all of the City of Las Cruces and State of New Mexico regulations governing cannabis and related retail activity.

As you can see, the subject business is going to be located at the far end of this facility right here. And this is just a street view of what we see it looking from Hadley. This is the proposed business right here. This is an existing cannabis microbusiness as well. The two closest points together are approximately 80 feet. I think it's like 78 point something.

All relevant City staff reviewed the application and had no comments regarding the proposed establishment. Notice was sent out to all surrounding properties within 500 feet. Staff did receive a phone call regarding general information of the business that was going in, not so much about the Special Use Permit itself just the business.

Today, staff recommends a conditional approval. The condition being that the business will be required to bring the property into compliance with all development standards as outlined in the 2001 Zoning Code. This includes everything from parking, landscaping, and whatever other building code requirements that may be needed if they make any improvements to the building.

The findings for approval are the subject property meets the distance separation requirements from any school, nursery, daycare, and single-family residential district. It already exists and is surrounded by commercial and industrial uses in the area. The subject parcel is compatible with several other nonresidential properties along Hadley Avenue. Meets the purpose and intent of Section 38-2 and it will meet all requirements outlined in the Zoning Code and those stipulated by the State of New Mexico. Meets the intent and purpose of Elevate Las Cruces Comprehensive Plan as it's located adjacent to a mixed use corridor and it's also found within the business park and industrial place type.

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

Kaiser: Thank you. Can you go back? So this is conditional approval, that's staff's recommendation where the, okay. So it's just the compliance bit. You mentioned something somewhere about the 200-plant capacity. Is that also part of the condition?

Castillo: No. That is as part of the definition of our microbusiness. They're only allowed to grow up to 200 mature plants.

Kaiser: Got it. Okay. Thank you. Any questions or comments from the Commission? All right. Seeing none. We'll go ahead and open it for public comment. Can I get a show of hands of anyone who wishes to speak on this item tonight? Okay. I see one from this gentleman here. Go ahead and come forward, sir. I'll give you three minutes.

Hoban: Good evening.

Kaiser: And before you get started, sir. Can I have you state your name so I can swear you in?

Hoban: Kevin Hoban.

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

Hoban: So help me God.

Kaiser: Go ahead.

Hoban: I am diametrically opposed to allowing for a Special Use Permits waivering the 300-foot separation of cannabis related facilities. The buffer was put in for a reason and I notice there are several agenda items requesting the same Special Use Permit and exemption. And I feel that it does not meet the intent of having that 300-foot buffer in the first place. And I believe it's a slippery slope that we go down when we start making the exceptions become the rule.

I'm not a big fan of cannabis having recovered from several things during my lifetime. But you know the State of New Mexico has decided to do that. They came up with a fairly comprehensive way to do it adopted by our local governments, and I think we should continue to follow those recommendations and not necessarily make exceptions just to fill space. Thank you very much.

Kaiser: Thank you. All right. Is there anybody else in the audience that wishes to speak on this item? All right. Seeing none. I will come back to the Commission. Any final comments or questions? All right. Seeing none. Go ahead, Commissioner Smith.

Smith: I would just like to address the gentleman who just came up. I know that you know we previously voted to approve a deviation from the 300-foot buffer. And I know that this Commission, we've been very careful as far as making sure that if we do approve and when we have approved those deviations has been based on you know proximity to schools and daycare centers and places of that type.

I know as I look at this one, it's close to another cannabis business and they're requesting quite a, you know deviation from that, approximately 80 feet. In this situation, I look at where this place is located. It's an industrial area. It's not near any schools or residences. And I kind of take the approach of a bar/restaurant. You know you go downtown and you know there's a bar beside a bar and a restaurant beside a restaurant. And you know they're in a warehouse type environment. You know I mean it's competition. I know they're close to each other.

So I think on a case-by-case basis we look at these and I definitely agree with you as far as you know we have to look closely at how often we approve the deviations. And that's what we attempt to do very carefully in this Commission.

Kaiser: Thanks, Commission Smith. And I'll just clarify too, the code allows for an applicant to come forward and ask for this relief under the Special Use

Permit. So these aren't exceptions. The code allows an applicant to come forward. And if they fall within 300 feet of a residential neighborhood or another cannabis establishment, they can seek a Special Use Permit on their existing code. So I just wanted to clarify that point. If there's no other comments, looking for a motion to approve, and keep in mind there's that one condition.

Bennett: I make a motion to approve 9.1 with the condition stipulated in the staff report.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve with conditions based on staff recommendation and just based on the supply and demand of the industry there as you're looking at actually growing and producing that product there. The industry is still very, very behind in a big industrial complex like that. The more competition the merrier. They still have an uphill battle from there. It's definitely not a golden ticket to a million bucks by any means. So we do still need the medicine out there.

Baum: Board Member Smith.

Smith: I vote yes based on staff recommendation for the conditional approval.

Baum: Board Member Murray.

Murray: I vote yes based on staff recommendation and the industrial area that it's located in.

Baum: Board Member Porter.

Porter: I vote yes based on staff recommendations with conditions.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation. This also meets the purpose and intent of the code and the criteria for decisions.

Baum: Chair Kaiser.

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

Baum: Motion passes.

9.2 **Case No. 23ZO1000109:** A request to approve a Special Use Permit (SUP) to allow a cannabis-based business less than the required 300-foot buffer distance from another cannabis-based business and single-family residential zoning district. The subject property is located at 750 S. Solano Drive, zoned C-2 (Commercial Medium Intensity), and encompasses 1.41 ± acres. Submitted by Alter Ego Holdings, LLC, representative. Council District 3.

Kaiser: Okay. Moving onto item 9.2. This is another request to approve a Special Use Permit to allow a cannabis-based business within the 300-foot buffer. This is at 750 South Solano Drive.

Gonzales: Chair and Commission. Sara Gonzales with Community Development. As stated, this is a Special Use Permit for 750 South Solano. The property is located on the northwest corner of Solano Drive and Colorado Avenue. It's approximately 1.41 acres in size. It is zoned C-2 which is commercial medium intensity, and currently has storage units as well as an additional business located on the property but does have underutilized commercial retail space still available.

Under the code requirements of Chapter 38, the applicants must come forth for a Special Use Permit if they do not meet the requirements of the 300-foot buffer from schools or daycares, residential zoning districts, or retailers or microbusinesses that are currently in operation.

The applicant is proposing a drive-through retail cannabis only. So this will only be for drive-through. There will be no walk-in. There will be no parking on site. So this is just to basically pick up and receive their retail services and then leave the site. They'll be utilizing 600 square feet of the existing building, and they will meet all the requirements for the State of New Mexico regulations as far as cannabis-related retail goes.

The buffer distance in which is in question is we do have another case that will be presented after mine. So we have two cannabis retailers that will be about 262 feet separation from an existing cannabis retailer and 170 feet from another one that is going to be proposed this evening. They also have a buffer requirement of 181 feet from a single-family residential zoning district.

As you can see on the zoning map, you can see that there's commercial properties along Solano Drive, that is one of our mixed use corridors. Colorado is mixed uses which is multifamily, single-family, and then has also some commercial located on the south side. This is essentially the aerial map of the subject property and its current location as to where it would be to the other cannabis retailers and the residential district. As you

can see, there is 170 feet from the current cannabis retailer that is in operation. The proposed one that is coming forth after this will be 262 feet away. And you have 181 feet to the residential zoning district. We go to the zoning district boundary line not to the residential property line because district lines are different, they run to the middle of the street.

One thing to note that I did notice within the applications as they were submitted. The property located on this corner was submitted on May 8th. The current application that is being reviewed right now in front of Planning and Zoning Commission was May 9th and the one just after is on May 15th. So all of these applications came in at the same timeframe. So at any point in time, these Special Use Permits would have come forth to the Commission for consideration.

Here is a site plan of the subject property. As you can see, this is the existing storage unit facility. Their customers will be coming in through Solano, going through their drive-through window and then exiting out onto Colorado Avenue. Once again, it is just for drive-through purposes only. Here is some images of the subject property as well as along Solano. So you would have Solano here. This is currently where the retail space that is used for the storage units. There's also another business inside this building and then their business would be on the very end in order to meet that 100-foot stacking lane that's required for any drive-throughs within Las Cruces.

This is if you're looking at the property. This would be where they're located on the corner. Across the street is where the current cannabis business is located. This is on the south side where you see the other commercial services being provided. With this, the applicant has justified the Special Use Permit because it is just a strictly drive-through establishment. You will not see as many cars parking. You will not have as increased traffic as anybody who is coming by to pick up their services or their retail and leave.

It is also providing a 24-hour service which then in turn will provide security for the existing property. The owner at this time has a chain link fence around the property and its storage units, and so there are several damages taking place. So this now puts someone on site to actually do security for that site as well as generating the GRT for the City.

So with this, staff did not find any health, safety, or welfare issues identified. This is a retail establishment that is often similar to the ones we do see currently being utilized and approved throughout the City of your coffee shops, your gas stations, you generally see multiple in similar locations. And it's utilizing an additional portion of a building that can generate the GRT for City.

So with this, these are the findings that were found within your staff report. It does meet the distance and requirements for any schools or nurseries and daycares. It is compatible with the surrounding area and land uses as far as it is a commercial retail service. And so along Solano is where we continue to see our commercial that is being restored as far as vacant buildings being utilized.

The site does attract vehicle traffic but it's coming from Solano which is our designated minor arterial as opposed from the local streets. All of that traffic will be coming off of a roadway that's already designated to handle that impact. It meets the purpose and intent of the 2001 Zoning Code and it meets all of the requirements that are outlined as far as the State of New Mexico has indicated with the Special Use process.

Staff did send out notification to the surrounding property owners. We did receive seven letters in support. You also received two additional in front of you this evening that were printed and provided. With that you have three renters that are renting around this location as well as six property owners. We did receive one phone call that was not in support with the concerns of there may be increased traffic along Colorado Avenue due to the hours of operation and that it may take away business from the existing cannabis location now.

So with that your options are to vote "yes" and approve, vote "no" and deny. Once again, if you choose to vote to deny, please provide alternate findings of fact that were not found within your staff report. Vote "yes" with conditions, and vote to table. I stand for any questions and the applicant is here as well.

Kaiser: Thank you. Any questions or comments? I have just a couple of minor questions. So the drive-through element, it looks like this is one-way traffic. Is there going to be a need for signage to control that at all, or is it self-explanatory when you pull up?

Gonzales: Mr. Chair and Commissioner. The applicant will be required to update the site in order to provide the proper signage to locate. And then also as his customers come in, give that information as they tend to purchase. If they have the availability, all of these will be detoured so that way you can understand which way to get into the site for that drive-through.

Kaiser: Okay. Is it a drive-through strictly or could somebody walk up to this window as well?

Gonzales: Mr. Chair and Commission. It is drive-through strictly. There are no windows to walk up to and there are no doors in order to open it and actually access the retail services.

Kaiser: But somebody could walk up to the drive-through window and purchase a product? They have to be in a vehicle?

Gonzales: Mr. Chair. Let me ask the applicant. Mr. Chair. The applicant has stated it has to be in a vehicle. That the customer has to be in a vehicle.

Kaiser: Okay. And then I guess when they exit the property, it looks like a building or I guess two buildings directly across the street on Colorado. One looks like a residential structure. The other, I can't really tell. Would the potential hours of operation have an impact on that residence perhaps? I don't know if there's going to be restrictions on that hours of operation, I'm just thinking 24-hour drive-through, you know headlights coming into a bedroom at 2:00 a.m. would be pretty obnoxious.

Gonzales: Mr. Chair and Commission. Based on the aerial if you can see this would be the drive entrance right now. Currently, you would be coming out. This is the commercial property. This would be the residential property. So I think by the time you'd actually turn there is that possibility of lights. But I think we see that regardless in most commercial and residential areas. You're going to see some type of light that may come out. The driveway is located over here so it should not impact at least the access coming in for that residential property, but it would be more just to these streets right here do not have as many on street parking for vehicles because they are commercial related, so you don't have that extra traffic at night.

Kaiser: Okay. And then I'm assuming there's no limitations on hours of operation? This is 24 hours. Yes. Okay.

Gonzales: Mr. Chair. Correct. It would be a 24-hour service.

Kaiser: Okay. Thank you. Any other questions, comments from the Commission? Okay. Looking to the public. Is there anybody who wishes to speak on this item tonight? Please raise your hand. I see three individuals. I'm going to start with this gentleman here in the front row. Please come forward and I'll give you all three minutes each. Please state your name for the record.

Cortner: John Cortner.

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

Cortner: Yes.

Kaiser: Go ahead.

Cortner: So my name is John Cortner and I'm the CEO and one of the cofounder of Casa Verde Cannabis. We're actually the cannabis dispensary that's already there supplying to both these. I did bring my sales data. I don't know if you guys want to see any data. I just have some information.

Kaiser: Yes. Bring it up.

Cortner: That's our sales to date. The main reason why we're here is we are, us three, we're small business owners here. We've been just recently established you know just for about six weeks. We do not feel that having two dispensaries open up within 300 feet of us is going to be good for us. Honestly, it's going to kill a small business. If there's one you know maybe that's okay, but having two open up within 300 feet, honestly, it's going to be really tough for us.

Also, I don't feel that having a drive-through coming down Solano where it turns from two lane to a one lane. I think it's going to impede traffic pretty badly right there. So I think it's going to make Solano kind of like back up right there. But the biggest focal point of this is going to be we are a small business. We're trying to survive here and bringing two dispensaries that close to us is not going to be good for us.

Kaiser: Thank you.

Cortner: That's it for me. Thank you.

Kaiser: Do you want your data back or …

Cortner: It applies for the second one too so.

Kaiser: Okay. We'll hold onto it for now. Thank you. And then the gentleman in the back please come forward. Please state your name for the record.

Escobar: Jason Escobar.

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

Escobar: Yes, sir.

Kaiser: Go ahead.

Escobar: Good evening. First off, I would like to thank the Planning and Zoning for making this possible today. My name is Jason Escobar, owner and operator of Alter Ego Cultivation, a dispensary here in Las Cruces. My family that consists of my parents, Francisco and Jenny, and my two siblings, Brandon

and Ariana, moved here from Arizona in April of 2022 with one goal in mind, to bring in an amazing seed to sale experience to the Las Cruces community. Every day we strive towards this goal working with the great people we've met along the journey.

We're ready to serve the community of Las Cruces seven days a week with a 24 hours a day with a knowledgeable and friendly staff. As a drive-through only dispensary, we offer a unique and divergent experience to our City's cannabis enthusiasts giving opportunity to those who may not be seeking the traditional cannabis experience. I'm sorry, the traditional dispensary experience. We are very pleased to become a part of the cannabis community that Las Cruces has created. We thank you for supporting our small business and making our dreams come true. Thank you for your time today and have a great day.

Kaiser: Thank you.

Escobar: I also have some sales reports here as well from the whole of Solano. From all the way up to Lohman back down to the 750 Solano location.

Kaiser: All right. Thank you very much.

Escobar: Thank you for hearing me. That will be all.

Kaiser: Please come forward and you can just restate your name for the record and go ahead.

Hoban: Because I understand I'm still sworn in. Kevin Hoban. Besides my previous comments on the other issue. I work with a facility here in the south Solano area. Looking at three applications within five blocks and we're in the 1100 block, 1135. And next door we have a cannabis retail space and I'm just wondering if creating a high-density cannabis or any other business, liquor stores or anything like that that's not designed that way like an entertainment district, is a wise thing to do especially since Solano is surrounded mostly by a residential area.

So again, I would ask you to preferably consider making these, they are exceptions, I mean you can call it anything you want, but they are exceptions to a recommendation to create buffers between these businesses. Okay. And also, the cannabis was referred to as medicine. It is medicine for some people but the proliferation of these shops came about when recreational cannabis was legalized in the State of New Mexico. So let's not fool ourselves into thinking that these are just delivering medicine to people. Thank you.

Kaiser: Thank you. Is there anybody? Yes, sir. Please come on down. Please state your name for the record.

Barber: Good evening, ladies and gentlemen. My name is Jordan Barber.

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

Barber: I do.

Kaiser: Go ahead.

Barber: So yes, I represent the 725 South Solano Drive location. We're with Round House Reserve. We currently have a storefront off of Lohman and Solano, 200 South Solano Drive, in which we also a location out in Sunland Park, New Mexico.

I just want to clarify. We are submitting for a Special Use Permit in regard to being able to retail. However, that is not the main purpose of what we are looking to do here. The property that we are putting to use is going to primarily be for manufacturing because we're located in a C-2 zoning cottage district. We're also located in an Infill District in which this building has been vacant, an eyesore, land of the free to the homeless population in that area. And we know the landlord personally.

We also are looking towards bringing in a testing facility in which we've spoken to Carolina Barrera which is the Deputy Director of CCD to southern New Mexico. So our primary use of the 725 South Solano Drive is not going to be retail even though we will be offering retail. So I just want to clarify that. And we're not opposed to this drive-through taking place because we believe in collaboration over competition. And as said before, there's not enough manufacturers, producers. And we have zero testing in this area. That will conclude what I have to say.

Kaiser: Thank you.

Barber: Thank you.

Kaiser: Okay, final show of hands. Anybody else who wishes to speak on this item tonight? All right. Seeing none. I will come back to the Commission. Any final comments or questions? Commissioner Smith.

Smith: I have a question for staff. What is the current number of cannabis businesses in Las Cruces that are licensed and operating at this time? The last I heard it was 68 but that was about two months ago.

Gonzales: Mr. Chair, Commissioner. That is correct. We are still at that number. We are still within 60 at this point, 60 to 70.

Smith: I just want to make a comment. I live very close to El Paseo and Wyatt and there are a number of cannabis businesses there. As a matter of fact, I jokingly call it cannabis corner. There are about five, possibly six, cannabis businesses in that area that are pretty close to each other. So you know once again to address the gentleman in the back there.

I know that you know there's this fear that we're going to have like this you know area that's just like a strip of cannabis businesses, but you know I go back to the fact that they're competing with each other as far as business. It's capitalism. It's business. And you know it's going to be the best business wins. People have choice you know. You can go to a number of different places to shop, eat, and it's going to be no different with the cannabis business.

So you know when you enter a business, I was in business for a long, long time. I ran a fitness business. I competed with gyms and other personal you know training facilities. And I just took that risk and went out there and competed for 12 years. So you know these people who are here making this application at this point are basically in the same situation where they have to establish a business and compete to do well.

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

Bennett: I make a motion to approve 9.2.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes to approve based on staff recommendation and Elevate Las Cruces free market where it will *(inaudible)* the top. New Mexico is in a unique situation. We have no cap on licensing. So again, people will be able to fizz it out eventually.

Baum: Board Member Smith.

Smith: Yes, based on site visit and staff recommendation.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation.

Baum: Board Member Porter.

Porter: Yes, based on staff recommendations.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation, this meets the 2001 Zoning Code and Elevate Las Cruces.

Baum: Chair Kaiser.

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

9.3 Case No. 23ZO1000118: A request to approve a Special Use Permit (SUP) to allow a cannabis related business less than the required 300-foot buffer distance from another cannabis related business. The subject property is located at 725 S. Solano Drive, zoned C-2 (Commercial Medium Intensity), and encompasses 0.225 ± acres. Submitted by Jordan Andrew Barber, representative. Council District 3.

Kaiser: Okay. Item 9.3., another request to approve a Special Use Permit to allow a cannabis related business within the 300-foot buffer. This time at 725 South Solano Drive.

Ochoa: Good evening again, Commission. Adam Ochoa for the record again. So can I just say ditto. My apologies. A bad joke. So 725 South Solano, it is a proposed Special Use Permit for the subject property. The property is located on the east side of Solano Drive, roughly about 165 feet north of its interaction with the Colorado Avenue.

The property encompasses roughly 2.25 acres in size and is zoned C-2 commercial medium intensity. The property is a developed, vacant, and badly deteriorating commercial property as it currently exists. It has been vacant for a number of years.

What we're looking at here under Section 30-3, the conditional uses under the 2001 Zoning Code is not meeting one of the buffer requirements which is retail to macro business distance requirements of 300 feet. This one is a little bit more of a different proposal. This is, I believe the applicant for this one spoke before. This is retail but it's also a cottage industry so it's more of a microbusiness where they'll be manufacturing as well. So essentially, you're looking at like a third different type of cannabis related business on Solano.

So as the applicant calls it out, it is a cannabis fully vertical licensure with retail and associated cottage entry uses. Buffer distances that we're looking

at is the 262 feet that's from the drive-through that was just currently approved, and 177 feet from the one directly south at, I believe 795 South Solano who are both just strictly cannabis retailers.

With an SUP, staff does examine the potential impacts in the surrounding area and just the existing conditions. And just on top of that we do look and make sure that it meets all other requirements of the City of Las Cruces and the State of New Mexico regulations for governing cannabis related retail activity.

Here you're looking at the zoning map. Subject property located here. Actually, it encompasses two properties but from building a building. Here's the one that was barely approved and the other one located right now on Colorado. As you can see, Solano and unfortunately, I don't have a wider shot, but Solano is a commercial corridor. It is what El Paseo is just a strictly commercial corridor. It eventually gets into residential basically, when you get past Missouri is when you finally get some residential in that area.

Showing here the distances again. About 262 feet from the one that was just recently approved, and roughly about 177 feet from the existing cannabis retailer located here. And just for clarification, you do see some homes located near this but they are not zoned for single-family. So only the one Special Use Permit is required. One variance or SUP is required for this one from cannabis to cannabis related business.

Here are some pictures of the subject property. As you can see, they've already been doing some work with it. Some light demolition work. Cleaning it out. When we did a site visit, I turned around and we did see some vagrants on the property so vacant property that will now be utilized on Solano is the big push for this one. Which during our analysis staff did see no health, safety, and welfare issues identified with the proposed Special Use Permit.

And as I stated before, it would allow for the redevelopment for a vacant commercial property. And really also to bring it into compliance as well. The property as you can see was two separate properties so a replat will be required. Parking will have to be updated. Landscaping will have to be updated so on and so forth. And the whole property will be utilized whenever they bring in their testing site as well, so that's definitely a plus.

So again, this is an area where commercial properties have a history of high vacancy rates. Business will trigger nonconformities as I stated before and it is supported by several comprehensive plan goals, policies, and actions.

With that staff does recommend approval for the proposed Special Use Permit with the findings shown there. That it does meet all other distance

requirements from daycares and schools and single-family residential zoning districts. It's an area of large variety of compatible uses in zoning, located along a designated minor arterial roadway where these types of uses are encouraged. It is supported by the 2001 Zoning Code and also the Elevate Las Cruces Comprehensive Plan.

Staff did send out a public notice to surrounding properties. For this case stat did not receive any public input to date, minus what we heard tonight from the adjacent property owner.

These are your options tonight, one to vote "yes" and approve the Special Use Permit as recommended by staff. Two, to vote "no" and deny. Of course, new findings of fact will be required if you vote that way. Three, to vote "yes" with any conditions are deemed appropriate by the Commission. And four, vote to table to postpone and direct staff and the applicant accordingly. You have heard from the applicant previously. He's here for any additional questions you might have for him. And I stand for questions as well.

Kaiser: Thank you. Any comments or questions?

Smith: I have a question for the applicant, Mr. Barber. You stated that primarily your goal for your business is to grow and produce. That's your initial primary goal as far as establishing your business and then the retail will possibly come later. Because I know that you did state that you know that you want to really become a producer.

Barber: So I'll be completely transparent. Retail is not our primary use. We don't aim to take care of the retail as the primary priority, part of the phasing. However, we do have a couple of code requirements and things that necessary adjustments that need to be made to the property to bring it up to speed, which we're very close to achieving.

However, you know rent still needs to be paid. So if retail does end up being phase one then that maybe the direction. However, what I will say is it is going to be very small scale. We will be manufacturing so it's more of a place for us to service other cannabis businesses. So our first cannabis business in Las Cruces is located on 200 South Solano Drive. It's two rock throws away from this building.

You know so for us to put another retail cannabis business there is kind of crazy. But what we're looking to do for testing and manufacturing and assisting producers with processing you know their material; we're looking to inevitably break into the market that is underserviced and go that route.

Smith: Okay. Yes. I kind of see it as in some way you will be helping other cannabis businesses also.

Barber: A 100%. That's the goal here.

Smith: All right. Thank you.

Barber: Thank you.

Kaiser: Any other questions, comments? No. Go ahead and turn it to the public. Is there anybody in the audience who wishes to speak on this item this evening? Please raise your hand. Yes, sir. Come on down. Just restate your name for the record and then you can go ahead.

Escobar: Jason Escobar. Yes, sir. I was just wanting to say that we absolutely support the approval of this SUP and it couldn't go to a better person. Jordan is a great person. Round House as a company is a great company and I can't wait for the things that they're going to do for the community. Thank you.

Kaiser: Thank you. All right. Anybody else who wishes to speak? All right. Seeing none. I'm going to come back to the Commission. If there's no additional … Commissioner Smith.

Smith: I just have one comment. I had a site visit at that building location and you know I live near that area so I drive down Solano quite often. And that particular building has been quite an eyesore for I don't know how many years but quite a while. Just seeing what they've done so far, I mean this is a type of you know renewal in existing businesses that will elevate Las Cruces, the comprehensive plan attempts to do. The businesses don't matter. It's the fact that you know we're helping to utilize buildings that have been sitting you know empty for a long, long time. And you know this is part of what we want to do in the City to help it to grow.

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

Bennett: I make a motion to approve 9.3.

Murray: I second.

Baum: Board Member Acosta.

Acosta: I vote yes based off staff recommendation and Elevate Las Cruces.

Baum: Board Member Smith.

Smith: I vote yes based on site visit and staff recommendation.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation and utilizing a vacant building.

Baum: Board Member Porter.

Porter: I vote yes based on staff recommendations, Elevate Las Cruces, and site visit.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation.

Baum: Chair Kaiser.

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

Baum: Motion passes.

9.4 **Case No. 23ZO0500105:** An Infill Development Process request to allow for site deviations for the redevelopment of a commercial property located at 1325 El Paseo Road. The subject property is zoned C-2 (Commercial Medium Intensity) and encompasses 0.60 ± acres. Submitted by Express Trade LLC, property owner. Council District 3.

Kaiser: Okay. Moving onto item 9.4. This is an Infill Development Process request to allow for site deviations for redevelopment project at 1325 El Paseo Road.

Banegas: Mr. Chairman, Commissioners. Vincent Banegas, Interim Planner for the record presenting this evening's case regarding the Infill Development request at 1325 El Paseo Road. Current conditions are as follows; the property is currently C-2 which is our commercial medium intensity district. It is 0.68 acres in size plus or minus. Our zoning atlas shows the property as two lots but I think in the assessor's office there's multiple smaller lots that make up or comprise the property in question.

They are in the process of replatting those properties into one and staff is awaiting further feedback and/or input from the surveyor in order to proceed with that process, but they're close.

The property was originally developed in 1978 making it fall under our 1969 Zoning Code back in the day. And I talked to that issue because it was

developed as Dunkin' Donuts and then later was used as Style America and then sat vacant for about three years or so. While it was a Dunkin' Donuts, I'm kind of going back and reflecting back as a teenager, going there to have a donut, etc., I believe there was a window, a service window drive-through window at that time.

Our code back then did not speak to drive-through windows. It didn't have any provisions for them. So staff feels that at some point in time the window was put in and we have no record of when that was or how that occurred. But that was the reason for bringing that point up.

Due to the vacancy period that I spoke to, there's a need to comply with the current code requirements for this property. The property is within the Infill Development area or overlay and we refer to that as either the IDO or IDP depending on what you want to use. It's also within the El Paseo blueprint study area and falls within the urban neighborhood place type as part of our Elevate Las Cruces Comprehensive Plan.

The surrounding neighborhood is largely commercial service. You have office and there is some residential uses in the vicinity. C-2 and C-3 largely make up the zoning along El Paseo Road both north and south. And then R-1a, R-2, R-3, and R-4 represents the residential uses southeast and east of the subject property.

Here's a zoning map showing the properties in question outlined in red. You can see either the pink or the light red if you will showing the C-2, C-3 zoning and then your residential off to the southeast and east of the subject property. An aerial map showing the same location and some of the buildings in proximity to the site. You have Arby's located here. Wendy's here. And Grandy's, I believe they're called located here.

This was a case that came before you all for rezoning. It's now C-3. It went to City Council with your recommendation of approval and City Council approved that.

You have El Paseo Road along this portion of the image here. Idaho Avenue on the north side. You have Durazno Street here and then Foster Road on the south. So the proposal being presented through the IDP is for a pharmacy with drive-through service. There are two deviations or flexibility requests that are part of the proposal.

The first is to use the sole legal route for egress as part of the proposed drive-through stacking line. In our code, our stacking lanes are required to be 10-foot wide. They can go down to nine feet at the service window. Driving aisles for egress purposes when there's no parallel parking on either side or parking on either side can be 12 feet. So you combine those two

together, 22 feet is a requirement. Ten feet exists at the narrowest segment of that route.

The second deviation talks to landscaping. Our design standards call for 50 percent of the landscape area to be within the front of the property and that's between the building and the front property line. They're proposing 862 square feet of the 3,400 roughly square feet to require to be placed in the front. In exchange, they're providing 41 additional square feet of landscape area and their plant material quantities will satisfy code requirements. Staff has less concern with item number two as opposed to item number one.

This is an image of the site plan that was submitted for consideration. The top image, and I apologize, there's a lot going on with this but the top one is primarily showing the entire site, again both parcels as part of our zoning atlas. The bottom left is a blowup of the front portion of the lot. And then this one on the bottom right is a blowup showing the back portion of the lot. So with this site plan you have parking, there's 19 stalls that are provided on site pursuant to this site plan. A vast majority of them are located in this area here. All 90-degree stalls meeting code and 27 feet back-up aisles meets code, etc. You also have two ADA stalls here. Those are great pursuant to code. They satisfy the ADA requirements. And you have a few stalls located here. And then you have this 45-angle parking stall coming right off of El Paseo onto the property in this area here.

The shaded image or portion of the image at this location is a ped access, pedestrian access from the sidewalk to the front door of the business, the existing building. Ingress comes from here. You have a fairly wide access aisle or curb cut. This area in here separates the ingress portion from the egress portion. And so you'd come into the property along this route and then either park at this location or take a left right here which begins the stacking aisle or stacking lane for the service window, the drive-up window.

The length of the stacking lane is 100 feet, that meets code. But where staff has considerable concern is in the width of the stacking lane/driving aisle for egress purposes. They have 10 feet from property line to the building wall. Presently there's two feet of concrete or concrete ribbon along the building primarily I think to separate cars from the building. And they are willing to make accommodations to either raise the level of the asphalt or get rid of that concrete ribbon to make a full 10-foot width. But right now, there's eight foot passable.

The window is located right here in this vicinity of the building. So they would then, after conducting business, exit at this location and out onto El Paseo Road. The concern is that with the width of the stacking aisle and driving aisle being 10 feet at the best-case scenario there could be an

instance as we probably all been through it where you get to the window and your prescription isn't ready or there's a problem with insurance covering the prescription. And there's quite a lengthy discussion between pharmacist and the customer. And in this case, if that does occur then you have a cuing problem. You have people wanting to get off or out of the property through the only egress that exists. So you'll have cars cuing up and staff kind of foresees one of four scenarios taking place and that is after the recommended or I should say the intended business practice has been implemented. The applicant has indicated that there's less of a concern for that cuing issue for a variety of reasons, a couple of reasons I should say. One is they don't anticipate a lot of vehicles here coming on site to conduct their business. The code, I believe, if I'm not mistaken requires five stalls. They provided 19. So I'm not quite sure whether there's an intended business at this location that will require more stalls than what the code seeks to provide as a minimum or what the situation is there. But nonetheless, with 19 cars it's very likely that there will be a cuing situation.

The applicant and representative have indicated that another business practice that would be implemented should there be a delay at the window is to ask the customer to leave the window and return for additional time in order to carry out the necessary business. Staff sees one of four scenarios taking place. Either the customer is not going to want to leave, the cuing will continue to get worse and either cause a conflict between customers. That's scenario one.

Scenario two is they will agree to leave and they will try to take an immediate left on this egress aisle, driving aisle, onto this one-way lane that goes northbound. There's no southbound direction here for this drive-in aisle that serves this 45-degree stall. So you may have conflict with cars backing up here and going against the direction of the intended drive-in aisle at this location looping back around and then trying to resolve the business. That's scenario two.

Scenario three is they agree to leave and they may try to be rather quick about it but take an immediate left and enter onto El Paseo back into the ingress property not realizing there's a median that separates northbound traffic from southbound traffic. And that's a concern staff has in terms of health, safety, welfare of the transportation system and the users of that system.

Another scenario is likely to have the customer leave the site, in which case they're going to take the wide loop. They're going to take a right on El Paseo and go east on Idaho, go south on Durazno, west of Foster and then back up and into the property. Either way, I think staff believes the business practice is an unreasonable one to think would work in this scenario. It's unrealistic and we think it's dangerous for users of our transportation

network. It also provides a scenario where people leaving the property to adjacent properties could cause some traffic issues on those properties. The Arby's drive-through, for instance, isn't too far off from the property line that separates the two. So you might have cars causing conflicts there and elsewhere. So those are some of the concerns we have with that driving aisle.

The only other concern staff has is with this 45-degree stall. Cars come in off of El Paseo taking a right may not negotiate the geometry that's presented here successfully enough. You have this area here that is a planter for landscape purposes. You've got an area there that's a planter for landscape purposes. And then you have that ped access right off of the sidewalk right adjacent to the 45-degree angle. So not only would you have potential delay of cars moving into the lot causing backup onto El Paseo but when they left, and this is an ADA stall, when they left at a 45-degree angle sometimes people overestimate, underestimate, I guess how far back they are, and which case they could conflict with pedestrians on the sidewalk and then have trouble navigating the geometry here to come out on the egress portion and then head northbound on El Paseo.

Staff had recommended that there be some consideration given for the removal of this stall. And in so doing, they could either increase the landscaping. Or another option is to create the possibility for a two-way driving aisle that might allow cars to leave the window, come back around, etc., and also go the other direction. That's still a little dicey but nonetheless a little better if this goes away. So that is kind of our concern in a nutshell.

The one thing we all must consider is that there's no formal shared access agreement at this time with any of the adjacent properties. The applicant has tried. I don't believe Wendy's have responded in any way, shape, or form. Arby's told them no based on applicant information. And the property that was recently rezoned, I think they've approached them but I don't know if they've heard back at this point in time.

This is the landscape plan part of which I've discussed already. Again, showing the planters adjacent to the ped access and the 45 stall. The bulk of the landscaping will be here on the north side of the property and south side of the property. Their drainage is intended to go here at this location.

A couple of photos showing the property in question. It is presently boarded up but you have a front view of the property. Off to your right is the ingress and off to the left is the egress. And this is the width that you're actually dealing with for both stacking lane and egress purposes. A better shot kind of going in reverse showing the ingress lane. The back of the property. Just one thing to note is they'll have to comply with other requirements of the

code, so there will be a need for dumpster enclosure. Right now, it's just set out on the side. Improvement of the parking lot, striping, etc.

This is a shot just looking east on the property. You do have between Wendy's here and the subject property a little concrete ribbon that over time cars have traversed back and forth and some of the dirt has filled up. So even though there's curbing there, it's not much of a deterrent for cross traffic. This is an alley, at least it's treated as an alley in the back of that one building that was recently rezoned.

Looking north towards Arby's, I mentioned the drive-through not being too far from the side property line. And this is showing the recently rezoned C-3 property, and perhaps one of the most promising areas in which to secure a shared access agreement in my opinion. This is just looking north on El Paseo. South on El Paseo. There's that median that I mentioned that separates northbound, southbound traffic.

In terms of analysis, staff has no problem with the pharmacy. We think a pharmacy would be a very valid, very good use given the mixed use corridor, given the place type that the area falls within in terms of Comprehensive Plan. Where staff feels the proposal runs afoul is in the site design features that are being promoted or proposed. We just feel that there's a lot of health, safety, and general welfare type issues that would affect users of the transportation system. And again, the angled parking, the shared stacking lane, egress type issues.

We also feel that those same site design elements have anticipated impacts and safety concerns for adjoining properties. Again, through unauthorized or unintended vehicular access. I mentioned the shared access agreement does not exist. But if one was secured, I might add, if one was secured that would open up a significant opportunity for the property to be developed beyond what I'm presenting here because we could kind of balance the egress with alternative egress. Allow other opportunities for other uses perhaps on the property, which was originally submitted earlier. And this is the ultimate plan that has come out of this whole review process.

I mentioned that staff could support the landscape deviation. We have no problem with that. And I also mentioned that other provisions onsite will have to comply with code. And some of those are the curb cut type issues they'll have to get with our engineer to deal with, either a variance, a deviation to those standards given the nature of the curb cuts that exist, provide dumpster enclosure, etc.

Because of those site design impacts, it subjects the proposal to goals, both policies, and actions that don't necessarily support the overall request. And the same can be said for the purpose and intent of our Zoning Code.

Public notice was sent out in accordance to code and we received no input one way or the other from property owners in the area. Staff, based on my presentation in the packet. are recommending denial based on the findings. The property has been vacant for several years triggering compliance need with current code. The property falls within the Infill Development which affords flexibility but we think in this case it's a bit much, at least for those two issues.

The proposed land use is consistent with our urban neighborhood place type in terms of what it promotes. Again, but those site design elements kind of throw a wrench into that and make it run afoul. It's within a mixed use corridor. It's part of the El Paseo Community Blueprint. And the applicant proposed a method for resolving some of those conflicts at the service window; we just don't feel are very reasonable or practical and we feel that's dangerous to a large degree.

Keep in mind that alternative recommendations were provided by staff. Staff did request that they consider eliminating the drive-up window. If that was the case, we felt that we could support a two foot deviation to the 12-foot driving aisle that the code would otherwise require. But the applicant didn't feel that was warranted for business purposes and they wanted to keep that as an item for their business intentions there.

The parking stall as well. We talked about a possibility of eliminating that and either adding landscaping or doing something else and they wanted to hold onto that as well. So given those issues again, there's the issues with our goals, policies, and actions - a lot of those speak to transportation related matters and the users of our transportation system and the safety for that.

And that concludes that presentation. I do have the options here. And I want to indicate and clarify that the vote "yes" to approve in this case because my presentation packet speak to denial, would require new information or findings of fact that I have not provided. You could vote "no" and deny it, that would be consistent with staff's recommendation. You can vote "yes" and amend with conditions, or vote to table. The property owner and the design representative are in attendance and can speak to this matter as well. So that concludes that presentation.

Kaiser: Thank you. And would the applicant or applicant representative wish to speak? Yes, sir. Please come forward. And if you could state your name for the record, I'll swear you in.

Atieh: My name is Yazid Atieh.

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

Atieh: Correct.

Kaiser: Please go ahead.

Atieh: Okay. So the property, the main idea is …

Kaiser: Excuse me. Can you speak closer to the mike?

Atieh: Sure.

Kaiser: Thank you.

Atieh: So the property is an existing property since long time. And it's vacant since few years. Bringing it to the new code might be like whoever designed it back in the day was compliant. It was operational and it was safe. Now, what's happening is every while the City cannot improve the code in order to comply and be more you know more of any kind of modern or any kind of up to date, let's say. So it was before it existed.

So what we're seeking is to do a pharmacy which is really a good importance there. This is going to do a good competition like we mentioned but a competition is really good just to serve the people with the best service. A drug store will be very nice there.

Now the safety and stacking of, whoever goes to our pharmacy. Everyone of you goes to our pharmacy. And sometimes, they are asked to leave. And I haven't seen anybody, like I'm a pharmacist and I own Healthcare Pharmacy on Lohman. The Healthcare Pharmacy on Lohman is an established pharmacy and it's newer than this building. So it complies with the code for that building.

Now, being vacant for two years, it brings it up all the way like 20 years later. It's not very much practical in life. Here's like you're moving and your moving a decade or two decades actually in the code. It's an existing building and it used to be safe. There is shared access that is already accessible like you see in the plan here. There is shared access right here. There is already in the images for this area that already exists and established. So it's established access that nobody obligated about.

A lot of businesses in town have showed accesses and they never know each other and they don't have to get a solid information. Because like what happens is that I ask Arby's and Arby's will not give me that because they have no mutual benefit and they have their parking lot and they're happy.

So I mean they're happy with that. Now, when I ask that it's not of their concern to access my parking lot. It's my concern because the City is asking me unrealistic demands. And these demands can over and over and over demands that was not realistic at all and not practical.

So the help I'm seeking from the Committee is to approve the Infill process where actually you're saying that the Wendy's next store, the inside going this way is actually the same width of going backway from Wendy's. And then this way, I measured it myself, and it's actually nine foot here and it's actually 10 foot here. There is a designed window here. So I'm not sure about this stacking of cars.

Now, there's a couple of things. If you go - I'm going to give you an example. If you go to Si Senior on Lohman and see how it's blocking in Lohman at the evening at 8:00 when they want to just grab a sandwich and food and they want to make it and go. So what we're suggesting is if a stacking will start happening, we'll have to have them move. And they have actually the option to turn around here and it's not unsafe. He's actually presenting the case like if you're in a gage here. And if you're in a gage here then you can't exit from here because you're blocked right here and you're blocked from that. And the stacking of these are one, two, three. The car is six feet. So there's one, two, three, four, five. I'm sorry, six cars here which are going to be busier than Walgreen's and busier than CVS that way. And that's not reasonable.

So given an opportunity for a pharmacy to develop in here is great for people. It's a good alternative and we have services that are different from Walgreens and other chain and big box companies. We have services that are different. You're going to find it in an individual pharmacy. You're not going to find it in a chain pharmacy.

Now, we're already operating a Healthcare Pharmacy on Lohman and we don't have a drive-through and we feel that's an obstacle because the drive-through will be convenient much more for people because you're driving your car will be convenient for people. I don't see what is the safety issue arises from. There's no safety issue. They should access a very established since years here. And it shared access to that corner one.

And by the way the code doesn't require by lecture or by any kind of statement to get a shared access and grant signed from each neighbor or from one of the neighbors in order to guarantee access because I don't see that reasonable. There's three neighbors. So if this one was mean to me and said, I'm going to block all this. I'm going to build here or something then this will still be open and this will still be open. I don't see where is the reasonable being like this will be mean and block, and this will be mean unblock me, this will be mean unblock me. The cars will be stopped here

and it's unsafe because they're waiting on a prescription and the pharmacist is right here discussing why this controlled substance is going to be due after two days. And the patient doesn't want to go.

So all these scenarios are not reasonable at all. And back in here, the parking lot here where is the walkway for the public is right here. There is some kind of parking for, we agreed. They've been taking parking lot one by one and making it very much uncomfortable to do this project which we feel that it's kind of intentional or obnoxious, I don't know how. But I'm just saying here this thing if you're back right here. I did back several times and I have a truck also. So if you back right here and if you don't know how to drive, you don't have to drive a car. If you know how to drive then you drive a car.

Because you put in scenarios that it's going to be like right here is, one scenario is going to be like here and then you're going to go like right here which is against the drive. This is going to be against the law to drive against the street. So the street goes this way. How come he's going to come here and go like this? So if this happens this person needs to get a ticket but it has nothing to do with the pharmacy. It has nothing to do with the pharmacy design. It has nothing to do.

So my main concern is it's an existing building. We wish to have this granted as a pharmacy. It will be really nice to have a drive-through for people to be more comfortable. You know, because otherwise if we eliminate the drive-through what we're going to do is we're going to still do it because we think in our mind, back of my head, I think that's intentional the reason they put in so much obstacles at the City. But I don't know for real because I can't read people's mind. Like I can say here, we're going to put right here behind the building where the people can park right here and we can come to a fence after they can rest like Sonic. In that way we can just go out through the fence and hand them their prescriptions because it's convenient. You know what I mean?

I don't see any dangers. I don't see any dangers. The stacking lane back here is like two cars or three cars. So you're by McDonalds and I saw a couple of examples and I did show them to several people. If you're by McDonalds, okay and you want to get your sandwich, it's either you stay in the line or go to the other line and go. And there's a way to go like right here, right here. There's a way to go right here. The stacking is in the corners. The stacking right here is in the corners. And there will be stacking in the corners here but it's too long to stack that much. It's probably stacking cars, let's say, three or four. So the stacking will be by the corners. Right here they can back and go to anywhere if you know how to drive.

But if you have you know a big car you still need to know how to drive in order for you to drive. But honestly, we got to do this curb. So we're going to go with the project and get it hopefully like as a apply for permit separately if that doesn't get approved. But I wish from the Committee, and I do respect all your input today and it was wonderful. But I think that it's a pharmacy. It's a very necessary to have a diversity in town and to have a variety of pharmacies. And then it's necessary to have a drive-through. It's comfortable. Because if you're tired by after your working, you need to maybe sit down and have your juice and just pick up your prescription. And if the pharmacist asks you to leave and come back in 15, 20 minutes either you come the next day. It's like any other pharmacy.

It's not going to be the magical pharmacy. So you get good all the scenarios in the world that are not reasonable. We're going to be a pharmacy like other pharmacies. We might be better than them but we're not the magical pharmacy that you can put any scenario in the world. It's bringing all scenarios and I do apologize for just presenting everything because that's what's been happening to me. That's what I've been important to me. And thank you so much.

Kaiser: Thank you and don't go far because I'm sure there will be questions for you. But I do want to make sure that you can get to resolution tonight.

Atieh: Thank you.

Kaiser: So coming to the Commission. Are there any initial thoughts or comments? Yes, Commissioner Acosta.

Acosta: So I think probably you and I are probably the two guys in this room who have successfully opened pharmacies without drive-throughs before. You obviously have enough you know to expand. Congratulations. I'm very happy to see expansion and more independence.

Atieh: Thank you.

Acosta: What I do see is a really big parking lot. I see a big mess right there by El Paseo. I think you might get a little busier than you even anticipate. And that drive-through where you have you know disabled people and all kinds of people trying to not only walk and drive in a very clustered situation.

I really would just employ you to maybe consider either replanning that drive-through completely or you know eliminating it so you can get your pharmacy started because this drive-through does create a lot of situations there that are just kind of a mess just based off of, yes. Based off of the way that the property got put in the '70s, sure. So it was our downtown location. There's not much we can do about that. You can't put a drive-

through there unless you corridored it out did a whole mess. Like it just didn't work. So I would just employ you to think to try to do it without that drive-through.

Atieh: I actually definitely if I can answer? Would I be able to answer?

Kaiser: Let's just hold on for a second. Let's see if there's other Commissioners who have specific questions for you and then we'll give you a chance to respond. Commissioner Smith.

Smith: I have several questions. The first one is for staff. The User Access Agreement, I know the applicant said that there is nothing that says the Access Agreement has to be in place; is that correct?

Banegas: Mr. Chairman, Commissioner Smith. The Las Cruces design standards encourages Shared Access Agreements between properties to help with the congestion on those adjacent roadways, etc. But there's no requirement for it, I guess.

Smith: And I have comments also if I may take that time now. Once again, I'm very familiar with that corridor at El Paseo, Idaho. I live near there. I've been living in that area for 25 years and it has grown significantly over the years. One area, one location business that hasn't really been talked about is that right on that corner there is a gas station. extremely busy gas station. They compete with a gas station across the street. Prices go up and down. I see it all the time. There's a grocery store there, Albertsons, and also a little bit further away. But the number of cars over there on a daily basis, it's already highly congested.

I have done a site visit on your location. As Commissioner Acosta has said, you can drive-through and drive around but with the amount of traffic that's there, there will be congestion, even if there's no stacking there will be congestion just you know for accessing and also for egress.

Atieh: It's the same like next door? I mean why don't you just take Wendy's as an example?

Kaiser: Please let Commissioner Smith finish his thought. Thank you.

Smith: And I'm sympathetic for that. I mean you drive around town. I mean like Chick-fil-A, you know, I mean you know on Lohman, I mean they have just cars you know coming in. But they've come up with a system. They've managed a way to address the stacking. I mean you know you see you know employees standing out there taking orders. And so, it happens all the time. Starbucks, you know. I mean if you're going to go through a drive-through because I am not a drive-through person. I have people tell me it's

faster to sit in your car wasting gas and go through a drive-through than it is to walk in, order something, get it and walk out. I never use drive-through just because of time and it's wasting my fuel in my car.

So you know but I see drive-through all over town. You being the business that has a drive-through window, they will be stacking. But in this situation, just the congestion and there are some risk factors. I would assume that a number of your clients are going to be elderly. They're going to be driving around the back of a building. It's narrow unless that brush gets cleared. I mean that's still going to be an issue. And then coming out onto El Paseo with the amount of traffic that's there. I know you're licensed to drive. If you're licensed to drive, you should be able to operate your vehicle safely but as a City, we have to look at the possibility of the risk that could occur if you operate a business where there's so much traffic and congestion.

That's something that you as a business owner really should take into consideration because if your customers, your potential customers, have issues getting in and out, you won't have customers.

Atieh: I don't think so.

Smith: You know I'm just giving you know my opinion. I know as a business owner, you want it to operate itself.

Kaiser: Sir, please let us get through our questions and answers. And I will give you a chance to respond, I promise. But I want to make sure that we can get to a decision.

Atieh: If I answer one by one it will be better, before we move on and the thing comes like really forgotten, you know.

Kaiser: I understand it and some of us are going to have comments. And some of us are going to have very specific questions. And I'll give you a chance to respond when we're done with our questions. And some of these are not going to necessarily be questions directly to you. So just be patient with us so that we can get to a resolution. Thank you.

Smith: I'm just throwing these out there because these are, if I am having these thoughts, I would think that some of the other Commissioners are having some of the same thoughts. So you know I'm throwing out some of these issues that are popping up in my head. I just want you know be prepared to have those you know issues you know be answered. And so, that's why I'm just bringing them up. You know, I'm just bringing up the ones that I have, but I'm just one Commissioner. And we have others that are about to speak.

Kaiser: And I can echo just briefly that some of our comments probably will be consistent. So I'll give you a chance to respond to that.

Murray: I have two questions for staff. I can't read dimensions well, but I'm assuming that the one-way drive aisle is less than the required 27 feet needed for the two-way.

Banegas: Mr. Chairman, Commissioner Murray. The one-way driving aisle basically serves as your drive-in aisle for that 45. And this line that is very lightly shown is your 15-foot building setback that they are showing. So yes, it is less than 20. If it were to be a two-way, it'd require 24 feet.

Murray: Okay. And then what about the drive aisle line to the back parking?

Banegas: So this is I believe roughly 16 feet wide and in similar, if there was no stacking lane on this side, 12 feet. It would be allowed for egress purposes. And the same holds true here of 12 feet. So they exceed the 12 foot requirement on the ingress side.

Murray: Okay. And then say we deny this based on the current plan, are they allowed to take the comments that you've given, that we've given, and rework the site plan and then resubmit?

Banegas: Mr. Chairman, Commissioner Murray. The applicant, let's assume that you did oppose and recommend or decide to deny the case this evening. The applicant could, for instance, do away with the stacking lane for the drive-up window. They could do away with that 45-degree stall and then submit for a permit just like any other business would. And we would consider those issues.

The one thing that would have to be recognized is the landscaping deviation, that would be something if you separated those issues out then they could proceed with the permit given support for the landscaping by this Commission.

Murray: Okay. Perfect. That is all my questions but I just do want to give you a comment. I am not an architect but I work at Desert Peak Architects downtown. So I have gone through numerous projects with the City. It all depends on how much time you want to lay out. I recommend that you would do away with the drive-through and you would get rid of the 45-degree park spot.

I think based on site constrictions, there's no way that you're going to be able to get the required 50 percent of the landscaping in the front. And the City is going to recognize that and they won't be able to approve that as such. But if you continue to go on the path where you have the drive aisle,

you have the 45-degree parking spot, you're just going to run into problems when you go to the permitting process and your architect may be able to give you this information too. But you'll go, you'll just go through numerous rounds of permitting.

And the permitting process, you have to do the preapplication which is going to take you two weeks. And then if there are any comments that you need to fix from that, you'll then have to do the first round of permitting which is another two weeks and so forth.

Banegas: Mr. Chairman, Commissioner Murray. Just to clarify my answer. If this Commission denies the request as presented, the applicant also has an opportunity to appeal to City Council. So they could either vote in line with this Commission or contrary to it, but that is another option afforded the applicant.

Kaiser: All right. Any other questions or comments? So I've got I think I guess one question and then a few comments. But my question to staff if we could go back or go to the landscaping slide? Yes. So based on the landscaping plan, you're blocking your access. Like you were talking about to the site to the, I guess that's the north and south.

So you really don't have that access as you were speaking to earlier because you're going to be landscaping it. And we obviously wouldn't be wanting drivers to just drive through your landscaping. So the reality is based on the site plan, which you would be required to comply with when you go to your site improvements. You basically have one option for ingress/egress and that's what's being presented here tonight. So I just wanted to clarify that in my own mind but also point that out. So thanks for going back to that slide.

I love the pharmacy idea. I think it's a great location. I think it would do a great service to the neighborhood. The drive-through element, it's a square peg in a round hole. It just doesn't work. No matter how hard you try to squeeze this out, there's tremendous safety risk to other users who may be passing by your site, who may be trying to access your site. Not everybody has a car. Not everybody drives a car all the time. And the way that this is laid out even with that driving aisle right on the back of the sidewalk as a pedestrian, you've got cars flying by you on El Paseo. And suddenly, you've got cars that could potentially hit you from the other side of the sidewalk.

Atieh: There's no pedestrians.

Kaiser: I mean there's no pedestrians because we made it pretty much impossible for pedestrians to exist in that space. The El Paseo Community Blueprint is specifically trying to reverse course, make this less of an automobile

dependent environment. Make it more accommodating for other road users. They do exist. Cars are expensive to operate. They're expensive to buy. I mean I had to unfortunately buy a new car recently and it's insane how expensive they are.

So I mean there's other factors. There's other people out in the world that don't sit in a car and drive through the drive-through at every business establishment. So the way that this is laid out, in my opinion, it just doesn't work. There's too much at risk and I understand that the scenarios that were presented to us tonight, you're right, 99% of the time you may have no issues, but that one percent could be bad. I mean just trying to get out of that driving aisle, that angle alone you're requiring the driver to essentially turn their heads all the way, 180 degrees, to see oncoming traffic.

And then you've got pedestrians potentially walking towards them on the sidewalk. I mean there's just too much there to make this feasible. I mean it just doesn't work. And I encourage you to look at whether or not you can do away with the drive-through because I think that what you're proposing is fantastic, but the drive-through, it just doesn't work. It doesn't work.

So those are my comments. I will give you two minutes on the timer to respond to us and then we'll open it up for public comment.

Atieh: Sure. So based on this, there's a little curb right here. And this curb is we are agreeing to make it only a drivable curb which makes the distance around 10 feet and here nine feet. And I measured it personally, and somebody can go and measure it though. And the angle here, it's taking in the angle, if you decide yourself anywhere, I'm not sure why I'm on an odd situation myself, but I mean if you decide to go this way then you need to wait until you get out.

But we're saying we're going to try our best not to have this car wait more than five minutes then everybody else should clear up faster. But if you decide to go here just like if you had a Cane's, Cane's is a new establishment of a restaurant and they have a curb, and between the curb is a restaurant. And if you get in there, if you get into Si Senor, if you get in there you stop. You need to wait until you're gone. Why is everybody can wait and then in this situation there's a one percent chance of having a pedestrian coming through. A one percent chance of having somebody want to back off after they decide to go there so they can wait. We can make it faster, as fast as possible.

Now driving in that aisle is still will leave some space to the right and left. We're not going to allow trucks. So it's going to be a left and there will be height and there will be width is allowable. And there will be lanes that are

going. I don't see no reason of the rejections that's been happening here. I don't see that.

I mean the shared access if you're saying there is some landscaping, the shared access is not required. And we found out that, okay. They're telling us get shared access and if it's by law. And then we found out today that this shared access doesn't exist and it's not required. So this shared access now will make the opportunity of this to be approved. But now, the shared access is not required so why is it not approved?

Kaiser: That was the end of your two minutes. We had the timer going.

Atieh: There's ways of going here and here or over here. That's taken all the time.

Kaiser: I understand. Yes. Thank you.

Atieh: Thank you so much.

Kaiser: Okay. I'm going to go to the public now. Is there anybody in the audience? I see one, two individuals. So I'll go this gentleman first and then you. Please state your name for the record.

Oroyinyin: My name is Waheed Oroyinyin and I'm the architect on this project.

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

Oroyinyin: Yes. I do.

Kaiser: I'll give you three minutes. Go ahead.

Oroyinyin: Okay. Anyway, talking to the staff and what we're trying to do really is be able to bring, if you look at the drawing there's only one access to come in. And there's only one access to go out. So the stacking lane that Mr. Banegas was talking about, whether I would do the stacking lane or not, that is the only exit to come out. So all the traffic, you know the safety that Mr. Banegas is talking about is you're going to have it because that's the only access to get out of that side is on the north side.

And as far as Mr. Banegas request that put out as stacking lane and a drive-by lane. Well, the stacking lane doesn't affect anybody except people on the site. There is no car that is going to come all the way from the stacking lane on the north side of the building that's going to come all the other way around to affect anybody. So all the cars is going to be, I mean they're going to go through the stacking lane you know are going to be on the side. They don't affect the traffic. You know and like I said right now

the existing parking spaces in the front of the building you know is the way it's run. You know, I mean and we are providing more landscaping in the front of the building you know so at least that meets the requirements that Mr. Banegas wants.

You know so to me as far as we're concerned there is no safety issue regarding people coming out of the site because no matter what we do, a stacking lane or no stacking lane, that's the only exits from that building. So the stacking lane doesn't affect any safety that Mr. Banegas is talking about. You know, so as far as I'm concerned that's not an issue that we need to worry about.

Now, again, I know Mr. Banegas is talking about landscaping. There is no way to provide a landscape to meet the requirements. It's an existing building. You know everything is fixed. There's no way you can add to it. There's nothing you can do to it. You can't add to the, I mean the width of the landscape. I mean the width of the access to come in and the width of the access to get out. Everything is fixed.

You know, so to me really there's nothing that has to do with the safety issue yet. You know because like I said no matter what you do you have to get out that site from the same area. You know there is no other way to get out. You know the stacking lane, the access to the window for the drive-through, it doesn't affect anything. You know people can line up through the whole parking lot, they're not going to be coming out to the street, no.

Kaiser: Okay. Thank you very much. Unfortunately, that's time.

Oroyinyin: Okay.

Kaiser: Thank you. All right. This gentleman please come forward. State your name for the record and you may begin.

Hoban: Kevin Hoban. Owner of the property at 515 Foster which is a daycare Montessori school. I appreciate the work that staff has done in looking at the traffic issues because it is a real problem. There's already a barrier between the gas station and that proposed drive-through that exists. So I don't think that shared use is an option there either.

Additionally, the traffic on El Paseo going north is a mess. They constantly are cutting through the gas station in order to avoid traffic at the traffic light and I can see by Mr. Smith's head nodding that he has observed that too because that is my neighborhood as well. So these are just additional problems of traffic behavior that creates a problem here. I would love to see this pharmacy there. We could use some competition in that area but that drive-through is just a mess. It was better when it was a Dunkin' Donuts

though. I used to take my ambulance over there but that's not going to happen.

And then as far as I don't know if you all were going to mention, but as far as the issues of code compliance. Any time you change these in my experience with codes, any times you change occupancy the building has to be brought to current code, okay. Whether it's electrical, water, whatever like that. And that's the example that you're setting here as well, okay. And I appreciate that.

So you know with that being said, I'd love to see the pharmacy there and address the you know maybe curbside delivery rather than drive-through in that back parking lot might be a good option. Don't know what the pharmacy rules are on that but I appreciate it. Thank you very much.

Kaiser: Thank you. All right. Anybody else in the audience wish to speak on this item tonight? Okay. Seeing none. I will come back to the Commission for any Commissioners. Yes.

Smith: I have just one question for the applicant. You stated that you currently have a pharmacy on Lohman?

Atieh: Correct.

Smith: And that location you do not have a drive-in window? And you're doing, your business is doing well at that location?

Atieh: Not much.

Smith: Okay. I mean but it's operating --

Atieh: It's doing fine. It's doing fine.

Smith: It's operating. So the reason why I asked those questions is that I mean this drive-in window that you want to put in is definitely has some issues with it. And I just …

Atieh: Again, I accommodated with drawings. We can accommodate it with signs. We can accommodate it with lines. We can do whatever but …

Smith: Right. But my question is …

Atieh: It's easier or more convenient with a drive-through definitely.

Smith: But my question is you know you could open it; we welcome having you know a local independent pharmacy at that location to compete with

Walgreens. And it appears that you're willing to keep fighting for that drive-in window when you could actually not have that window right now and open your business and have your second location because people will drive through, I mean drive in, park and go inside and access you know your pharmacy just like they do at Lohman. Just like you know in the other location that doesn't have drive-through.

So I just you know this entire Commission, we just feel that we welcome your business. We support you but we feel that you should really take some time to think about how important that drive-in through window is for you at this time because it seems like it's going to hinder your ability to move forward with this project.

Atieh: We can if you would let me answer?

Kaiser: Yes. I'll give you 30 seconds.

Atieh: Okay. We can actually eliminate the drive-through here which actually gives a great comfortability for people. I don't see a lot of reasons of this is being stacking too much. That's not an issue. But we can do like at curbside pickup here with a fence. That's what we were planning to do. I don't see why, are we voting on getting, are you guys voting onto approving the drive-through or, because this is a remodel. So it needs to be remodeled into a pharmacy. Are you approving the drive-through? Or if I eliminate the drive-through then you'll approve it as it is or not? Because I don't want to run into different problems because there's shared access here. So I don't have to have somebody come again and say, I need a signature here, I need a signature here, I need a signature here.

Kaiser: So I'll let staff answer that question but before you do I was going to ask a similar question. So if they were to eliminate the drive-through component of this. Presumably you no longer need, I don't have a mouse but on the El Paseo, that driving aisle, yes, so would that be required? And then could you get more landscaping in the front? I guess what is the purpose of that aisle.

Banegas: Well, Mr. Chairman, Commissioners. As I understand it the sole purpose of this 45-degree angle stall was just to have an ADA stall at the front of the building. Keep in mind, they do have two others back here.

This driving aisle is just to allow the backup of this vehicle in this 45-degree stall to exit one way onto El Paseo. Again, just to reiterate, the geometry of that seems difficult for me anyway to kind of wrap my head around in terms of navigating successfully. But it's also a concern in that the backup could end up encroaching into the sidewalk, could end up encroaching into that

ped access there. But it is intended to answer your question specifically to allow egress from this stall out onto El Paseo.

Kaiser: Okay. And presumably current code gives them flexibility in the location of that stall?

Banegas: Yes. In fact, they don't need it, Mr. Chairman. They've got two back here that satisfies code requirements. So they could eliminate that.

Kaiser: And then if they did they probably could get all their landscaping requirement in the front?

Banegas: That's correct. At least a good portion of it in the front. And correct me if I'm wrong because what I heard the applicant say is they might be willing to forego the drive-up window, is that correct?

Atieh: Yes. I can take off the drive-up window.

Weir: Mr. Chair.

Kaiser: Yes. Please go ahead.

Weir: This is David Weir in Community Development Department. Just what I heard you say in the conversation that has taken place. If they were to eliminate the pickup window, they would then have an entry way or egress to the property that would have met code. They would then have an exiting that would meet code. If they eliminated the parking in front, they would provide additional landscaping. And then based on the Commission's comments this evening, staff could entertain and would approve a flex for that reduction of landscape in the first part. And all that could be done administratively and there's not a need for an Infill approval by the Planning and Zoning Commission. So I think that's what you were kind of asking.

Kaiser: Yes. That's exactly where I was headed with that. So I mean if the applicant is willing to go that route, I'm not sure what our big postpone indefinitely. Would that be our …

Banegas: Mr. Chairman, Commissioners. What you could do is just approve the request but make it subject to elimination of the drive-through window and the elimination of that 45-degree stall. And then you could approve it. Would have to come up with findings. There's a lot of findings in Elevate that talk to economic development, jobs, housing, balance, etc.

Kaiser: Okay. So we could recommend approval with the condition that the drive-through be eliminated, the handicap stall at the front of the property be removed and replaced by landscaping. Correct? Okay.

Weir: Mr. Chair. You could also approve that as part of the Infill, the reduction in landscaping.

Banegas: Correct.

Kaiser: Okay. I'll just speak for myself but if we're going to eliminate that space, I'd rather that eliminates the need to have that additional aisle. And I would prefer to see some landscaping up there. So I'm seeing head nods from the Commission. If someone remembered all that and wishes to make a motion.

Murray: I make a motion to approve, what is it, 9.5 with the conditions that the drive aisle be removed. 9.4, my apologies. The drive aisle be removed, the 45-degree parking spot and drive aisle in the front be removed, and landscaping with most likely reduction of the 50 percent of it being the front.

Banegas: Mr. Chairman, Commissioners. Just a point of clarification. You meant with the elimination of the drive-up window, correct?

Murray: Window, yes.

Acosta: I second.

Baum: Board Member Acosta.

Acosta: So yes, I vote to approve based on the conditions that we outlined with the findings from Elevate Las Cruces such as spurring economic development, increasing our El Paseo corridor with obviously everything that we want as well.

Baum: Board Member Smith.

Smith: I vote yes to approve based on the conditions that have been brought forth. And also, that it would meet the zoning decision criteria in this case.

Baum: Board Member Murray.

Murray: Yes, to approve with conditions based on Elevate Las Cruces and bringing competition to other businesses.

Baum: Board Member Porter.

Porter: I vote yes with conditions based on Elevate Las Cruces and recent findings. And as well as bringing some good local business here.

Baum: Board Member Bennett.

Bennett: I vote to approve. This will spur economic development.

Baum: Chair Kaiser.

Kaiser: Yes, based on consistency with Elevate Las Cruces and the need for Infill Development on the El Paseo corridor.

Baum: Motion passes.

Kaiser: Thank you, sir. I appreciate it. Thanks for coming down tonight. Good luck.

9.5 Case No. 23ZO0500085: A zone change request from C-1 (Commercial Low Intensity) and R-3 (Multi Dwelling Medium Density) to C-3 (Commercial High Intensity). The subject property is encompassing 1.436 ± acres and located at 2460 Missouri Avenue. The request will bring the property into compliance with the 2001 Zoning Code, as amended for future development. Submitted by Oscar Luevano, representative. Council District 2.

Kaiser: Okay. I think we've got one more on the docket tonight. So this is item 9.5, a zone change request at 2460 Missouri Avenue.

Castillo: Good evening Commission. I'll try to make this as quick as possible. Once again, it's John Castillo for the record. We have a zone change request today from C-1 and R-3. The C-1 being our commercial light intensity and the R-3 being multiple dwelling, medium density, to C-3 which is our commercial high intensity at 2460 Missouri Avenue.

So the property is located at the corner of Missouri and Triviz. The address is once again 2460 Missouri. It's a developed and vacant undeveloped lot that encompasses 1.427 acres. It is a split zoned designated property. It contains C-1 which is a commercial low intensity and R-3 the multi-dwelling medium density.

It's located along a commercial corridor that is acting as a buffer to various types of residential housing such as multifamily housing, single-family housing. It also fronts two arterial roadways that being Missouri and Triviz.

As you can see from the zoning map, the R-3 portion is this south end of the property. It has been sitting vacant for many years. The C-1 is going to be over here. There's a couple of businesses already on the property. That side of the property has been developed for many years. Here we go. We have the aerial image. These are the two businesses that are on the property. Once again, this is the vacant property. As you can see, there's

commercial. Here's a church. Some multifamily, single-family residential, or single-family housing, I believe it's zoned multifamily as well.

On the other side of the highway, we have some more commercial. I guess I'll swap out those pictures. Sorry about that. So the proposal today is to rezone the property from C-1 and R-3 to C-3. This is to realign existing uses to fit today's current 2001 Las Cruces Zoning Code as amended, eliminating the nonconformities on the property. The C-1 zoning has a maximum gross floor area square footage of 2,500 square feet. Both buildings on the property as they exist exceed that square footage.

The C-3 zoning designation that they're proposing is the most compatible for the subject property and the neighborhood. This would also increase the attraction for future development as well as retain current businesses on the property.

Here's the replat that the property underwent over time to what we see it as today. Public notice and input was sent to all relevant agencies. All supported the proposed zone change request. Notice was sent to all surrounding properties within 500 feet. Staff did receive two phone calls regarding it. The first one being general questions of the zone change and the existing cannabis business that was on the property. The second one was in regards to how the zone change is going to affect the neighborhood as far as property values. Is it going to bring any changes to what may happen on the property?

So the staff recommendation today is to provide an approval of the zone change request. It will allow for the attraction and retention of businesses at the location through the expansion of potential uses while keeping with the C-3 zoning districts. The expanded uses allowed by this zone change are consistent with existing uses in proximity to the subject property.

It's located along a minor arterial roadway which is recommended for commercial land uses. 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.

And today your options are to vote "yes" to approve, vote "no" to deny, vote to amend, or vote to table.

Kaiser: Thank you. Any questions, comments from the Commission? I just have one about the C-3. So you've got R-3 and then is the rest of the commercial that's C-1? So we're going to have R-3, C-1, and then C-3? Is that going to be a problem?

Castillo: So the C-1 and the R-3 are going to get eliminated and it's all going to become a C-3 property.

Kaiser: But the surrounding uses are - there's no other C-3 on Triviz, correct?

Castillo: No. There is no other C-3 on Triviz. There maybe some a bit further down, but outside of the range of what we see here. The map extent I should say. But most of this has been previously zoned prior to the Zoning Code as of 1981 if not before then. The R-3 as stated in our staff report, not presented in this presentation, but the R-3 has been there prior to the '81 Zoning District. The same thing for the C-1. Through time over subdivision processes the C-1 was actually three lots spanning from John Street all the way to Missouri, then it was R-3. And over time, it's just either gone through a zone change or through various code updates it's been changed through map amendments.

Weir: Mr. Chair. I just might add to information that John provided you. The primary difference between the C-1, C-2, and C-3 is lot size. And so, when you have a lot greater than an acre, it has to be a C-3 not to create a nonconformity situation. The land uses are primarily the same. There is some building size but the primary reason they had to request a C-3 was because it's greater than an acre in size. From a technical standpoint, we would not consider that a spot zone because there's adjacent commercial zoning and uses in that area.

Kaiser: Okay. Thank you. That was my only question. Any other comments? All right. We'll go to the public. Is there anyone in the audience who wishes to speak on this item tonight? All right. Seeing no show of hands. So I'll come back to the Commission. Looking for a motion to approve.

Bennett: I make a motion to approve 9.5.

Smith: I second.

Baum: Board Member Acosta.

Acosta: I vote yes based on staff recommendation.

Baum: Board Member Smith.

Smith: I vote yes based on staff recommendation and that lot has been empty for a long time. I was always wondering why it hadn't been developed over the years.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation.

Baum: Board Member Porter.

Porter: Yes, based on staff recommendations.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendations.

Baum: Chair Kaiser.

Kaiser: Yes, based on staff recommendations and consistency of Elevate Las Cruces.

Baum: Motion passes.

9. DISCUSSION AND STAFF ANNOUNCEMENTS

Kaiser: All right. Any other discussion or staff announcements before we adjourn tonight?

Gonzales: Mr. Chair, Commission. Staff does not have any additional announcements.

Kaiser: Sounds good.

10. ADJOURNMENT (8:27)

Kaiser: Looking for a motion to adjourn.

Bennett: I make a motion to adjourn.

Smith: I second.

Kaiser: All in favor.

MOTION PASSES UNANIMOUSLY.

Kaiser: Thank everyone for coming out tonight.

_____

Chairperson