CITY COUNCIL
AGENDA

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

Monday, November 6, 2023 at 1:00 PM

Council Chambers

CITY OF LAS CRUCES

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

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

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

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.

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1. **OPENING CEREMONIES**
   - 1.1. Pledge of Allegiance - Councilor Graham.
   - 1.2. Pets of the Week.
   - 1.3. Jobs of the Week.
   - 1.4. Presentation of Certificates of Appreciation/Proclamations - Councilor Graham.
   - 1.5. Vulnerable Road Users NM presentation.
   - 1.6. The Living Lumbre presentation.
   - 1.7. Implementation of Advanced Metering System by El Paso Electric.
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 October 30, 2023 Closed Meeting Statement into the record.
5. **ACCEPTANCE OF AGENDA**

6. CITY COUNCIL MINUTES

6.1. Work Session of September 25, 2023. 5 - 21

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6.2. Special Work Session of October 2, 2023. 22 - 39

Special Work Session - Oct 02 2023 - Minutes - Pdf

6.3. Regular City Council Meeting of October 2, 2023. 40 - 53

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

7.1. RESOLUTION NO. 24-045: A RESOLUTION ESTABLISHING DATES FOR HOLIDAY OBSERVANCE FOR CITY EMPLOYEES IN 2024. 54 - 61

Resolution No. 24-045 - Pdf

7.2. RESOLUTION NO. 24-046: A RESOLUTION TO ACCEPT 2023 LAW ENFORCEMENT RETENTION FUND AGREEMENT 23-ZH5048-40 FROM THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION. 62 - 67

Resolution No. 24-046 - Pdf

7.3. RESOLUTION NO. 24-047: A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $750,000.00 FOR ROAD CONSTRUCTION MATERIALS WITH GCC SUN CITY MATERIALS OF LAS CRUCES, NM, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT 23-24-032). 68 - 95

Resolution No. 24-047 - Pdf

7.4. RESOLUTION NO. 24-048: A RESOLUTION TO ADOPT A NEW JOINT POWERS AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND COUNTY OF DONA ANA, AS WELL AS A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAS CRUCES AND THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY. 96 - 134

Resolution No. 24-048 - Pdf

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

8.1. RESOLUTION NO. 24-049: A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 375 KAREN AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, FIRE DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED. 135 - 144

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8.2. RESOLUTION NO. 24-050: A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 643 EAST PICHACO AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC 145 - 157

COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED AND AMEND THE CITY'S ADOPTED FY2023-24 BUDGET THROUGH A BUDGET ADJUSTMENT OF $28,000.

Resolution No. 24-050 - Pdf

8.3. RESOLUTION NO. 24-051: A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) FY2024 BUDGET AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP) FOR VARIOUS CITY DEPARTMENTS. 158 - 175

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8.4. COUNCIL BILL NO. 24-006; ORDINANCE NO. 3048: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER. 176 - 293

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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. 24-007; 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. 294 - 370

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10.2. 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. 371 - 388

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10.3. 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. 389 - 430

Ordinance No. 3051 - Pdf

11. <u>CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT</u>

12. <u>CITY MANAGER REPORT</u>

13. <u>ADJOURNMENT</u>

MINUTES
Work Session
Monday, September 25, 2023 @ 1:00 PM
City Council Chambers, City Hall

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

ABSENT:

1. PETS OF THE WEEK

1.1

Amy Defelix introduced Pets of the Week.

2. JOBS OF THE WEEK

2.1

Sarah Raney introduced Jobs of the Week.

3. RECOGNITION OF MAYOR'S TOP TEENS 2023/2024

4. AGENDA ITEM

4.1 AUTOMATED TRAFFIC ENFORCEMENT (SPEED VANS).

Lieutenant Tate McBride, Las Cruces Police Department gave an overhead presentation.

Mayor Miyagishima said the reason why I like the mobile van is because they don’t have to be out they can be parked. Like for example right now it’s probably been over a month since I received an email about someone speeding. No sooner if we were to say no then here they come again, so if we just have them parked and pull them up when we need them that's one thing. The second thing is believe it or not we actually had a nine mile buffer. On Lohman it was 35 mile speed limit, it didn't go off until you hit 45, so if you were doing 44 you still didn't get a ticket. If you got a ticket you were speeding you were doing 10 miles. The reason why the city did that because depending on if you buy a bigger tire or smaller tire on your vehicle it could change the miles per hour. That was why they put it 9. Of course it was probably one of the worst kept secrets, it was a 9 mile an hour buffer. There were signages all over and there was a rumble strip when you were going over you knew you were coming up on a camera. Can we do that on a mobile van, I doubt it. Like I said I am envisioning that it would be placed and pulled out when need and not there all the time just on those traffic areas. But I mean if Council wants to do more that's fine. I was just thinking for those few streets that seem like were getting a lot of attention. The money would go back to road department for some type of public safety as far as repaving the road whatever it needed to be as mentioned this is civil it's not criminal. I would think and I think Ifo is checking with the chief, that we could probably use police service aides not police officers if we were to do a mobile van because they're just parked there. To prevent them from stealing and vandalizing the van. The difference we had over Albuquerque is we only paid based on what we collected. Albuquerque paid the whole amount and they actually sometimes owed more than what was collected. Can we find a contractor like that I don't know? I would be a little cautious of having to pay up front but if we can do it for little or no cost alright. Our hearing officer was retired, our US magistrate judge and attorney John Darden we just needed one, so it was ok. We had about 80 percent compliance, 20 percent that did not want to comply. The City would send them a little letter saying this is a City program which you're subject to possible non-renewal of your city services, and they started paying. That's how the ordinance was. It actually brought down a lot of the speeders.

Councilor Corran said the specific concerns that I had in particular sort of related to what the Mayor was speaking of only using data to decide where these are going, that's really important to me. I've come to understand people are going to complain about certain people's behaviors in disproportional ways that are deeply problematic. I appreciate that you all have objective research studies that can balance that out. Because I think folks definitely see different people different ways when they are doing perceived bad acts. I've certainly learned that as a City Councilor. I appreciate you talking about how you would use that information to guide this and also sort of your pragmatism in terms of the relative effects. It sounds like you would have data related to traffic studies but to the sort of additional comments you had, would it be overly intense to analyze all the data to figure out the places like that you mentioned where it is particularly effective. There's an intersection, a pedestrian interface, and a long stretch. Do you feel like you have enough data to identify those places? Because if we're thinking like 3 or 4 someone said 3 that sounds like a starting number. It seems like we would have to be really strategic in thinking about how to do that. Do you feel that data exists for you now and/or would it be really labor intensive to make sure these are stationed in the most optimum places, not for profit making but for changing behavior in a moment where it can help people?

Lieutenant Tate McBride said to answer your question in the short term is yes. I am relatively new to the traffic section so a lot of this I had to do some digging to find out what's been done throughout history. That's what you're getting at is a long term longitudinal type study to say, this is the way it's been for x number of years. Due to this one intervention this is the impact that it's had. As far as localized information, yes. The way traffic studies are done it's generally by somebody's complaints saying I have speeders in my neighborhood that's one way. The rest is we look at data for crashes and that's tracked since 2018 through TRAX which is reported to the State. It's a good reporting system to look back and you can search for whatever topic, whichever way you would like, injury crashes; you could do it by severity any particular data point you'd like to look at can be searched. Even before 2018 the traffic section has actually been very good at keeping track of especially crashes, injury crashes, fatals and that type of thing and down to a very specific location. The data exists to accurately report. The other thing is we are not an island unto ourselves. We are going to be working with a lot of city personnel, traffic engineering, a huge resource for us and there is a lot of other resources out there that we have access too.

Councilor Corran said we serve on the MPO where we hear actually there's dissonance and heavy lag in the data. I know you all keep up better statistics than actually might exist in the TRAX system. I glad you all are on that. My last sort of question related to where the information goes and then hearing the idea we would cut off city services. I just want to make it clear that would never be an acceptable path for me if we were talking about consequences. I am open to hear a lot of other things but not that one. Cutting off city services for people if they don't pay so just to put it out there. If that's even on the table I would say that we should stop this discussion now. The data that is collected where is it stored and who is it shared with and/or is it used for other operations outside of traffic enforcement?

Lieutenant Tate McBride said within the traffic section the data is generally used for traffic enforcement so it's a question where do we put our officers if we want to work a project that's the data that we go to. It's kept all of you should have access to it on SharePoint on the city's website, so I want to say maybe even as far back as 2015 or earlier, it goes back surprisingly far considering that TRAX is what we use now and it's a great system, that's all reported to the State. We do have some older data that essentially we've been looking at the same numbers for a long time TRAX is going to go report to the State and then again UNM does a lot of studies more information than you could ever want to know about traffic. They do a lot of studies on that MPO. All of that data is there in whatever way shape or form you would like and it's easily accessible and no issues with transparency.

Councilor Corran said I was asking about individual people's data so, for instance would someone getting a ticket in a certain area be a potential source of evidence in a different domain of police operations for example?

Lieutenant Tate McBride said you're running a license plate and it has people's personal information attached to it. That's why even if you chose to not use a police officer to review those citations all of those things are not going to be accessible to just anybody who likes to see them. Even if you use a third party that is still someone who considered, even though he may be retired he's still a certified law enforcement officer. That's what endless certification does is it says that not anyone has access to these databases because they contain such sensitive information, personal information, identifiers, and things of that nature. So no, it is all confidential.

Councilor Flores said well I was a victim of Red Light, and I was going to fight it. I fought it and I lost. It was Judge Darden who was officiating. It was here in City Hall the second floor; this was back in 2012 or 2013. It doesn't keep me from speeding. I have gotten a lot better. I go 40 in a 35 and 45 in a 40 that's probably safe enough. I have slowed down, but it wasn't because of that. It was because of a presentation that was made here by concerned residents who are affected by the traffic on Lohman and Amador. Statistically there's been more car accident related deaths on that street here in the City. It's information like too that jars people, it jarred me. The part that really bothers me is that you don't know who's driving the car. The owner is the one that gets punished for as you said may be the grandchild, sister, brother whatever you own the car, and they may not even be aware that there was a ticket that got issued, it could be a relative from another part of the country or the world, so you have to pay the ticket. Losing the case not only did I pay the 100 bucks but was 25 dollars for a late payment and I think there was another tag on thing. The question that Councilor Corran has, about how much information does big brother have on you type of thing. That's problematic for me, really problematic and then the vandalism. Doesn't the vandalism affect the accuracy? One of the arguments I brought up and loss of course was the calibration, how often does an officer got out there to make sure it's recording the speed correctly? I know how busy you all are and how understaffed the police department is at this time. The accuracy is a concern. If they're being vandalized from time to time what's the cost involved with that? I think we could frankly living between Roadrunner Parkway and Lohman I think if we had more officers going up and down the street we'd be a very rich city because, people just speed, they must be going 60 or 70 sometimes on Roadrunner Parkway. The possibility of no upfront cost, but we really didn't get any kind of numbers on what that cost would be initially and continuing? What the returns would be? It was slide 25 the last bullet, generally run by the community development division of your department, a police department, or the City? I think it just presents a lot of problems, why would the City be involved with that aspect of police work? That's why when a police officer issues the speeding ticket there's more credibility there because you see the person who's driving and get the information from the person and it's fair.

Lieutenant Tate McBride said the City.

Councilor Bencomo said in the four years I've been here it's been ingrained in me the three E's, thanks to David Sedillo. Education, Enforcement and Engineering. What is the budget for example for the education piece of traffic enforcement? What does that look like?

Lieutenant Tate McBride asked as far as the funds coming in as result of the program?

Councilor Bencomo said no what we already have now. This is our frame for the City, when a constituent reaches out and says look this happening in my community the three E's before we get to any big changes in engineering which is what I believe ultimately changes actual behavior is the design of a road. We have education, enforcement and then engineering. I am curious around how much are we putting behind education efforts to help people understand the dangers of speeding. I sound silly, and I laugh about that because it is, but it is also true. That's obviously our framework and I am curious about what that looks like right now?

Lieutenant Tate McBride said there are a lot of solutions or a lot of pieces to tackling a particular problem. There is no one size fits all solution as far as specific numbers on a budget, I don't know off the top of my head. But I can find out for you. I know certain city resources go to our line items in the traffic section just like any other. We also have a traffic safety fund generally that's going to be used for the additional equipment specific to traffic safety. So it's not spent on anything outside of traffic enforcement on the police side. The issue with the funds that come in as a result of this is you can kind of spend it on whatever you want. Assuming you were going to go with the cameras the additional funds that come in after the system has paid for itself and after the State has had its cut it goes wherever you like it just has to be ear marked to traffic safety.

Councilor Bencomo said we already have a couple of these sort of mobile units they're not necessarily recording but like the big eye and on Hoagland. I am curious about vandalism on those if can you talk a little bit about, does that happen often?

Lieutenant Tate McBride said it's funny you mentioned the one on Hoagland it was vandalized recently. It was spray painted, we had one of our public service aides go out and was able to just kind of scrub it off. Vandalism does happen to anything that is accessible to the ground and even I did hear some horror stories from other agencies where certain ones have been shot. It happened in I believe in Houston. Vandalism is going to happen it's just the cost of doing business especially when people figure out what they are they can become a target. The vandalism itself the funding to repair those does have to come from the City because it's kind of an incurred expense that's why they're typically insured by the City.

Councilor Bencomo asked what's the data that shows that these types of measures actually change behavior? Between 8 and 49 that's like a huge sort of chunk of data there. Do we feel like we have any of this locally already?

Lieutenant Tate McBride said yes that why I tried to couch this statement, because the CDC we're talking national numbers which is why we see a range from 1 to 15, 8 to 49. Interesting but is it as statistically relevant to what we're talking about in the City of Las Cruces. To answer your question do we have that localized data that's very similar to your question, yes we do. You can pull that from sources like us, TRAX, UNM I had someone ask me today can you send me the results from the traffic studies that you did on Cheyenne I sent it to them right away it's on SharePoint. There's nothing that can't be shared so transparency is there. To answer your question yes we do have much more localized numbers. The issue is are we going to put these in the appropriate places for the right reasons and yes we do have data to support that.
the three percent. The City of Las Cruces 3 percent of fatal crashes were speed

related does that include pedestrian fatalities?

Lieutenant Tate McBride said yes this is all fatal crashes. This is going to be vehicular, ped cyclist or anybody on a bike, and pedestrians as well.

Councilor Bencomo said I am wondering David if like from an engineering perspective what is the best sort of way to change speeding behavior? I am curious if you also know about the budget for the education piece and I know there is a budget for the traffic calming piece?

David Sedillo, Director of Public Works said to answer your question what we would see as a benefit to addressing speeding is going to follow those three E's. It's going to be that educational portion first that way the public is aware of the rules, regulations. Again follow that up with enforcement and then lastly we take a look at are what are those design factors within the right of way that help that. Let me clarify for that, we have existing right of way and then we have new right of way. So existing right of way we look at how can we modify that space to help minimize encouraging that activity. New development that's what we're working towards to address from the get go. Now as far as the budget for public works, you mentioned both the educational portion of it and our traffic calming. Those are actually one both are in one, so the budget we currently have right now for fiscal year is $60,000.

Councilor Bencomo said I honestly feel like we need something in the short term. I feel that frustrated with, not the people who call in to complain about speeders, but with speeders in general on Hoagland, McClure, Tashiro, Legends West like all of these places that it's pretty consistent how much I hear from folks around speeding issues. I feel just as frustrated as them. I do feel that we have to do something in the short term. What I like that you just said that actually sort of made me think ok well I think perhaps we should look at one of these and to move forward with which one I am not quite sure, but you said once these original costs are sort of paid off then we can use these funds for anything related to this issue that can go into education or into traffic calming projects. I do feel immediately like the vans are maybe the ones I would support the least given they'd have to be turned on the entire time like idling and they have to be staffed with someone. That seems something huge to take on and I don't know if I necessarily support. I do feel like one of these options could be possible particularly the mobile ones so they could be traveling from location to location. I think the biggest piece that I'll say is more for Ifo and my colleagues is that to me it is clear that we should be increasing the budget to the traffic calming program so we can invest in more design and re-engineering type of measures.

Councilor Graham said thank you for taking the time to reaching out to other municipalities that are already doing this. I think that information really resonates with me just kind of boots on the ground and people who are already working with it. You very deftly and admirably avoided the question that I am about to ask you at the start of the presentation, so I apologize because you desperately don't want somebody to ask which is what do you think is this going to work. Can we jump to pros and cons slide? The potential con that I'm not seeing and that my eyes were really opened is how much human power this actually takes the staffing. I wouldn't have thought today that Christine would have IPRA requests that you're going to have to field. I think the thing that gives me the most pause about this job is that I sit up here, and this is a great idea and then I happily float away and to whatever the next great idea is and someone else has to execute whatever nightmare I just put upon them. I don't want to do that. You did not list as a con staffing concerns. But can we talk a little bit about this? What kind of burden would this put on our existing staff just from your perspective as an officer? Chief if you want to jump in also, but really everyone who would be affected by this. The big question does it balance out? Are the potential benefits going to be worth that?

Lieutenant Tate McBride said I am glad you asked that question because it does give me the opportunity to expand on that a little bit. I did rush through it for the sake of time. However I will try and find the slide where it talks about the personnel that is required. It's a notary, court monitor, attorney, legal assistant, physical office for staff, potentially additional administrative assistants, and kind of you choice of an LCPD officer to review citations or a third party. There is a couple of ways you could go with it. If you want to implement this now and this is actually a recommendation that carried over since this presentation about a year ago, this is after a review from the City's Legal Department is that these are all new positions. The incurred cost on its face, yes it's going to increase drastically. Now the caveat to that is generally everybody has a problem with speeding so whenever they put up speeding cameras it's kind of like fish in a barrel, like you were talking about. There is no shortage of citations, that being said remember the cost of the system itself, the first half that's left over goes to the state and everything else comes back to the city. That is divided between potentially these resources you see here. I ask again I told people just be frank with me is it truly paying for itself the way people claim it is and they said yes. It kind of speaks to the Councilors point there's no shortage of speeders and whenever there's a fine attached to that and people actually pay it there's no shortage of funds. The person trying to give me the sales pitch said she's not aware of anyone who has had the problem of not being able to fund these positions in their entirety as a result of the program.

Councilor Graham asked is it what we most need to be devoting law enforcement positions to though? It's not even a question it's more of a comment. I 100 percent acknowledge that speeding is a problem. I am more honed in on obviously on the fatalities and crash side of things and when we talk about, David you and I have had some great conversations lately about behaviors and choices of drivers. Odd ball question but what is the recidivism rate on speeding? If I get a ticket is it really going to change me in the future? How many people do you ticket consistently for speeding?

Lieutenant Tate McBride said to get you the exact numbers again I would have to do the research but with the system that we have it's probably an answerable question. I could probably find out for you. Recidivism rates for speeding I think it depends on the person. Will it truly change behavior or is it an environmental solution, an intervention you know speed humps I know that's a common one, we implemented some on McClure, and eventually they were removed as well as signage and things like that. It just kind of depends, we had a lot of people polled for it and a lot of people polled against it. The tide will go which way it goes. It just kind of depends. It goes back to the statement that was made about how can we really solve the problem there really is no one solution. It's the three E's, he's exactly right, Councilor is right. It's going to take more than one solution it's got to be a cohesive solution that comes at the problem from a lot of different angles. Will it help? Most likely, again it is very localized. If you put it in a certain place and leave it there everyone knows they're not likely to speed there. If you move it around it's going to have less of a deterrent affect long term because people it takes them a while to figure it out. It's a very complex solution that requires a lot of different angles of attack.

Councilor Abeyta said most of my questions were actually just answered because it had to do with staffing. I do have a few follow ups. One, when half of that money goes to the State Treasury what dedicated fund is that then used for?

Lieutenant Tate McBride said if you're refer to I think it's page 3. What happens to the money that goes to the State, 65 percent shall be credited to the court automation fund, 20 percent to the traffic safety education and enforcement fund and 15 percent to the judicial education fund.

Councilor Abeyta said is that then money that stays just at that state level? Are we able to access back any of those things for education?

Lieutenant Tate McBride said that would be up to the State.

Councilor Abeyta said then hearing that these are able to kind of "pay for themselves" in some ways with the staffing. It does look like though that we would need to have upfront costs at least for a while, perhaps a year at least, perhaps more?

Lieutenant Tate McBride said so the way that works is because I was not immediately sold on the concept either there has to be a catch, nothing is for free. The way it works is you're signing a contract with the company and there is no upfront cost. Now on the back end with personnel and things like that to hire these people on and have them in place prior to the system going into effect, possibly. For the system itself the actual cameras that is part of the contractual agreement you would setup potentially with the company. One contract that was sent to me as an example was 27 dollars per citation, that is automatically going to the company. That's the upfront cost that's talked about and after that is when you have half goes to the State, half comes back to the City and part of what comes back to the City is then used to address what they call reasonable cost directly related to administering the program. That's the ancillary personnel you're talking about. To have those people in place ahead of time, I sure they liked to be paid and the system is not generating anything immediately. Once it's in place and it's up and running it's working. One example is 27 dollars per citation if that kind of gives you an idea.

Councilor Abeyta said thank you for that. In my opinion just for right now of course more information and education on my end is probably required. Looking at the mobile units seems to be perhaps the better option just I don't know in my opinion being able to move somethings around, because there are so many locations. I think we have 3 at fixed areas, seems to me there's going to be more requests even once we have these on people are going to want them in different spaces or places if patterns of behavior seem to change being able to move them. With that sort of in mind what systems are most in place in other municipalities that you researched is it the mobile system or was it the fixed systems? It kind of seems that speeding vans are not as effective as people would like?

Lieutenant Tate McBride said so most places are going to use a combination again our data goes back far enough we can say this particular intersection is a problem and has been for years. A lot of places feel very confident at putting them in a fixed location that's hard wired into the City's electrical grid and leaving it there because it's been a problem and will continue to be until an intervention is there. When you also have the option of mobile like the Mayor was saying you can park, or you can put it wherever you like based on additional new data or citizen request, and we verify it with traffic study and say yes this is a good spot for a mobile system. Then you have that option.

Councilor Abeyta said actually that's great to know so you're not necessarily fixed to one option or the other then, but you can merge. Then with that did most municipalities need to have a certain number of cameras to be able to recoup cost of personnel? I am assuming if you have one camera that might not quite do it but if you had at least 3-5 would that usually pay for all the extra incidentals?

Lieutenant Tate McBride said again anecdotally most places will begin with 6-8. There is one package with, trying to give it as an example. There is two trailers, 3 pole mounted cameras with signs. Well the cost of that was $139,000 that is the package they chose to start with as a package.

Councilor Abeyta said if we did have the mobile items when we look at the portion of money we can keep on our end can you store money to look at paying for vandalism, like build up a little buffer or does it have to come out of the General Fund?

Lieutenant Tate McBride said generally everything is on a monthly basis. The cost that are incurred are paid for on a monthly basis after let's say the first 27 dollars and then the State's cut so yes you can. Again the spoke person I talked to said you're not going to have a shortage of funds; they don't hear those complaints. Whenever the City gets its portion back and it says in here the municipality's reasonable cost directly related to administering the program that is incorporated in that.

Councilor Gandara said your right we have been talking about this for some time. I think we need to do something. Did you get the sense that if we started with this particular one 6-8 cameras that you have a plan in terms of where you would locate them or is that for a larger conversation with other departments?

Lieutenant Tate McBride said it would be nice to include other departments, again we are not an island unto ourselves. We have a lot of data, but we don't have all of it, then I would be going to people like Mr. Sedillo. I speak to Soogyu Lee through email quite a bit. There are a lot of subject matter experts that are far more qualified than I to interpret data but there's some people that are very much experts in their field. A comprehensive solution including everybody would probably be the best way to go.

Councilor Gandara said that is what I am hoping we're going to do and once we do that we know across the City where it's the most applicable. Where we should be putting them based on the number, all of us get those kinds of calls with complaints "it's an accident waiting to happen, kids are going to get hit and die". Unfortunately we've had some fatalities and seems like hot spots around the city. For me it's more of a comprehensive, it's not just one strategy it's going to be a number of strategies and I am really interested Ikani making sure we have that plan. That we know exactly what it is going to cost, not only the three E's but where strategically we are going to place them. I would say for me that more education to the public is probably warranted so people are aware we're doing this and why we are doing it, what data. I would like to know also I think all of us know of streets that need a redesigned. I would also like to know where that might be including HAWK systems because we've talked a lot about that as well as a way and if I remember correctly was it about a year ago we had that individual on Zoom that spoke about the number of strategies, and this one being one them. This is one of the things that is really going to deter speeding fatalities and those kinds of things. It's more for me to say yes I'm in support of it, really looking to you all and staff, administration to give us a really comprehensive way of looking at this with some costs associated. Because I believe we are the budget people to be able to know what that is and put forth the money. I want say yes, with a caveat, that I know what the cost is going to look like and that we give you every single tool so that you can make it work. I think our citizenry deserves that, there's a lot of outcry around the City about this. I don't want it to be a place where Big Brother is looking and we're giving information and I'm a little concerned about stuff being on SharePoint. I think there needs to be some tightening up on that. I don't think everybody should have access to that. That's just my feedback.

Mayor Miyagishima said we can't really decide here so what I would propose is if Council the majority wants to move forward and then what happens next is staff will then put together a bid. It would go out to bid and various companies would come in and then we'll be able to see what the actual costs are and things of this nature. How they'll be able to see exactly hopefully it would align with you all concerns. At that point if we chose not to do it than we don't do it. At least this way we move forward, because right now he's done a fantastic job at getting us as much information as possible, but until a company see that we're actually going out for bid, then they will start releasing real numbers saying this is ok, but this is what we can do it for, and this is what we can do. Right now they're just giving us generalities. Still it has to be voted on and if you don't want it based on what comes back and it's still going to take a few months before they develop a type of bid to go out. I think staff has enough information as to what you all are looking for; it probably would be something mobile. You're right though once it starts getting throughout the city, they're going to want it in their neighborhoods not major arterials but in the neighborhoods they want them slow and if we can pull them out just like we did with eye in the sky. I bet you once we started doing that, people started finding out that we had that. I think we had to buy four more. Their probably still out there 6-8 and I think there all being utilized. If we move forward for staff to start developing the bid. Go out there and see what's out there bring it back to us, see how much it's going to cost. I hope there's different companies, hopefully it's not just one as to what they're going to propose to give us.

Councilor Bencomo said I think that’s right, it’s a little bit difficult to try to figure out what decision to make without more solid numbers. I did just want to ask you Lieutenant off the top of your head do you think you can tell us how many problem intersections you would think yes for sure a stationary camera at that one?

Lieutenant Tate McBride said it’s like the Mayor said you can go as far as you like with that problem. There is no shortage of people who contact me on a daily basis and say I have a speeding problem in my neighborhood. As far as major intersections again I think starting with five as an example, 6-8 would be maybe a nice pilot project to see long term longitudinal study is this effective and is it actually doing what we think it’s going to do. I am sure if you’re ask for a certain number I could probably provide you, I have no shortage of people who contact me and say please look at my neighborhood, a feeder street or major intersection.

Councilor Bencomo said I personally would love to see that sort of estimate, from your professional data driven experience there is an X number of intersections that are pretty problematic. That would be helpful.

Lieutenant Tate McBride said it kind of depends on where you want to set the parameters. Data is data so it can be manipulated. It depends on how severe of a problem you want to look at are you saying 1 mile over the speed limit is problematic. Again nine miles and over is generally the standard but you can change that for a school zone. It could be 4 or 5 miles over; it’s a school zone and we want to send a message we don’t want you speeding but we definitely don’t want you speeding here. It kind of depends.

Mayor Miyagishima said the number 1 intersection was Telshor and Lohman. They would occasionally show the accidents to City Council, but I think one of them caught a hit and run driver and was able to track it down that way. It has a lot of good to it.

4.2 CONNECT LAS CRUCES (GIS & DATA SERVICES).

Courtney Granite, GIS Manager gave overhead presentation.

Robert Allen White, GIS Analyst continued overhead presentation.

Trent Bianchi, GIS Analyst continued overhead presentation.

Heather Glaze, GIS Analyst continued overhead presentation.

Courtney Granite continued overhead presentation.

Carol Brey, Director of Quality of Life Department continued overhead presentation.

Cilicia Villegas, Economic Development Coordinator continued overhead presentation.

Interim Chief Jeremy Story, Las Cruces Police Department continued overhead presentation.

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

Courtney Granite continued overhead presentation.

Councilor Abeyta said I think it's very exciting to see all the data and how I know when I make decisions up here I like to see data, I like to see what is going on and being able to take things down to different types of levels especially district level is super important when we're making prioritizations. Just briefly as we were looking at that I picked up on road numbers for district 2 I have the worst quality of roads in the district by quite a bit as it turns out. It also looks like so now that know that how do I work on it. I think this is very helpful as we're putting these pieces together do you see an area right now that needs to be added as far as data the next step because you said it's very important to look at the questions of what's missing? This project is so many different levels and pieces, is there another area you are wanting to add a layer on now or a different department that you're thinking about or kind of like what's next?

Courtney Granite said of course data is important. I think it's more important that we're training up our staff to be able to use GIS or other ways of looking at data because we have limited staff in GIS. Why we're more than happy to help we want to do that we really want to share that expertise with others in order to help build that so whether it's a tool in GIS or even there's other business intelligence tools that the City is able to utilize. I know that we've used there's Power BI, Office, there's Tablet so there is other business intelligence tools we can utilize to look at data holistically. I think most importantly it's the educational piece we've done most of the training in the past, but we just don't have the capacity to continue to do that all the time.

Councilor Abeyta said I really do like the way it makes us look at efficiency too. I think that was very important to note. Since we have put a lot of pieces of data on there is there anything we need to consider, the IT security of all this type of mapping?

Courtney Granite said I think with any data that's going to be published we need to have a policy for doing that publicly. Obviously we want a review committee to publish anything that needs to go out to the public and not just to do that because of anything that would be sensitive data. That's something we have been talking about in our group that specifically about having a process to kind of control the release of the information and it is also controlled by some of the roles and responsibility within the system. I think formally we should work together across the departments with our Information Technology team as well to make sure we're adhering to policies that make sense for the organization.

Councilor Bencomo said I don't think you could hear us all snickering about how excited we all were about this presentation and even just when you said PowerPoint I don't think so we're really going to show you all the full sort of breath of our skill here. That was really great. I'm a believer in that the safest communities are not necessarily the communities with the most enforcement but the communities with the most resources. I'm sitting here nudging Councilor Corran every time there was a new map, and I was like oh yeah I think that is actually kind of accurate. I think when you see a street condition and hot spots just all of these different things. I feel this is telling us a much wider story of the entire city not even just departments. I think maybe the next challenge for you all is how do we even continue to break down silos amongst city departments and tell this bigger story about Las Cruces. I feel like you're sort of going in that direction already. I had made myself a little note just to give you huge props on the NAT because they presented last week at our Housing PRC. I was just really taken aback by the level of detail that has. I know they didn't click on any particular houses on there, but it just shows you all of these different details about that house there's three layers of it did we just hear about this house or is this house level three and it's really ready to be knocked down. I know the NAT has existed for a really long time. I think you're giving some new life to it, through GIS. I just want to thank you because that presentation was really incredible, and this is something I really care about is addressing abandoned nuisance properties all across the city not just in district 4. I wanted to ask you about if you were thinking, if you talked to Economic Development especially about including the MRA's to new MRA's we just established. I know that we haven't really fully began to implement those so I don't know what it will look like, but I think that's also a huge opportunity for a data point.

Courtney Granite said yes absolutely we will work with the department if need be or make sure we get the data into GIS as it's approved and unfolds.

Councilor Bencomo said that would be a really great Economic Development tool. You showed us a little bit about the infill. I also feel like as we're talking for example housing developers where they can build more affordable housing or multi-family housing. I feel like these are just such great tools that you created for us. Really just said all that to say thank you and how excited it is that we have such a robust department.

Councilor Gandara said I do have some questions from the presentation last week about the Housing Policy Review Committee on the NAT and your presentation. Councilor Bencomo you spoke about sort of how are we letting the public know what are we going to publish and I think it important to publish because we always hear where Codes isn't doing anything we make a call or to police well they're not doing anything. I think this is really important often when I have district meetings, people like IPRA and did you know there's a 154 calls, I like oh my gosh. When you really put it into those kinds of terms it feels like codes is doing a lot and I think public needs to be aware particularly on the nuisance properties that people are understanding that. Before I got here there was a call on a nuisance property that they were not aware that it had been red tagged and the permit to be demolished, the abandoned building and once you say that to them they're all ok I understand there's an actual plan in place. I think about the number of calls that everybody is getting on this, I've received 5 calls in the last two to three weeks about this particular area. Ifo, I know there's sort of that feeling about how are we going to present this data. I'm really advocating to publish this data in a way that's going to be useful to the public particularly in the NAT area. I know there's some conversation happening. I think we need to make sure we do that and then Courtney I'm thinking that the Lift Up and the layers like that particular one you did the tree streets the staff did and I'm wondering and thinking we used that distressed indexing tool that identified a number of factors related to the area, median income, unemployment, employment establishments, and those things. I'm wondering if some of those can be done as part of the Lift Up and then scaling out.

Trent Bianchi said so for Lift Up we did actually do that. Any shape I can draw on a map we can use info graphics and info graphics will pull in all the data. Whether it be the tracks or the block data. We can pull in employment data, even access to internet. We can do that and we actually provided that to Lift Up for the areas they were kind of considering so they could make their decisions a little better, more data driven.

Councilor Gandara asked so how long did that take you?

Trent Bianchi said with all the other projects a couple of weeks to pull it all together.

Councilor Gandara asked and it's just the three of you all with some students or how many staff?

Trent Bianchi said we have quite a few. If everyone would like to stand up that's in the GIS department.

Councilor Gandara asked do you need more resources what sort of things? What is the need there I think particularly as we move forward and more departments? I think you said educating the staff most important. If you had the pie in the sky what would you ask for?

Courtney Granite said I think what we're really want to obviously have a trainer to help train. We need some more analysts to support the organization as a whole. We have 4 analysts throughout the department, Utilities has one, we have 2 in Community Development, and Heather represents Public Works. We also have staff in Parks and Rec. I'm thinking as we focus a bit more on the analytics we would need to have more analysts to support the different departments. I don't really have a number for that.

Councilor Gandara said sure but just give me an idea or going back to assessing that and bring it back to Council.

Courtney Granite said yeah we need to do that because it's not just GIS. I think we need to approach our data plan as well. It's beyond who people can do the geographic analysis as well.

Councilor Gandara asked so what does that mean? What would that be telling me its beyond? What does that include?

Courtney Granite said well we have our trained staff in GIS. We don't really have Data Scientists in this organization, so I think if you want to do that. We have a crime analyst in the police department. But what about other analysts that specialize in their different departments? That is the culture we want to build the communities of practice we would want to build is a focus in data sciences. To do more with data to support your questions, your needs and really make better decisions around data.

Councilor Gandara asked could we have a Data Scientist for Council? Ifo that is what I'm advocating for. I think is an important thing. I'm wondering if you can go back and through Ifo, share what your assessment is in terms of resource and tools to really make it as robust kind of vision that you have to forecast kind of next steps would be helpful to me.

Councilor Graham said no questions just compliments. If you're looking at overarching goal bullet point three of getting by in from council I'm sold. This was rad. I just wanted to thank you for you know a lot of work went into not just what you do but presenting it so concisely and compellingly and to echo Mayor Pro Tem excellent points. Getting you more resources, because now you've shown how cool you are the flood gates are going to open of requests. I have 5 ideas off the top of my head so just to make sure you're not inundated. I want to echo that commitment to getting you the resources you need.

Mayor Miyagishima said so you may have covered this, but do you want to practice on one to be really helpful, so I don't have to look it up. I know a long time ago the city had a way to find out what a particular piece of property is zoned, do you know how to do that?

Courtney Granite said we actually do have a zoning map.

Mayor Miyagishima said if you could do 2795 Roadrunner Pkwy. I could see what its zoned and that would help me with my little project here.

Robert Allen White said I built this map quite a while ago, it's actually available for the public. A lot of the public can actually answer some of their questions before contacting some of the zoning staff. That way they at least see what it's zoned as and hopefully formulate some questions that don't waste staffs precious time. Everything up here is shared to the public. All I have to do is type in part of the address, then I have the option to pick the address that you're interested in, it will highlight that location and it will tell you what it is. Also can save it as an image, or I can actually look at it. The application shows that it is actually R1A zoned. It actually goes through and tells you some other information about it like when it was last updated. I will pick the zoning information and now you can see it is single family medium density dwelling. It tells you the council bill upon which it was created. The ordinance number for when the zone took place and about the acreage of that particular zone change.

Mayor Miyagishima said 157 acres?

Robert Allen White said of the zone if I click in here again it is of the entire area of what was zoned on that ordinance at that time. This whole highlighted area was zoned that at the time. It also tells you when it was zoned which was 1979. With this zone map you can also search by ordinance number, or you can search by the case number, you can search by the zone classification and also find by council bill. A lot of this information is readily available to the entire public.

4.3 GO BOND QUARTERLY UPDATE

David Sedillo, Director Public Works gave overhead presentation.

Natalie Green, Manager Housing & Neighborhood Services continued overhead presentation.

Councilor Corran said I noticed that the fire station is about 30 percent overish what it was bonded for it seems like the estimate for how much it was going to be. Is that correct?

David Sedillo said that's what it appears to be at this time. Those are schematic estimates at this time as we work through the final design and based on what is incorporated into the facility at that point we can either work on that number or look to see what additional funding is lacking to be able to build it to that level of service.

Mayor Miyagishima said if I can just also add that those proposals were done in 2018 before COVID so since then on these new changes the price of construction has gone up considerably. I was anticipating it would be more expensive as well.

Councilor Corran said wait I thought the proposals were from 2021, when we voted on it, it was double the prior one that was similar. I just wanted to say I've seen the value engineering process and how it can be pretty harsh in terms of the functionality of spaces. I would hope that we, however that process goes throughout the functions and the important things that the fire department has identified really are able to be maintained. I would ask that the valued engineering process doesn't cut to the bone of the fire station and make sure that all those things are maintained. I'm thinking we have public safety infrastructure funding separately but I'm hoping we can leverage other things and not value engineer it to not functional well enough. Then everyone will be cursing us into the future I'm sure you have experienced. I just want to confirm I was understanding that correctly and also hope that we cannot value engineer too much.

Mayor Miyagishima said I do have a quick question with the fire station there. I've often thought to help save cost is there certain fire stations that we already built that we already have all the plans to would that work? Do they always have to be a little bit different. If you think about it we already have the plans for it and everything it's working we know what it looks like, why not build it?

David Sedillo said yes that is exactly what happened in this process. We did go back and utilize the services of the architect that were involved with fire station number 3 and that did help reduce some of those costs.

5. ADJOURNMENT

5.1

Councilor Tessa Abeyta moved, seconded by Councilor Yvonne Flores, to Adjourn the meeting at 4:07 p.m.

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

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Mayor

____
City Clerk

City of Las Cruces

MINUTES

Special Work Session

Monday, October 2, 2023 @ 10:00 AM

City Council Chambers, City Hall

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

ABSENT:

1. AGENDA ITEM

1.1 CHAPTER 7 - ANIMAL ORDINANCE DISCUSSION.

Kathe Stark, Animal Advocates for Change gave overhead presentation.

Geri Wheelis, Animal Advocates for Change continued overhead presentation.

Mayor Miyagishima said let’s talk briefly about community cats. I am going to share with you different experiences I have had, residents call in. That is why I need some clarification on this. The community cat is obviously a cat that is out there that doesn’t necessarily belong to anyone.

Geri Wheelis said it is a free roaming cat.

Mayor Miyagishima said I’ve had reports where some residents will have a small little dog in their yard then there’s this cat, that likes to mess with it. Are you saying that, in the past I think they would give them a trap, to trap the cat and take it off to animal control. You are suggesting that not be allowed?

Geri Wheelis said no the opposite. I am saying that’s what Best Friends says you should not bring in and trap these animals. We say we don’t agree with that you absolutely should.

Mayor Miyagishima said what I’m trying to get is when I mentioned this to Kathe, I said listen if you’ve got this great ordinance share with us what it is you want. Instead of sharing with us what these guys do.

Geri Wheelis said because we know that Best Friends has had communications with some of the Councilors.

Mayor Miyagishima said that’s good to hear because I thought you were advocating this. I’m thinking that takes away from this resident’s right to enjoy their little puppy or dog.

Geri Wheelis said Best Friends put out an alert that you may or may not have seen promoting this meeting and promoting change and one of the items that they discussed in that alert was community cats. We do not agree with some of their stances.

Mayor Miyagishima said I’m sorry. I know I was getting a lot of emails; I just took it for granted that Kathe had her friends send all of that.

Geri Wheelis continued with overhead presentation.

Kathe Stark continued with overhead presentation.

Mayor Miyagishima said you mentioned at the very beginning about the County’s ordinance it seemed like you are ok with it but there could be a few changes but that you for sure feel that’s better than the City’s. We can at least see if we can bring it up to see if there similar or bring up that parody and then at least that change can be sent to Council and then also your request as well. Can we do that and then work on the others as the time comes? What you’ve laid out is a lot of information, good information and I pretty much can support just about everything, but I need clarification on that community cat.

Kathe Stark said Mary Lou and I had a brief conversation before the session started today, because she’s looking at what we drafted for the City. Our focus when we started was in response to the adoption in 2021 of the new ordinance, so we focused on the City.

Mayor Miyagishima said what I don’t want if we do something with the City and the County going to say well ours isn’t the same as the City’s. Let’s at least get this and slowly move.

Kathe Stark said here is what I’d like to suggest and the avenue we are trying to pursue right now. We don’t just look at County or City, we sit down and look at them both. Mary Lou has looked at the draft we did for the City and says there’s a lot of good stuff in here. We’ve looked at the County and one of the questions I had was we have a three strikes rule for community cats which is really a four strikes rule. First time animal control picks them up that starts the clock after 4 strikes then that cat can be removed either put up for adoption barn cat or euthanized. My question was well what do we do with dogs that are picked up four times. The County has great language on that we didn’t even catch when we came up with the draft. My proposal if this is acceptable if Gino, Mary Lou, and us as we continue to work and go through that ordinance in a fairly expeditious manner. Then we have one ordinance. The County has elements in theirs that you don’t need, you don’t have a lot of livestock in the City limits so those get added in. You don't have a difference between the two that is substantive, we dovetail them. Does that make sense?

Mayor Miyagishima said I believe there still is and it would be in probably Councilor Flores district years ago when the City was annexed there was an area that allowed for still horses to be out in that part of the City I think it is still zoned that way. It may want to be left in.

Kathe Stark said we left it in. I'm taking about the density of livestock. I remember when I first read the City ordinance and I worked for the City about ten years we have livestock in the City, and I checked it out and we do have small pockets of livestock so that stays in. Instead of trying just to work on the City ordinance and the go back to the County to do what we're doing right now with the community cat buffers and the three entities sit down and just hammer through that.

Mayor Miyagishima said I apologize if I caught you off guard. I just thought that you knew what in the County's you like versus the City's.

Geri Wheelis said Mary Lou has indicated that the County is pretty much in agreement with the majority of our proposed ordinance, and we are working with them to make changes based on joint criteria and she is also looking to change the County's ordinance in accordance with the City's, so it is kind of a joint project.

Mayor Miyagishima said what of the City's ordinances you do not like that you would like to see changed? Let's start with five things your top five?

Geri Wheelis said spay and neuter.

Mayor Miyagishima said so first thing is spay and neuter. So you want to see that mandatory?

Geri Wheelis said make it mandatory, make it required with appropriate funding.

Mayor Miyagishima said what is the second one?

Geri Wheelis said for me personally it's the no de-clawing and all of the other.

Mayor Miyagishima said so in the City's ordinance it doesn't mention it then?

Geri Wheelis said those are the beauty surgeries that are mutative to animals in general.

Kathe Stark said dog fighting definitely got to be in there.

Mayor Miyagishima said dog fighting, isn't that a State Law?

Kathe Stark said there is State Law on the books. I think the enforcement and that's a big topic.

Mayor Miyagishima asked how about this, you wanted some questions on what is adequate shelter?

Kathe Stark said those are general standards of care.

Mayor Miyagishima asked ok is that in the City's ordinance?

Kathe Stark said yes, all we've done to that is we've set minimum standards so that as a dog owner I know what's expected of me. It doesn't just say it's appropriate or it has a roof.

Mayor Miyagishima said so you're ok with the definition?

Kathe Stark said with the added language that cleans a lot of that up.

Mayor Miyagishima asked the community cat is there language there you're ok with?

Kathe Stark said I think the community cat language we've been working on with Gino and Mary Lou will be very good the moving of abandonment under cruelty and neglect is critical. Currently the way abandonment is described in the ordinance it's kind of a set aside. It says you can't abandon an animal for more than 24 hours, that little dog emaciated dog that you saw in the picture was one that was abandoned over at Action Program for Animals we don't have to wait 24 hours for that. You leave an animal in that shape that is cruelty and so we have put abandonment in with cruelty and neglect and abuse. That's huge here.

Mayor Miyagishima asked what do you need us to do on that one? To add abandonment?

Kathe Stark said just to approve it the way we have written in the draft.

Geri Wheelis said the draft has old language in black.

Kathe Stark said I think our point if we bring the parties to the table we can hammer through it. We can get it done in 60 days. I don't think there's going to be huge disagreements and those that are larger we will reach some kind of consensus just like we're doing on the community cat buffer zone right now. We need to get the City to the table. The City hasn't been at the table recently. When we talk about enforcement we're talking about staffing 8 officers and if I remember correctly we have 55 square miles. That's a stretch because if we also need our animal control officers to be able to walk up and down the street, try to reunite pets with owners, educate the public. The website says two years later you require a dog license. When we talk about enforcement that's a big one that would be one of my top five. To look at how do we do this? The City you have your tv station, you have your PIO office, how can we maximize that to help residents when we change an ordinance like this to let those residents know what the expectations are. People don't know that the ordinance even changed in 2021.

Mayor Miyagishima said so I have spay and neuter, no de-clawing, add abandonment, more staffing and enforcement.

Kathe Stark said the last one would be the restraint requirements. Right now we have a two hour limit for chaining up a dog, tethering a dog. Animal control will tell you they can't sit there for two hours to get the proof they need.

Councilor Graham said I did want to say that our City Clerk did send the draft ordinance with the redline on Sept. 28th. I know that is far down in a lot of our emails.

Councilor Flores said your ask is adoption of a new ordinance which includes population management, direct staff to meet to discuss with and to have it all done within 60 days and to have a mid-year budget adjustment of a $100,000 dedicated to the Service Center is that correct? Yep ok. In so far as communication with the public you could always have the PSA's, public service announcements. I think they're required by the FCC so you can go to all the outlets that are here. You can have those mass going on day in and day out so of course we have our channel 22. I don't know who many people tune into that, but they I do know that people do tune into our local radio stations KRWG. It seems to me we haven't made a lot of progress. I don't know how the City and County are going to mesh their local ordinances. The 60 day ask is good to ask but I don't know.

Geri Wheelis said I believe the 60 day ask, and Kathe can correct me if I'm wrong is to sit down together to discuss, to hammer it out to further the process not to actually have it finished, but to put a deadline on it so it's not further delayed.

Councilor Flores said and who would be meeting?

Geri Wheelis said the ASC, Mary Lou, Gino and whoever else the council would like too.

Councilor Flores asked would it be our board?

Geri Wheelis said it could be if you want too. You can include whoever you want.

Councilor Flores said because there at the board meetings we could have a joint meeting and be no violation of anything. We know you've been working with the County. But we don't know what the County has done? I have gone through the ordinance you all sent or that Christine forwarded to us. I caught a couple of mistakes by the way. I just want to be forth right. I really appreciate your efforts.

Geri Wheelis said we have been working with Mary Lou from the County side and Gino from our side.

Councilor Flores said yes I understand that, but Gino hasn't met with us, and I think it's a big onus for either Mary Lou or Gino it's a big responsibility and I don't think it's in their job description to talk to the politicians.

Kathe Stark said the people that we need at the table within the hopeful 60 day reach for the stars deadline are Gino, Mary Lou, and AAFC. What we did with Clint we hammered out in a couple of weeks. It's my understanding, Gino correct me if I'm wrong, not that long ago you thought you'd have comments done sometime in October. He got his comments we sit down and hammer those out. Before it comes to you, it's still kind of a hodge-podge of well this is the County, and this is the City. Let us do that front end work so it doesn't take your time un-necessarily. What we're asking for is Gino and Mary Lou and a commitment from City Management that Gino will be able to have that time to be able to meet with us.

Councilor Flores said I know our legal department is barraged with work and I'm not saying this wouldn't be important. I'm just saying that there is just so much in the legal department would be the one looking at this and presumably, the County's legal department is communicating with Mary Lou. Just a little bit more contrived than us just sitting up here and saying yeah let's go for it, let's do it. Not that I don't support it.

Kathe Stark said at this juncture, we've done a whole bunch of research and we've come up with this draft we need the people who are the experts in the field to say this isn't going to work or yeah we can do this and that's Gino and Mary Lou after that consensus document has come together then yes the ASCMV board or a joint meeting between the City and County. Always the next step is to go through legal to make sure that nothing is violating any laws. At this juncture, just like when we went with Clint he runs the shelter. He knows the day to day operation, so we needed him to say hey you guys this isn't going to work and here's why. How do we do this? How do we write this to get to this goal? It wasn't difficult. We need that from Gino and Mary Lou just like we're getting it right now from the Community Cat Buffers. Does that make sense?

Councilor Flores said understood yes.

Geri Wheelis said I think what we need from you is just saying yes we agree with you. This is important we want to go forward with this and some guidance on some of these certain issues.

Councilor Flores said I think I can speak for my colleagues up here we are all animal lovers. I support it and I will do everything I can to make sure it's processed.

Linda Samples, City Attorney said I appreciate everybody understanding that presently the in house legal counsel is comprised of two attorneys but none the less we have reviewed the ordinance and confidential legal advice to the Councilors on the recommendation and so I believe that Gino who has been referenced repeatedly is prepared to make some commentary here.

Gino Jimenez, Animal Control Supervisor gave overhead presentation.

Councilor Bencomo said I was sort of wondering when that was coming because I think this starting to feel that this was a very ineffective place to have this conversation, but this is definitely more helpful. I guess most of my questions were around enforceability because I agree with most of these things. Honestly really the one thing I disagree with just from my own research is the mandatory spay/neuter. That those laws disproportionately impact the low income communities and people of color. I am curious about their actual effectiveness and if it is going to do what we want it to do, which is population control. From everything I've read it doesn't seem like that's the case. But really just for that and everything else just around the enforceability of some of the issues and how you foresee that.

Gino Jimenez said it's hard to say right now because it's not part of our section, not part of our ordinance it would be a lot of re-training and training of the officers. How I see it happening it's going to be difficult because if we come up to a citizen that does not meet the requirements or has an unaltered animal and we either educate or we enforce. Initially I like to tell my officers to educate first because what we want ultimately is voluntary compliance that's the best result for both parties for us and the citizen is voluntary compliance. Now if it doesn't happen within a specific time period. Now we have to go back and enforce. Now what extra burden are we putting on those people. Absolutely I get both sides of the page but how and what extra burden are we putting on those citizens that don't have the means to alter their animal.

Councilor Bencomo said for the advocates how you see the enforceability; do you see a $200 fine? What is it that would be the consequence?

Gino Jimenz said I believe I can answer part of that. All of our citations go through municipal court so the fine could be maximum of $500 dollars and/or 90 days in jail. Anything below that is at the judge's discretion.

Kathe Stark said what we propose is that we take some of that discretion away from the judge. People do need to be held accountable when we're talking about requiring spay and neuter and that's why I mentioned there are several ways to do this and that's where we need some direction. The point is not to go out and round up people's dogs and cats or the people. It's how can we best help them do what they're trying to do. Remember the last time I was before the City, and we talked about the SNAP data that almost 700 hundred of the people that went to the voucher program were SNAP or city residents. We don't fund SNAP, so what could we do if we did fund SNAP if we have almost 700 people paying $39,000, and these are low income people. I felt bad to see them having to pay that amount of money. They are already accessing that. We need some funding to augment that. We aren't going out and whacking somebody upside the head, we're going out and saying how can we help you?

Councilor Bencomo said I actually really support that without putting in the law that there is this mandatory thing that you have to figure out how to navigate the court system with or the officers have to navigate. Well it says this so now I have to give you a 500 dollar fine. A 500 dollar fine that I might not be able to pay, so I have a warrant for my arrest. How does that actually solve what we're trying to get at. I agree with you on the other pieces around, actually we do need to put money behind programs that help people spay and neuter their animals. Everyone deserves to have animals and it shouldn't be a matter of well if I'm poor I shouldn't have a pet. I think we can get to that without specifying in the ordinance now it's mandatory because then it adds all of these other layers to the officers and the court. I was interested in some of what you talked about in terms of the data you all got through the IPRA's with the court and how many sort of things are not being held accountable. I wonder if you sort of dug into them around was it low income folks, who were the folks that were coming to court 4 times and not being held accountable. I would be really interested in that because I actually think it could tell us a different side of the story we might not be seeing, and we might be able to address the issue differently.

Kathe Stark said I don't know if the court keeps that data on income level of the people coming through the court. I can ask. I'm going to call Jamie Michael from the County, that I did find a spay and neuter feasibility study formula the State has been working on. They look at low income and they're defining it as people on Medicaid and there is a formula to actually project giving your population size. What are you talking about with the number of animals? What is the cost of that, so you can actually come up and forecast what requiring spay and neutering would cost in the long run? The other point and I don't think I made it earlier and I apologize is we don't want to happen is what happened with TNR when boom it just went into effect and Clint and Doc comes in on Monday morning and there's 45 cats in traps. What we've put in there is going to require spay and neuter there's got to be a phase in period that's funded. We get word out to the community, and we have vets lined up like the MASH units to come in on weekends and get it done. We can get as many of those done up front before there's an enforcement issue to even have to be addressed. You don't want to drop this like a bomb.

Geri Wheelis said I think also part of making it mandatory is that then that no animal will be able to leave the shelter without being spayed or neutered and that's not a requirement now.

Councilor Bencomo said so that can be its own separate addition then to the policy. What I really hope happens after this is because you're right this has been far too long we need to figure something out. I think everyone agrees there's a problem. I also just want there to be clear and strong in good faith communication between the advocates and the City on how we address some of these issues. If the City says yes that's really un-enforceable and the advocates are willing to hear that. I will just say that I right now I will tell you I'm not in support of making a spay and neuter a mandatory ordinance just from the research I've done, but I do agree with all the other pieces that you added to the spay and neuter which is funding programs. I will say that from my end at least that I think it's really important to make the folks on the ground are being heard around this is difficult to enforce, etc.

Kathe Stark said that is what we're asking for in the 60 days, Gino, Mary Lou and us will sit down and go through it, use their expertise to tell us we can't do this, there's no way and here's why.

Councilor Bencomo said I really do want it to be in good faith because I think ultimately we all want the same thing.

Councilor Graham asked supervisor Jimenez how many ACO positions are currently allocated in the City budget and how many are currently filled please?

Gino Jimenez said I am budgeted for 8 Animal Control officers and one supervisor, and we are completely staffed right now.

Councilor Graham asked so we are not having trouble recruiting or retaining Animal Control officers?

Gino Jimenez said no ma'am not like we did during Covid.

Councilor Graham said so when you and I did ride along together, so that situation has changed. I know I'm asking you to have a crystal ball, but the creation of new positions would be able to be filled based on how things are going now?

Gino Jimenez said absolutely yes ma'am.

Councilor Graham said we had referred to penalty money. Money that is taking in when people pay fines or penalties, which Miss Stark you have advocated for putting into a spay and neuter fund. Where does the penalty money currently go?

Gino Jimenez said that money currently goes into the City's General Fund.

Councilor Graham said ok great. Ball park how much a year? I guess what I'm asking is it a substantial amount of money that could make a real dent in the problem that we're talking about?

Gino Jimenez said I have no idea ma'am I think that would be a question best answered by Municipal Court.

Councilor Graham said I'm looking at specifically the mandatory spay/neuter at least initially this would lead to a pretty big influx of animals coming into an already very taxed shelter system. I realize that long term solutions take time. How many years realistically does it take to get over the tsunami of animals being brought into the shelter system? If that question makes sense?

Kathe Stark said I'm not sure that I understand what you're saying by animals coming into the shelter.

Councilor Graham said so what I'm imagining is that if we did let's say went hard on enforcement and Supervisor Jimenez and the officers are really cracking down getting a lot of unaltered animals bringing them into the shelter here they would not be released until they were spayed or neutered. I'm kind of imagining this when you tell me the numbers that we're seeing I have these mental picture of 500 hundred animals showing up. How long does it take for the ordinance to really make a difference? I'm sure it's not an instant fix obviously.

Kathe Stark said we don't want to go out there and hit this hard and the shelter can't handle that influx of animals and that's why we're saying there needs to be a protracted period in which we tap in resources. We have some City funding so use those resources and educate the heck out of people to get them spay/neuter before there's an enforcement arm to that. If that's two years, three years to do that and really ramp up the public education and use that resource that are available and fill the position that Clint has before we're ever in enforcement. He can't handle that influx and I don't think that's fair to the residents that have pets to say starting as of November 1st you have to have your pets spayed or neutered. That's not possible with the vet resources, it not possible with the socioeconomic make-up of our community.

Councilor Graham said but with a phasing in we could avoid that kind of worst case scenario situation that I was in-elegantly describing? We are talking about this could be over the course of even a couple of years.

Kathe Stark said definitely that public outreach education piece is so important during that period and tapping into the resources that said they're ready to start helping us next year. Can we get that setup that needs Clints help we're not the surgical people as to how to make those things work.

Councilor Corran said right now around fortyish horrifyingly animals come into the shelter each day as strays or owner released, that's a rough average. What on average what percent of those are unaltered right now? On a single day what portion of animals let's just use this as an estimate of all the relatively un-cared for animals in our City? What would you estimate that rate to be?

Clint Thacker, Executive Director of the Animal Service Center said I would probably say that at close to 90 percent are not sterilized coming to the center.

Councilor Corran said I think that this goes to issues of capacity that are intractable that is if we said we are going to sterilize all those animals there would be no surgery for any community organization, any TNR, anything else correct? That would take up every shelter slot of fixing probably?

Clint Thacker said keep in mind that any animal that leaves the center has to be sterilized or it has to have a voucher purchased for sterilization. Those animals if leaving the center they are sterilized or purchased the voucher and that's per New Mexico State Law as well as adopted. Any animal that leaves the center is sterilized or is going to a rescue organization that will sterilize it or has a voucher purchased by the owner to sterilize it. When you say there's going to be a huge influx of animals that are coming into the center to be sterilized. There will not be because we're already doing it as far as the animals coming in being sterilized.

Councilor Corran said but those are animals on their way out. I guess part of this would be animals coming in being picked up and going back to their owners within the 3-day period.

Clint Thacker said we are currently doing those as well the return to owners.

Councilor Corran said so that is already part of the process that's happening.

Clint Thacker said the mistake that I'm seeing somethings, is people are thinking Gino's officers are going to impound these animals because they're not sterilized and bring them to the center. I don't think that's the way we're seeing how the program is going to be run. It's mostly an enforcement program and that's something we can discuss and talk about. There's different types of citations that can be used like; if you come into compliance then this citation can be destroyed. If you should show proof of compliance then you don't need to show to courts. Somethings like that we can pursue and look into. I don't support mandatory spay and neuter if you're impounding because they're not sterilized that would mean can you imagine the number of animals that would come into the center would just explode. I am supportive of it as it shows it does reduce population over time. Any program for spay and neuter you're looking at three to five years until you see some significant results coming from it. That goes for community cat program, that goes for mandatory spay and neuter with dogs, etc.

Councilor Corran said I think that's sort of what Councilor Graham was also eluding to. I think that's the philosophical orientation that we're all leaning towards. I really just want to echo what Councilor Bencomo mentioned which is we are I think this is something we're committed to. I do think there's opportunities to increase the education and of what animal control officers do. I want to name a few things I think in this conversation a lot of folks really perhaps don't necessarily have a sense of the balance of what kinds of things animal control is working on. I think it's very useful to attend animal services board meetings and listen to the animal control folks. I think in the context of enforcement. I think that first of all enforcement problematizes a certain class of people whatever they are it won't pass muster for my perspective. Though if it appears that it's going to be punishing poor people it's not going be included in any ordinance revision that is the very first layer of sort of where I would expect types of enforcement to go. I would also argue that enforcement that increases animals going into the shelter is also problematic. I think however we work that out animals going into the shelter contributes to our increase in euthanasia. I think we get a lot of emails saying can you please pick-up this animal from my neighbor because they're not treating it well, sure I think our worst euthanasia rate this summer was somewhere around 50-60 percent live release rate very low. In terms of what our goals are. I hope we can continue these conversations and have those two spaces that is not increasing the population at the shelter through an enforcement mechanism and not stigmatizing folks who are poor while also education and support are critically important. I am intrigued by the idea of having community stepping into spaces where we can't, where the limits of enforcement exist. I don't want us to rely on that. I do think in a lot of ways there are opportunities for us to collaborate more. I think building this structure within Animal Control to allow for that coordination sort of like the TNR coordinator position at the shelter which is sort of an evolving thing that is really oriented towards community, animal control like making those connections. I would like us to think about investing in those types if we're going to invest in adding City staff. I would like an orientation towards sort of community and education rather than enforcement. I would hope that would be the kind of investment we'd make. Moreover I do want to say thank you and I think we are here for it, and we do read the emails you all send us, whether we reply or not. I think the conversation definitely needs to sort of find a balance. I would also ask in that evaluation we consider doing things that might not be within our comfort zone in terms of pushing beyond the State Laws in places where we can. I hope that can remain part of the conversation and that isn't part of shutting it down just saying the State says this so therefore we say that. I think it's possible that we have different models of enforcement and understanding in this area, and I hope that we do that as we move forward in this collaborative conversation. Our state is very poor in terms of State Laws. That being our best is not good enough, I don't think. I think we can do better; I hope that is still part of that conversation. Thank you for clearing up that question and I appreciate you all very much.

Kathe Stark said if I can add something to what you were saying. When Clint, Geri and I and some others talked for a couple of years about Friends of the Shelter and at the last ASCVM board meeting you know paperwork has been filed. Let's think creatively about that there's an area by Los Lunas that does sponsor a spay and neuter. Where that money would go to the Friends or whatever it's names may be. If we have these veterinary resources out there we can help people if they need food to keep that animal out of the shelter we can do that. We can build a volunteer base to do that. Look for ways we're truly trying to help people and their animals, before we ever get Gino involved even though he's a nice guy.

Mayor Miyagishima asked how much does it cost approximately for the spay and neuter program to fix an animal?

Clint Thacker said the veterinarian cost alone is 35 dollars per animal. I want to say it's around 65 dollars and that's staffing and all the expendables that we use and time.

Councilor Abeyta said first thank you all so much for all the work obviously that's a time, effort, energy, and resources that are taken to put everything together and you're dedication. I am one of many that has a few animals that are wonderful companions. I recognize how important it is for us to make sure that their animals are cared for in our community. If it is about 65 dollars for the shelter itself, do you know what the price is in the private sector for veterinarians as well if it's the same or if it differs greatly?

Clint Thacker said we did a study when we looked at the cost analysis for the center on offsetting some of our costs to doing public things and that's the cost we did. The cost it differ first by weight, it differs by male or female and also by age. You're looking at anywhere from 400 dollars down to 150 was about the spread that we saw. That was asking about 5-6 veterinarians in the immediate local area.

Councilor Abeyta said with the SNAP program if we were to put money into that and give out a voucher then is that something that could be used for both the private sector and for your sector?

Clint Thacker said yes so we actually have an agreement with SNAP to do a special price with us it’s close to at cost. I think it’s around 75 dollars for that. They get a voucher and then they can go to where they want to. SNAP likes them to go to us because we’re more economically there so their money goes further but they can go anyplace.

Councilor Abeyta said does your cost also includes staff time, supplies, if we were looking at growth in the future veterinarian cost for service is going up too. Would that all be included?

Clint Thacker said that price was developed about three years ago. It definitely probably has increased I can get a current price for you if you’d like. If we get another veterinarian on obviously we’re going to have to pay them a lot more than we paid the veterinarian then. We can get an updated cost but that’s the best we have right now. To answer your question it would go up.

Councilor Abeyta said we have talked a lot about education and I’m happy to hear my colleagues as well talk about education to the public. I know that ASCMV has a bit of a budget for outreach mostly I think it’s for adoptable animals. If you could just re-educate me about what that budget is that you have maybe for whether it’s for the website or little advertisements you have?

Clint Thacker said we do have an advertising budget it’s just over $50,000 dollars and we do radio ads, we do print ads, we do billboards all those. Also on Facebook, Instagram all social medias. We can draft those or do whatever we want with them. I know we have some graphics on social media right now that talk about spay and neutering. One of the pictures that was shown here was from our picture that we had. We can change for anything. For example we are changing it in the month of October our radio ad to be for our drive-thru clinic. It can be done fairly quickly and be completed. We also have some educational material in the budget for our community cat program manager. I want to say it’s around $5,000 dollars, a lot of that is going to printing and purchasing the information so she can leave door hangers and information out in areas that she canvases.

Councilor Gandara said I know you’ve worked so hard to put this together and Gino I appreciate your input as well Mary Lou. As a child welfare worker, an administrator that are referring to laws on 32-A, I really agree with the fact that we need to have a preamble, we needed to have very clear definitions in our ordinance, so people understand from the get go. What the definition of abandonment, community cats, I think those are all very important in my mind. I thought that more specific to the cat, the TNR program. I thought that Gino you had made mention of this is mostly policy and procedures that you and animal codes were going to specifically address this in some sort of pamphlet related to the policy and procedures, has that not happened? That was very clear as we were moving a couple of years ago that you were going to set out to do that specifically.

Gino Jimenez said I understand what you’re asking except I don’t remember that specific part.

Councilor Gandara said I do so we should probably go back and look at that because I thought it would be the onus of animal codes to put that together. You were very concerned about how wordy it was and a lot of this was about moving away from putting it in an ordinance and having pamphlets specifically to animal codes and also the center. I think we should go back and look at that because that’s something that should already exist and if it isn’t we should work on it. I still see it a separate and apart, we should all have policies and procedures our department specifically. I feel that we need to be clear and communicate effectively with the public about what these definitions mean and sort of moving forward. I am for mandatory spay and neuter, I think it’s important that we have that as someone probably the longest standing Councilor on the Animal Services Center, we’ve been dealing with this for a really long time. I knew it was big to do mandatory microchipping and we haven’t made it to that space yet. I think it is because the lack of communication that we have to the general population and finding ways to communicate more effectively. I am in agreement to looking into adding more funding for the spay and neuter. I also want to talk about penalties. Could we not as Councilors add I think those that not only up to 500 dollars and 90 days in jail. Maybe Linda couldn’t we do other things more specifically in terms of that’s for the court but that’s our ordinance we set that as Councilors do we not? Can we add other things?

Mayor Miyagishima said Mayor Pro Tem that is the maximum that we can go. I think that’s State Law for municipalities regarding misdemeanors. I think the judge does stuff like that.

Geri Wheelis said we have put in the ordinances at different levels of penalties and most of them are starting with Animal Control discretion with education, so they are variable not just dropping the hammer.

Councilor Gandara said that was what I was hoping that we would and maybe that would address more penalizing poor people. There is some flexibility in that ordinance. If you would give me a page number that would be appreciative. I would really like to see that we start at the lowest levels possible and making our way up to 500 dollars.

Geri Wheelis said I think the only thing we didn’t start with as low was animal cruelty and viciousness, we kind of went for the max right off there.

Councilor Gandara said I wanted to ask about in terms sort of evidence based practices or best practices related to stray animals. I’d really like to see for codes specifically because everybody sees the numbers you’re going out their already gone. Many years ago I know that the Animal Services Board spoke of what other ways can we address this and still manage that safety and wellbeing of the people and the animals. Has your research indicated any other ways to help?

Geri Wheelis said other than spay and neuter?

Councilor Gandara said meaning for codes to go out because right now I think it's a misuse of their time when they go out and you look at the numbers you're in the thousands where you miss the animals. I'm interested in hearing more about best practices related to how codes can go out.

Geri Wheelis said from what I understand Gino can correct I think you're at about 50 percent rate. In my opinion that can't stop because that one dog could kill that one person and you can't leave it out. Being outside they become more aggressive and lots of other personality traits and what not. It's also a liability issue for the City if that dog is not picked up your going to be in a big lawsuit. Well 50 percent are?

Councilor Gandara said but they're not getting picked up that's my point. You've gone through the research what other research in terms of best practices if you can find it I would like to have it so I can read it. I wanted to move back to the restraint requirements and how do we deal with that. Kathe you said codes doesn't have two hours to manage to be observing a home where there's a tethered/restrained animal. What are you suggesting there? You said very limited tethering allowed and you made mention of the unchained New Mexico model.

Kathe Stark said the unchained New Mexico effort was through a non-profit and they got grants and they would come to your home for example. You have a German Shepherd and they're notorious for going over a four foot, five foot walls. You're having trouble restraining your dog. Outreach to that homeowner, looking at that property. What is it that they need? What funding sources did they have through grants to do that? I'm frequently sending dog owners it's a great picture very inexpensive where take PVC pipes and brackets at the end of your rock wall you mount that PVC pipe on a clothesline wire, so when the dog gets there it just spins, and it can't go over. I worked with one homeowner they wanted their cat to be outside and I kept saying it's better for them inside. We very inexpensively got someone to build wooden slats that lean into the yard so the cat couldn't go out of the yard and got to enjoy the backyard. Looking at those what are those grant funding opportunities. If we have a Friends of Organization what are those, local businesspeople that would sponsor a program that would help people keep that animal in instead of just chaining it to a tree.

Geri Wheelis said I think also to that in terms of actual enforcement, there is a two hour provision now the animal has to be observed for two hours, now that's never going to happen. You could have an ACO drive by periodically within a two hour period if he sees an animal tied up say three or four times you can assume that the animal has been tied up the whole two hours.

Kathe Stark said the situation Gino we've talked about it. Gino will have an officer go out to the home, it's my home, the dogs chained up and I say I just put him out there. The neighbor said it's been out there all day, but Gino doesn't have enough to do anything with that because it has to be two hours. Educating dog owners on what that does to an animal and the risks involved in doing that. Then looking at how do we help them restrain the animal on their property. Before we ever get to we're going to fine you.

Councilor Gandara said so to clarify when you talked about limiting you're still suggesting the two hours? When you talk about restraining requirements?

Kathe Stark said one hour in a 12 hour period.

Councilor Gandara said I know there was a law. I received several emails about the community cats there was a lot of dialogue on Next Door and other places around community cats. What we have currently and what you are suggesting. Can you just very quickly go over or send it to me to understand what you're wanting? I mean from allowing people to have community cats specifically in their property and manage it, I'm just unclear about that.

Kathe Stark said well there was the issue with the County and the two mile rule at the river that we engaged then with Gino and Mary Lou. I think we've reached consensus. Let's say I'm a homeowner and my backyard backs up to an un-channelized arroyo, but I own the property you cannot release that animal within a 150 feet of that arroyo. As a property owner do I not have the right to release that cat on my property. Now where that cat goes, and we've talked about this, where that cat goes I really can't control but as a property owner I have the right to release that cat on my property. That was the other issue on community cats.

Councilor Gandara said ok but what about in the inner city because we have a lot of problems in District 1. I have an issue with cats that are roaming my yard because I think the woman is doing community cat work and also where the cats have had kittens. We're experiencing all the things you just spoke of. What are you saying for that specific area and it's a nuisance to me and to many of our neighborhoods. Is it to continue managing it the way we're managing today by trapping them and taking them getting the TNR, releasing them back to the area and then offering the folks deterrents. Is that what you're saying, is to continue that way?

Kathe Stark said yes, but if I could add the way that we're doing TNR is not the optimum way to do TNR. Councilor Flores you may remember when I came on the task force, and I said what is our goal? Then we talked about don't roll this out to the whole city pick a hot spot go in there trap, neuter and return and control that population so that you don't keep having the kittens. We know when you go in there you trap and kill, then other cats will just move in and have kittens. What we've effectively done and I'm grateful for TNR don't get me wrong. We are scattering all over the city and were not having the maximum impact that we could have if we come into your area. I don't know if you're around Young Park I got a call about a year ago and they said, "all the cats are beating up on this little one and it's friendly and my Grandmas holding it and whatever". I went down to just south of Young Park and I got out of the car and went oh my gosh. I observed the situation and said no they're not beating up on her, they're making kittens is what they're doing. Instead of one homeowner in that area doing TNR with six or eight cats if we were able to, and right now we're more limited with one vet to go in there and trap and TNR 80 to 85 percent of them, and you'll see that population stabilize very quickly.

Councilor Gandara said I agree with you. I think the way we are doing TNR currently probably needs some tweaking for sure. We also spoke of I thought in the ordinance specifically doing some sort of evaluation with NMSU and I know that, there'd been some work asking a former professor that was doing some of that research for us and that evaluation component was asked and said we are no longer going to do that. I don't want us to lose sight of that. It's really important that we're able to as a Board and Council give good feedback about how this TNR program is working or not and tweaking it. Have we given thought to how we're moving in that direction? Gino have we given thought about that? I'm sure we have and what is it? How are we moving on that specific area?

Gino Jimenez said let me show you a map that may answer a bit of those questions. Right now the City's restriction is a 150 feet from any City owned property, daycare, public school, hospital, and such. What you see here in the green is the current 150 foot barrier and again this is taken like I'm going to say 10,000 feet we can always zoom in on it. What the consensus is right now is to move that barrier or restrictive level back out to 500 feet and I will show you what that looks like. If we are looking at 500 hundred feet and now again at 10,000 it looks like the whole entire city is covered and there's not that many areas that you can release community cats into. Let's now move or zoom in, let me mark it with the streets and zoom out a little bit more. This is the Benavidez Center, obviously we are going to keep or restrict the release of community cats within the current as green, but we've come to a compromise and pushed that number out to 500 which is the orange, now as we zoom out it allows for community cats to be released anywhere within Second Street, 3rd, 4th, Wilson, Howell. It would actually allow community cats to be released within any part of these neighborhoods staying away from the Benavidez Center. As we were working with GIS to develop this map if you can see where my cursor is, this is another City Park that would restrict the releasing of these cats.

Councilor Gandara said I just want to be clear about what your proposing as in this particular section. I do get probably most concerns about the community cats specifically in impoverished communities where your allowing for the TNR, the cats to go back in and not to be given sufficient funding to be able to offer deterrents particularly to folks. It is an issue and it's something I'd like for you all to focus on and work towards. Clint has had a vision about forming a friends group to the center and it looks like we're closer to doing that. This would be a 501(c)(3) that could help a number of these issues and I think we should really move on that.

Mayor Miyagishima said how about if we do this we'll call it Gino's Ordinance and the Dream Ordinance and if you can bring back for our next Work Session, say for example Gino how about you put in red lettering what it is that you have concerns about in the Dream Ordinance. If there's something that's not in there maybe you can add it with a different color and that would be something for us to a least go from there to discuss. A couple of things that just popped up in mind two things as far as funding one is businesses always like to be recognized if there was a way that if do like say a bronze, silver, gold, platinum. They don't have to do it all at once when they get to that certain number they get some type of award. Once they get to platinum we will put one of those little brick somewhere in Animal Services Center. They can work toward that, something to think about and/or cannabis money can be used for that too, it's totally unencumbered. If that's ok with my colleagues for you to work on that and bring it back at least we can start from there that discussion and move forward.

2. ADJOURNMENT

2.1

Councilor Yvonne Flores moved, seconded by Councilor Tessa Abeyta, to Adjourn at 12:22 p.m.

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

Mayor

City Clerk

MINUTES
City Council
Monday, October 2, 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 -MAYOR MIYAGISHIMA.

1.2 PETS OF THE WEEK.

Councilor Corran 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 - MAYOR MIYAGISHIMA.

Mayor Miyagishima presented Dianna Mauer with a proclamation for Ageism Awareness Day.

Mayor Miyagishima presented Eve Madrid with a proclamation for National 4-H Week.

Mayor Miyagishima presented Dr. Amador and Melanie Brown with a proclamation for Las Cruces Public Art Month.

Mayor Miyagishima presented Myr Dawson with a proclamation for National Dyslexia Awareness Month.

Mayor Miyagishima presented the Board of Directors of Las Cruces Hispanic Chamber with a proclamation for National Hispanic and Latino Heritage Month.

Councilor Corran gave a presentation on behalf of the Dona Ana Community College regarding their GO Bonds.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Yoli Diaz, Member of the Public said I am grateful for the positive platform to come here to City Hall that allows city council staff and the public to listen and to be heard when we voice our concerns on issues that affect our community and residents. I do want to say thank you publicly for the opportunity at the last months City of Las Cruces Public Health Review Committee. It was great to have focus group attendants speak and it was great to have interested city staff and interested residents attend and listen. I am also grateful that this subject continues this week. Respectfully I continue to advocate. There is a health care crisis in our community and I do think that we all recognize that. It is unfortunate that I have to report to you all that it happened again. Another resident was denied an appointment at Memorial Medical Cancer Center. By all means the MMC employee was just doing his job to relay the message that his patient does not have health insurance and therefore this patient cannot be given an appointment and will not receive treatment. I know this crisis will continue until there is action to create needed change. Drastically in this case the cancer patient is also disabled and in the county indigent program. The patient has compounded challenges. She is severely handicapped, she needs help. Now as I move forward advocating, I discuss this crisis of heath care with others I actually do stop and listen. I think with my head and my heart and with my humility and my passion. I keep the focus and the goal of action to improve the crisis. I am here today to ask you to think of this crisis and to think of the viable solutions that can help residents with this crisis of access to needed health care. I have created a simple document that will provide a solution today to help residents access health care. I will share this with the City Clerk and will share this with you by email. As you read this program document, I ask you that you also think with your head and with your heart and your humility and your passion to do what is right for our community and all the people that live in it. I also appreciate the opportunity to meet with each one of you.

Mayor Miyagishima asked regarding this resident, you said disabled, have you contacted social security to see if there is any program they may have to help and they may be able to direct to Medicaid. Have you had a chance to talk to Social Security since you said they are disabled?

Yoli Diaz said unfortunately in this case this is an also severely impoverished family. Dad is the income that they live on, which is social security and social security supplemental income. It is not much but unfortunately this gentleman has been here since the 80's under a farm worker program from back in the day. She does have a social security for nonfederal purposes so in other words she doesn't qualify so I asked him why was she never documented? They never had the money to. Unfortunately, they survive on under $12,000 a year and that is part of what I see in our community. I do believe there is answers. I think that program that I am talking about would seriously help and it is actually a joint effort between the City of Las Cruces and Dona Ana County and that is until maybe someday our state will actually kick in and do something for all the counties, all the municipalities but until that day comes I do believe that we have to consider out own community and do what we can because it is actually easier to go from the bottom up and so I truly hope that all of you consider what I will be emailing you. I can tell you this, I am going to have challenges helping this woman that is 48 and I give so much credit to her mother. It touches my heart and I will do everything I can to help her and I wish I could have gotten her to Albuquerque but I can't because she is not mobile.

William Beerman, Member of the Public said I am here to complain about a city council that has gone rouge to impose a socialist progressive agenda on the citizens and taxpayers of Las Cruces. Rather than carryout traditional responsibilities of local government such as providing adequate police protection you have imposed a series of programs and policies that most citizens could not have expected. You have grown the city payroll to about 1,700 people while allowing the police force to shrink, at one point to 75% of its authorized capacity which is only 202 sworn officers. Those who voted for you did not expect to see panhandlers on virtually every street corner that has traffic. Voters did not expect a crime wave. Business owners did not expect to have their windows smashed out repeatedly and suffer other crimes. Voters did not expect you to buy votes from business owners in the downtown area with other people's money by reimbursing them for crime losses and by paying for downtown security separate from our police force. Voters did not expect you to take other people's money to fund the multimillion dollar city bus operation which has few off riders and make it free. Voters did not expect you to push through a bond issue to provide up to 500 units of public housing at a cost of millions to taxpayers. Voters did not expect you to spend millions of other people's money to buy electric buses from a Chinese company. Voters did not expect you to take other people's money to buy votes from hundreds of families by giving them guaranteed basic income. Regarding this example the Mayor of all people voted no and told KRWG public radio, that I just don't get it, some of my colleagues really need to learn a lesson in finance and economics. They don't understand where the money comes from. I just thought that you would like to know that some citizens don't appreciate some of the things you do and some of these citizens are not part socialist progressive democratic party machine.

Lori English, Member of the Public said this weekend coming up is the Animal Services Center adopt an animal for the weekend. Check with the Animal Services Center about participating in that program to take a dog or cat home for the weekend. I mean no insult to anybody, and I mean absolutely no disrespect but when we have councilors that speak against organizations that are nonpolitical and nonpartisan and rudely refuse in writing to show up at an event that they have been invited to, all they have to do is say, simply decline appearance. They don't have to go into a 3 page oration of why they are not speaking because this group is being discriminatory against them. It is time we all stop to realize that we have got to stop acting like individuals and feeling like we are being mistreated or disrespected or dishonored because of our sex. I am a female, I am darn proud of it. I served my country as a female, and I am proud of that but the councilors need to act a council not as individuals for the betterment of the entire community not just their own political party or political gains. Many of you councilors are running for office and I congratulate you on having the forwardness to come forward and stand up and be counted for your city and your county but act as a councilor not as an individual or a party member. None of us have been disrespectful, that organization in particular has never had anything bad to say to any of you councilors in a disrespectful manner. They respect women, they respect you councilors, they respect the Mayor, they have invited numerous councilors to come and speak and some of you have and I congratulate you for doing that but it is time to be a city council and combine and work together and not be standing up for this party and that party and not to participate in demonstration against or for the Constitution of the United States. Some of you participated in a demonstration at NMSU that you should not have appeared in. You should not be standing against the United States Constitution period. End of discussion.

Peter Goodman, Member of the Public said between Mr. Beerman and Ms. English I didn’t hear anything close to a solution to anything. Even a reasonable suggestion or an unreasonable suggestion. I only heard yammering at you guys calling you socialists which is a great term of insult to use 30 years ago or 50 years ago. It is not too relevant now and I think that sadly epitomizes the quality of a lot of the public comment and I think we can do better.

4. ACCEPTANCE OF AGENDA

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to Accept the agenda as presented.

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

5. CITY COUNCIL MINUTES

5.1 WORK SESSION OF AUGUST 28, 2023.

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

7. OLD BUSINESS

7.1 COUNCIL BILL NO. 24-005; ORDINANCE NO. 3047: AN ORDINANCE APPROVING A ZONE CHANGE FROM C-2 (COMMERCIAL MEDIUM INTENSITY) AND R-3 (MULTI-DWELLING MEDIUM DENSITY) TO C-3 (COMMERCIAL HIGH INTENSITY) ON A PROPERTY ENCOMPASSING 2.29 ± ACRES. THE ZONE CHANGE REQUEST SEEKS TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 2001 LAS CRUCES

MUNICIPAL CODE, AS AMENDED AND ALLOW FOR THE FUTURE DEVELOPMENT OF A COMMERCIAL BUSINESS. THE SUBJECT PROPERTY IS LOCATED AT 522 E IDAHO AVENUE.

Adam Ochoa, Community Development gave the overhead presentation.

Sergio Castillo, Civil Engineer with SCR Group said I am here representing the owner. We are in agreement with staff comments and being able to develop this area here. I am from El Paso originally but travel quite a bit here to Las Cruces so it is always good to see new development happening out here. At this time I am open to any questions you may have.

Mayor Miyagishima asked are you privet to announcing what financial organization or institution this would be?

Sergio Castillo said yes absolutely this is a bank institution. This is the First Light Federal Credit Union. So, it will be a bank institution with drive-thru lanes.

Carolyn Hoban, Member of the Public said I can’t tell you how excited I am to see this happen. There have been so many changes to that area since 2007 when we moved our location and I just see this as a positive thing that will create more peace, more having a viable business that is there five or six days a week will change the whole climate of place. We have had tires slashed. We have had windows broken. We have had people broke in. Right behind us where our preschool children can see people changing clothes, people using the bathroom, and people shooting up. So, I am so in support of this because I think it will be very good and healthy for that area. It will totally change the dynamic.

Kevin Hoban, Member of the Public asked during the presentation there are two empty lots on this property, there is one west of the property but on the presentation, but you were pointing out that the lot on the northeast is the one being developed, can we just clarify that?

Adam Ochoa said just to clarify the corner of this property is located on the southwest corner of Durazno and Idaho but yes, it is northeast of you sir.

Councilor Tessa Abeyta moved, seconded by Councilor Becki Graham, to remove Ordinance No. 3047 from the table for discussion.

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

Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to Approve Ordinance No. 3047.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
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

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

8.1 <u>RESOLUTION NO. 24-033</u>: A RESOLUTION TO DESIGNATE FORMER CITY COUNCILOR AND FORMER MAYOR PRO TEMPORE GREGORY Z. SMITH AS GREGORY Z. SMITH, MAYOR PRO TEMPORE EMERITUS, IN ACCORDANCE WITH THE CITY COUNCIL EMERITUS/EMERITA PROGRAM.

Mayor Miyagishima gave an oral presentation.

Councilor Abeyta said I want to say thank you to Councilor Smith for all the work that he did for our District 2. It was clear that when I came on board that he spent a lot of time with the community really engaging and championing. Especially I think the public arts really came out first and foremost very clear but making sure that he was listening to constituents and so I just want to say thank you so much for all the work you did on the service to our district.

Councilor Gandara said I am really excited about this. I had the honor and privilege of serving with Councilor/Mayor Pro Tem Smith and I echo what my fellow council woman talked and spoke very specifically about your work Councilor Smith regarding public art. We had the real fortune earlier this year of our unveiling at our Visit Las Cruces of the beautiful mural and I spoke a little bit about just your tenure and what you were able to do regarding your vision for quality of life specifically in the art spaces and developing our board and our master plan and were are seeing so much of that now all over the city and I know it was largely in part for your work and also for the work that you did for the newly opened natatorium and I know you worked hard on that and I now it took a decade or so. I very much appreciate your work always.

Councilor Flores said I just want to thank you Greg, Mayor Pro Tem Emeritus along with former Councilor Eakman. Two perfect gentlemen in always helping me, not making decisions for me but showing me the way and just being absolutely wonderful and I have told you before and I will say it I really miss you on city council. You have been replaced by wonderful people though, absolutely wonderful but I do miss you and I want to thank you publicly for being absolutely wonderful.

Greg Smith, Mayor Pro Tem Emeritus said thank you. I appreciate the acknowledgment, the recognition and I do think that it is important to know that you have the support of your community when you are representing a district but also the support of the council when you are taking on the position like Mayor Pro Tem and certainly something like that is an honor and a privilege to be able to represent the rest of the council but also to represent the Mayor and this council and the whole community when it is called for. So, thank you. I appreciate the recognition and the opportunities to serve both District 2 and the community.

Councilor Tessa Abeyta moved, seconded by Councilor Becky Corran, to Approve Resolution No. 24-033.

RESULT:	**Carried**
MOVER:	Councilor Tessa Abeyta
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

8.2 RESOLUTION NO. 24-034: 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.

Charlie Fierro, Budget Analyst gave the overhead presentation.

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to Approve Resolution No. 24-034.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
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

9. BOARD APPOINTMENTS

9.1 KIRK LOUDON

Councilor Flores appointed Kirk Loudon as the District 6 representative to the Senior Programs Advisory Board.

9.2 ELIZABETH BARDWELL

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to appoint Elizabeth Bardwell to the Board of Commissioners for the City of Las Cruces Utilities.

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

9.3 MATT KENNEY

Councilor Becki Graham moved, seconded by Councilor Johana Bencomo, to appoint Matt Kenney to the Realize Las Cruces Ad Hoc Committee.

RESULT:	**Carried**
MOVER:	Councilor Becki Graham
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

9.4 MICHAEL R PEREZ

Councilor Becki Graham moved, seconded by Councilor Becky Corran, to appoint Michael R Perez to the Veteran's Advisory Board.

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

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).

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 MAYOR MIYAGISHIMA

This coming October 7th, Saturday at 7:30 in the morning if you guys aren't doing anything we are going to do the Cleanup Las Cruces. So, my Top Teens and I are going to clean up the Triviz Trail. So those of you or any of you members of the public that would like to join us they can just meet at the Walmart on Lohman on the east side.

I think this a great idea to allow citizens to be on the ASCMV board but I do have a couple questions where the anti-donation clause could have a little bit of an affect. I remember years ago there was a board and somebody got injured and they sued the board members and there was some civilians or members of the public there, so my question because this ASCMV board would hire and fire the administrator I believe and so if something were to happen and there was a wrongful termination the council members are covered, the commissioners are covered but what about the members of the public? I don't believe the anti-donation clause allows us to provide them a defense. They would actually have to hire their own lawyer I believe. I don't know. That is one thing and then the second is, what if an animal should get lost or should die in their care and then they want to not only go after the administrator but the board as well. So those same things apply to them. So, it is more from a liability standpoint. How are we going to indemnify the members of the public that sit on that board? Those are my two questions and comments.

Linda Samples, City Attorney said my office will look into it and provide you with confidential attorney/client privilege legal advice.

11.2 COUNCILOR GANDARA

I wanted to get an update on the hygiene stations. Specifically of where we are at and how quickly can we get them up and running. This is something that is very important to me but important to those folks who are needing stations to use the facilities. I think it is part of the spectrum of services that we are still missing, and it's been long overdue and I know there has been some issues with sort of the back and forth with the provider but I think it important to update council and the public.

Thank you to Chief Story, for the townhall and the Bridge the Badge. I participated in the Bridge the Badge and I thought it was a really nice opportunity to highlight community policing and they gave some really great examples and was proud because Officer Hernandez who is my community police officer spoke about his project at Mesilla Valley Housing Authority and just seeing from start to where they are at today and the number of things that have changed for the better in particularly just around quality of life and the area is really exciting and so I appreciate it very much. I also given some of the public comment that happened a few weeks ago related to the downtown and the variety of things that they are experiencing I also appreciate having the foot patrol initiative down in the downtown area. It sounds like they were received very well by many of the businesses, so I also appreciate that.

I had a meeting with Superintendent Ruiz. If you had not met him yet, he is fabulous. I have met him a few times but I wanted specifically to talk with him about some of the areas of need particularly about our youth and the CT programming and just the internships that the schools are providing our youth but I think unequitable issues related to those who may not have a vehicle to get to and from and if they are unable to get to and from point A to point B and back to the school for that four hour period for lunch and then back to their schooling. It makes it an equity issue in my mind, and he was very open to hearing some suggestions related to that.
We had in our Economic Development Policy Review Committee some presentations on how to use the one million dollars of ARPA money that was left over and it is for some of that CTE and maybe transportation. I was thinking that maybe we would have Roadrunner come and participate in that conversation with how maybe we can work together to ensure that more of our kids get that opportunity right to participate in their internships programs and I know Roadrunner Mini Transit could be a real solution or strategy and so I would like to see that.

I have also been asked, we have presentation on the Animal Services and such a lot of education in the time that Amy has started to present about a variety of things and I was asked if we could have the schools come and do a presentation similarly maybe on what they are working on or what there might be issues that they are facing and just similarly to what Amy does and I thought that was a great idea so I will present it to you.

Mayor Miyagishima asked your are talking about the school as far as the school children or school administration?

Councilor Gandara said school administration.

Mayor Miyagishima said that would be great.

Councilor Gandara said we do have Health Policy Review Committee this Wednesday from 3-5 where we will continue to have a conversation about the status of health care in Las Cruces. We will be having presentation about the Leakage Study that our Economic Development Department conducted a couple of years ago, presentation on the Telshor Fund. We are doing somewhat of a SWAT analysis. My student Alexis Espinoza will be presenting on that and getting more information on what the committee is feeling and how we should move on that and I will just say that the cannabis density one that we had talked about doing this month they weren't ready yet so they asked for us to push it back a little bit and I agreed. I thought that would helpful and staff had reached out to the presenters that were still needing to present for the health component and they were ready to do it so I didn't think you would mind.

11.3 COUNCILOR FLORES

I received mail and emails from residents who live off of Roadrunner I think the address of a property is 2795, it's an undeveloped lot and we have had and it has come to my attention and its come to the attention of the city where there have been the residents who live just west of that corner are very concerned about potential development. I received a letter, it did not identify the owner. It just said owner of that land and then I don't recall exactly how I received this information, but it was from Sara Gonzales from Community Development. I don't know if she was responding to someone, and I got copied or whatever but she said that it couldn't be discussed because it was going to be a zoning change was about to happen or whatever was forthcoming and it could not be discussed. So, my question is if the zoning there is being changed and when people moved in there it was a single resident zoning why aren't the people who live in the area that is affected why aren't they notified about the potential or the forthcoming zoning change? My request would be if it is going to the P&Z that the people who live in that area be notified of that meeting because I would say that if it was going to change from current zoning as it exists now it would be changed to multiple dwellings it would come back to us and I think that is why Sara said we could not discuss it because it will probably be appealed because we have already heard from people who aren't happy with that prospective development. Does the City send out notices to residents who are going to be impacted by a zoning change or is it just a secret and it doesn't come out until someone hears that there is a P&Z meeting or the decision has already been made and they come in to appeal it?

Larry Nichols, Community Development Director said zone changes when an applicant is proposed a zone change, we process that. We investigate the zoning that they are requesting, and we do send out notices to a certain radius. Normally it is 500 feet from the project site. Those notices are sent out and they are posted with a poster on the site itself as to the proposed zone change. I will check further on that address that you just mentioned. It sounds very familiar to me because I believe we have already discussed it.

Councilor Flores said the signs that the city puts up are usually in places where you can't see them and the reason I know is because ever since I have been a councilor District 6 is always changing things and then people are contacting me and I personally went out to see these signs and I have to get out of the car and I have to go read it even when you get right up to it it's difficult to read. So all of that being said my request would be that it be visible to those and it's not behind a bush with tiny lettering. I think there should be ample and sufficient notice to those residents who will be impacted.

Mayor Miyagishima said in all fairness to you I don't think you were aware of this but when you were out, we actually had five or six residents come out and talk about it. I had no idea what you are talking about. Some of them sent me the letters, notices that they received. So, I wanted to kind of refute the fact that they do get it and so they sent it to me and two weeks ago when they were doing a GPS thing, I just used that because I wanted to know what it was currently zoned. It is zoned R1-A so it's got to go before Planning and Zoning and that is where your constituents, our constituents will have a chance to at least share with them their opinion on what is going on.

Councilor Flores said my ask would be that they be notified, that the residents there be notified. Does the city send out that warning or that notice that the land may be potentially become multi dwelling or commercial?

Larry Nichols said extensive notification is provided. Not only is it provided with the letters that go out but also posting on the site and in many times depending on the different types of zoning in the newspaper as well. We make every effort to answer questions that residents may have about proposed zone changes. We respond to them very quickly either their phone calls or their emails or even text messages. As the distance a city block is 300 feet normally so its normally two city blocks in distancing from the subject site.

11.4 COUNCILOR CORRAN

I just want to give a few quick shout outs, first of all to Parks and Rec for their really cool use of the pool. I don't know if you all saw that on Friday they screened The Meg which is an awesome movie for teens at the pool. I thought that was a really cool event, so I just want to give a special thanks to Parks and Rec for creatively using that space and also addressing that there is nothing for kids to do. I thought that was a really cool opportunity so thank you for whoever dreamt and made that happen. I also want to thank Catrina, the Developing Leaders Academy that is happening this week for folks and we will see you on Friday. I am really glad that is back in action. I wanted to thank CAO Bencomo for your really diligent work on ASCMV related things. Those things to be perfectly frank were languishing and you really made a huge difference in moving those things forward and I think that your engagement in that really made a big difference.

The last thing that I really wanted to do was thank the Library, the Police Department and our Coms folks for dealing with some folks that came into the Library last week who are part of a nationwide movement to disrupt things and make people angry and just be terrible. I am super impressed with the Library and the way that the Library handled this. I know the Library is constantly dealing with a range of folks. These folks were clearly antagonistic, and they were so antagonistic to the police officers who maintained their cool in a way that I really admire. So, thank you to those officers that were depicted in that video as well and thanks to the City's Communication's folks and Legal for really quickly responding to that situation and I say this with really gratitude, but I also realize that in New Mexico last week we saw a very similar type of antagonistic person pull out a gun and shoot at folks in a very similar situation. A person escalated that to a very deadly situation and so I appreciate the folks who participated in that really thoughtfully and kept that from escalating more and I just want to tell folks who are experiencing that type of antagonism that you are city staff that we see you and support you and we know you are doing a great job and I am sorry that type of basically terrorism exists in our culture right now so thanks for doing a great job folks in the Library and police and all of those who responded to that.

There is no TSI PRC meeting tomorrow. We will give updates for next month soon.

11.5 COUNCILOR BENCOMO

I just wanted to give an update on the Housing PRC that we had a couple of weeks ago. Nicole Martinez from Community of Hope and other staff have been talking about creating principles around how we handle and navigate unsanctioned encampments that come about in the city and actually they have been working with the faith leaders that Mayor Pro Tem and I brought together over a year ago to come up with some of these principles and they will be working with Codes and PD and everyone necessarily to come up with that set of principles before they come to a Work Session in front of us so that we can discuss that together and really provide better guidance to like Park staff and Code staff on how to handle some of these unsanctioned encampments because a lot of unhoused folks travel together for safety. I think sometimes we have created situations that didn’t need to be there and we just have to have a better framework for how to address that and create that together.

I feel like we have given a shoutout to the new person at PIO that is doing the social media. They are seriously so incredible so if you are listening, good job you are doing great. I did want to request one more time, we had talked about this a while ago to sort of put stuff out around what people should call 311 for or what people should call 911 for, what people should call the nonemergency for and really start educating the public on those kinds of things. That came about from Viola’s presentation on the complaint hotline.

When I was in Santa Fe last month at the Housing Summit the Governor put on, I came across the New Mexico Sentencing Commission has Crime Reduction Grants and they are open right now through October 20th. I shared them with a couple of staff already, but I wanted to say it here for Assistant City Manager Taumoepeau and staff if they are listening because I think actually, we could potentially look at some of these. The reason I wanted to bring this up is because Mayor Pro Tem asked about an update about the mobile hygiene units that I think could be expanded with staff that could do community-based violence intervention and I am wondering if some of these grants could assist in that.

I think we have talked about these before, but Southern New Mexico Pride is on Saturday. The City Council will be participating in the parade. We have already notified Christine and she will be putting out potential quorum notice but just invite folks to come out and celebrate.

I just briefly wanted to touch on misinformation and disinformation. I was recently in a training around propaganda and how these things get used and maybe you all know but I just really didn’t know what the difference between those two things were. Misinformation is information that is inaccurate that gets spread without malicious intent to provide misinformation and disinformation is information that is spread with the intent to manipulate information and to manipulate your audience. I just have been hearing a lot of it lately and I think elections make emotions high and misinformation and disinformation has been rampant, and I think it is up to us to call it out whenever best we can.

11.6 COUNCILOR GRAHAM

If you have a little free reading time and you want to be more depressed than you already are, check out the highlights of the most recently released report on Political Division in America from the Pew Research Fund. I shouldn't say depressing, revealing maybe, explanatory for some of the things that we see up here a lot and really renews my thanks to everyone up here. My fellow elected, the staff who takes heat for us, who goes out and does incredibly hard jobs incredibly well every single day so on the dark side things are pretty divided, on the bright side I am happy to on this ride with you most of the time.

I probably spent too much time on a bicycle this weekend, 70 miles in a race in Colorado and it took me some hours and some pain so I was out there kind of thinking a lot. I find an interesting kind of theme lately on things that we have been discussing and it is going to sound weird but one was speeding and the other is the animal control issues that we were talking about today and it occurred to me that so much of this job is trying to find ways to legislate for people to care about things, to care about one another, to care about animal welfare. It is two issues that I think we can get universal agreement on. Nobody likes people speeding even though we all do it and everybody wants better care and better compassion toward animals. We can all agree on this, and we see these problems and they are so frustrating. Everyone wants to have the same outcome and yet without caring and compassion on a very individual level it is practically impossible to make those changes. We try to legislate and mandate and enforce them.

11.7 COUNCILOR ABEYTA

I have three brief updates. The first one is MVEDA, we were able to have a presentation from the new Superintendent. It is very interesting and positive I think to see his first 60-day plan. He has a very unique background and is well experienced so it's great to see him involved. The second is for Oversight Committee. There are going to be two board openings on this. There are requirements on who can serve. It is industry expertise related so when those are up and advertised so if you know of any individuals who may be interested, please send it that way. The third is I will be gone for Thursday and Friday with the New Mexico Municipal League. We are going to be starting our strategic plan for the league. This is really exciting. They have not done one in a very long time, and we are going to do that, and I will be running our first board meetings of what is our new season which is October 1st.

Point of privilege I guess, it was all three of the kiddos' birthdays last week so they are 15 and 10. So when I started out they were very little and small and I just want to say thank you to all of my colleagues and staff. I know I have had to bring them in from time to time and have them sit in on meetings and they have learned a lot and have asked great questions so I am hopeful they will be interested in the municipal government process later on but they are certainly getting an education

11.8

None.

12. CITY MANAGER REPORT

12.1 IKANI TAUMOEPEAU, ASSISTANT CITY MANAGER

Las Cruces Air and Expo. This has been happening, but this is the first time we are going to have aerial events. It is occurring Saturday, October 21st, 10 a.m. to 4 p.m. This year's event will feature aerobatic performers. We will welcome special guest Jessica Cox. This is the world's first and only licensed armless pilot. The expo will be capped off with a demonstration of the world's fastest motor sport pylon air racing being put on by the Sport Class Air Racing Association and the greatest thing is there is no charge to attend. There will be a charge for parking.

For Parks and Rec, we have the number one Spanish music hits throughout the southwest and top ten hit of European Country Radio, Tobias Rene will play a free community concert at 5 p.m. Sunday, October 15th in the Plaza and additional Halloween program will be throughout the month of October, movies, festivals, candy drops, music, dancing, pumpkin palooza, and more.

13. ADJOURNMENT

13.1

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to Adjourn at 2:52 p.m.

RESULT:	**Carried**
MOVER:	Councilor Johana Bencomo
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

Mayor

City Clerk

24-045

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:**	November 6, 2023
Drafter:	Christine Rivera	**Department:**	City Clerk
Program:	Compliance	**Line of Business:**	Office of City Clerk
Title:	**A RESOLUTION ESTABLISHING DATES FOR HOLIDAY OBSERVANCE FOR CITY EMPLOYEES IN 2024.**		

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

PURPOSE(S) OF ACTION:
To approve a holiday schedule for employees in 2024.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
On an annual basis, the City Council determines the schedule of holidays to be taken by City employees. On February 19, 2008, City Council amended the holiday schedule to include an additional holiday after Christmas Day and calling the additional day a "Winter Holiday." On June 17, 2021, President Joe Biden signed legislation making Juneteenth (June 19th) a Federal Holiday, the first since Martin Luther King, Jr. Day in 1983. On October 11, 2021, President Joe Biden began yearly proclamations declaring Indigenous Peoples' Day.

The attached Exhibit "A" reflects the proposed holidays for 2024. The Federal Government approved eleven (11) holidays for 2024, the State of New Mexico approved ten (10) holidays and Dona Ana County approved fourteen (14) holidays for observance in 2023. If approved, City of Las Cruces employees would be granted thirteen (13) paid holidays in 2024.

SUPPORT INFORMATION:
Exhibit "A" - 2024 Holiday Schedule
Attachment "A" - Federal 2024
Attachment "B" - County Holiday 2023
Attachment "C" - State Holiday 2024

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 the Resolution and the proposed holiday schedule for 2024.
2. Vote "No"; this will not approve the Resolution and the proposed holidays for City employees, and all offices will remain open.
3. Vote to "Amend"; this could change the number of observed holidays.
4. Vote to "Table"; this could delay the planning for other departments.

RESOLUTION 24-045

A RESOLUTION ESTABLISHING DATES FOR HOLIDAY OBSERVANCE FOR CITY EMPLOYEES IN 2024.

The City Council is informed that:

WHEREAS, the City of Las Cruces observes and entitles its employees to thirteen (13) holidays per year.

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

(I)

THAT the days of observance as listed on attached Exhibit "A", 2024 Holiday Schedule, be authorized and observed for the period beginning January 2, 2024 and ending January 1, 2025.

(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

____
Mayor

ATTEST:

____
City Clerk

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A"

CITY OF LAS CRUCES

2024 HOLIDAY SCHEDULE

January 2, 2024 through January 1, 2025

HOLIDAY	DATE OF OBSERVANCE
Martin Luther King, Jr. Day	Monday, January 15, 2024*
Presidents' Day	Monday, February 19, 2024*
Memorial Day	Monday, May 27, 2024*
Juneteenth Independence Day	Wednesday, June 19, 2024
Independence Day	Thursday, July 4, 2024
Labor Day	Monday, September 2, 2024*
Indigenous Peoples' Day	Monday, October 14, 2024*
Veterans Day	Monday, November 11, 2024*
Thanksgiving Day	Thursday, November 28, 2024
Thanksgiving Holiday	Friday, November 29, 2024
Christmas Day	Wednesday, December 25, 2024
Winter Holiday	Thursday, December 26, 2024
New Year's Day	Wednesday, January 1, 2025*

*The City Council Meeting or Work Session scheduled for Monday will be postponed one day to the following Tuesday.

ATTACHMENT"A"

2024

2024 Federal Holidays

FederalPay.org

Holiday Name	Day of Week	Observed Date
New Year's Day	Monday	January 1, 2024
Birthday of Martin Luther King, Jr.	Monday	January 15, 2024
Washington's Birthday	Monday	February 19, 2024
Memorial Day	Monday	May 27, 2024
Juneteenth Independence Day †	Wednesday	June 19, 2024
Independence Day	Thursday	July 4, 2024
Labor Day	Monday	September 2, 2024
Columbus Day	Monday	October 14, 2024
Veterans Day	Monday	November 11, 2024
Thanksgiving Day	Thursday	November 28, 2024
Christmas Day	Wednesday	December 25, 2024

Provided by FederalPay.org https://www.federalpay.org/holidays

https://www.federalpay.org/holidays

Attachment “B”

Dona Ana County 2023 Holidays

January 2nd- New Years

January 16th- Martin Luther King Jr. Day

February 20th- Presidents Day

May 29th-Memorial Day

June 19th -Juneteenth

July 4th- Independence Day

September 4th- Labor Day

October 9th- Indigenous Peoples’ Day

November 10th- Veterans Day

November 23rd and 24th – Thanksgiving

December 22nd- Christmas

December 25th- Christmas

December 29th- New Years

Attachment "C"

List of State Holidays of New Mexico in 2024

DAY	DATE	HOLIDAY
Monday	Jan 01, 2024	**New Year's Day**
Monday	Jan 15, 2024	**Martin Luther King, Jr. Day**
Monday	Feb 19, 2024	**Presidents' Day**
Monday	May 27, 2024	**Memorial Day**
Thursday	Jul 04, 2024	**Independence Day**
Monday	Sep 02, 2024	**Labor Day**
Monday	Oct 14, 2024	**Indigenous Peoples' Day**
Monday	Nov 11, 2024	**Veterans' Day**
Thursday	Nov 28, 2024	**Thanksgiving Day**
Wednesday	Dec 25, 2024	**Christmas Day**

24-046

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:**	November 6, 2023
Drafter:	Crystal Silva	**Department:**	Financial Services
Program:	Fiscal Management	**Line of Business:**	Grants Administration Program

Title:	**A RESOLUTION TO ACCEPT 2023 LAW ENFORCEMENT RETENTION FUND AGREEMENT 23-ZH5048-40 FROM THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION.**

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

PURPOSE(S) OF ACTION:
To accept the 2023 Law Enforcement Retention Appropriation

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces was granted the New Mexico Department of Finance and Administration (NMDFA) Law Enforcement Recruitment Appropriation #23-ZH5048-40, in the amount of $2,625,000 with no match required. The purpose of funds is to hire law enforcement and support positions over a three-year period. 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 for the third year.

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.

The New Mexico Department of Finance and Administration requires approval from the local governing body through a resolution acknowledging the funds were accepted.

SUPPORT INFORMATION:
ATTACHMENT "A" LERF Agreement

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 NMDFA Appropriation funding for 23-ZH5048-40.
2. Vote "No"; this will deny NMDFA 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 for l aw enforcement and supporting positions.

RESOLUTION 24-046

A RESOLUTION TO ACCEPT 2023 LAW ENFORCEMENT RETENTION FUND AGREEMENT 23-ZH5048-40 FROM THE NEW MEXICO DEPARTMENT OF FINANCE AND ADMINISTRATION.

The City Council is informed that:

WHEREAS, the City of Las Cruces was granted New Mexico Department of Finance and Administration (NMDFA) Law Enforcement Recruitment Appropriation 23-ZH5048-40; and

WHEREAS, the purpose of funds is to hire law enforcement and support positions over a three-year period; and

WHEREAS, 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 for the third year.

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

(I)

THAT 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 for the third year.

(II)

THAT the New Mexico Department of Finance and Administration requires approval from the local governing body through a resolution acknowledging the funds be accepted.

(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

ATTACHMENT "A"

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: Jacqueline Rubalcava
Email: jrubalcava@las-cruces.org

Signature: Jeremy Story
Email: jstory@las-cruces.org

24-047

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:**	November 6, 2023
Drafter:	Virginia Barela	**Department:**	Financial Services
Program:	Purchasing	**Line of Business:**	Procure-to-Pay
Title:	**A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $750,000.00 FOR ROAD CONSTRUCTION MATERIALS WITH GCC SUN CITY MATERIALS OF LAS CRUCES, NM, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT 23-24-032).**		

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

PURPOSE(S) OF ACTION:
Purchase of road construction materials.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The Public Works Department of the City of Las Cruces (City) is responsible for the construction, maintenance, and repair of City roads and flood control structures.

As the previously executed contract expired on August 29, 2023, an invitation to bid (ITB) was issued on September 8, 2023. Las Cruces Municipal Code, Chapter 24, Section 24-5, b (1) - Small Purchases allows the City to award price agreements $50,000.00 or more but less than $100,000.00, unless determined impractical by the purchasing manager, with no less than three solicited sources. Awards are to be based on the lowest prices meeting specifications. Two (2) responsive bids were received on September 26, 2023, from GCC Sun City Materials (GCC) of Las Cruces, NM, and Mesilla Valley Concrete & Materials of Doña Ana, NM. To ensure sufficient inventory of the varied road construction materials, it was recommended that a price agreement be awarded to GCC Sun City Materials of Las Cruces, NM, as the most responsive bidder as indicated on the attached bid tabulation (Attachment "A").

The City moved forward with entering into an agreement with GCC to be made effective October 20, 2023 for a term of one (1) year through September 19, 2024 with three (3) one-year options to renew, in an amount not to exceed $99,999.99, to ensure continuity of municipal service.

Although primarily used by the Public Works and Utilities departments, this agreement may be utilized by all City departments for purchase or road construction materials on an as-needed basis throughout the year. To meet the needs of the City, Purchasing is requesting that the City be allowed to purchase road construction materials in an not to exceed $750,000.00 annually, subject to annual renewals and approved budget appropriations.

SUPPORT INFORMATION:
Exhibit "A" - 23-24-032 Price Agreement

Attachment "A" - 23-24-032 Bid Tabulation

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 to authorize an annual not-to-exceed amount of $750,000.00 for road construction materials price agreement 23-24-032, subject to annual renewals and approved budget appropriations.
2. Vote "No"; this would deny the resolution and prohibit the purchases of road construction materials in an annual not-to-exceed amount of $750,000.00. This would require Public Works to pursue other options as directed by Council which may interrupt the supply of road construction materials and could cause roadway and flood control structure maintenance and repair work stoppages.
3. Vote to "Amend"; this could modify the resolution and advise staff of necessary adjustments as deemed appropriate.
4. Vote to "Table"; this could delay the authorization of an annual not-to-exceed amount of $750,000.00 for road construction materials price agreement 23-24-032 and may interrupt the supply of road construction materials and could cause roadway and flood control structure maintenance and repair work stoppages.

RESOLUTION 24-047

A RESOLUTION AUTHORIZING AN ANNUAL NOT-TO-EXCEED AMOUNT OF $750,000.00 FOR ROAD CONSTRUCTION MATERIALS WITH GCC SUN CITY MATERIALS OF LAS CRUCES, NM, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT 23-24-032).

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) requires road construction materials to support the operation of City departments conducting construction, maintenance, and the repair of City roads and flood control structures; and

WHEREAS, the City's contract for road construction materials expired August 29, 2023; and

WHEREAS, an invitation to bid was issued September 8, 2023 and received two (2) responses; and

WHEREAS, pursuant to Las Cruces Municipal Code, Chapter 24, Section 24-5, b(1), the City entered into price agreement 23-24-032 with GCC Sun City Materials, as the most responsive bidder, effective October 23, 2023 in an amount not to exceed $99,999.99 annually; and

WHEREAS, to meet the needs of the City, the Purchasing program is recommending increasing the authorized purchasing amount.

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

(I)

THAT the City is authorized to purchase road construction materials under price agreement 23-24-032, as shown in Exhibit "A" attached hereto and made part of this resolution, in an amount not to exceed $750,000.00 annually, subject to annual 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"

23-24-032
Road
Construction
Materials

CITY OF LAS CRUCES

PRICE AGREEMENT

THIS AGREEMENT made and entered into on this 20th day of October, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and GCC Sun City Materials, LLC, of #1 McKelligon Canyon Road, El Paso, Texas 79930, hereinafter called "CONTRACTOR".

1. PRODUCT DESCRIPTION
Road Construction Materials

2. SCOPE OF SERVICES
In a satisfactory and proper manner, the CONTRACTOR shall deliver PRODUCT as bid in response to the CITY'S Invitation to Bid No. 23-24-032 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
In consideration for CONTRACTOR'S satisfactory performance agreed to herein, the CITY shall compensate CONTRACTOR based upon pricing offered in CONTRACTOR'S bid response, plus applicable taxes. CONTRACTOR shall deliver product upon receipt of a purchase order from the CITY. The CITY cannot authorize costs to be incurred prior to such purchase order.

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 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 October 20, 2023 for a term of one (1) year through September 22, 2024 and has three (3) one-year renewable options to be exercised at the discretion of the CITY, upon mutual written consent. CONTRACTOR shall deliver PRODUCT 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. 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
Insurance is not required under the terms of this Agreement.

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: Lucio Sandoval
With Copies to:	Purchasing Manager
TO CONTRACTOR:	GCC Sun City Materials, LLC #1 McKelligon Canyon Road El Paso, Texas 79930 ATTENTION: Jose Cobos

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.

GCC SUN CITY MATERIALS, LLC

BY: ______________________
José Cobos
Account Manager

10-19-23
Date

CITY OF LAS CRUCES

BY: ______________________
Alicia Hernandez (Oct 20, 2023 10:45 MDT)
Alicia Hernandez
Purchasing Manager

Oct 20, 2023
Date

APPROVED AS TO FORM

______________________ 10/13/23
City Attorney

Revised: August 2023

Exhibit "A"

CITY OF LAS CRUCES

INVITATION TO BID

TITLE	BID #	DUE DATE/TIME
ROAD CONSTRUCTION MATERIALS	23-24-032	September 26, 2023, at 2:00 pm

Bid Submitted by: GCC Sun City Materials
(Company)

BIDDING CONDITIONS

Unless otherwise stated in the bid document, the following conditions apply.

1) Bidders are advised that all bids are subject to the legal requirements as provided for in the City of Las Cruces (City) Procurement Code, Chapter 24 Las Cruces Municipal Code (LCMC), 1998 available on the City's website: https://www.municode.com/library/nm/las_cruces/codes/code_of_ordinances?nodeId=PTIIMUCO_CH24PRCO
   a) Preference will be given to bidders residing within New Mexico and/or Las Cruces, NM, in accordance with §13-1-21 & §13-4-2, NMSA, 1978, of the State of New Mexico Statutes, and Section 24-100, LCMC, 1998, of the City Procurement Code.
   b) Whenever bid specifications are for supplies or materials consisting of recycled content goods and non-recycled content goods, bids submitted for recycled content goods shall receive a 5% preference pursuant to §13-1-21, NMSA, 1978.
   c) The application of multiple preferences shall be limited to ten percent (10%).
   d) Whenever federal funds that are subject to the U.S. OMB "Common Rule" and involved in the purchase of goods/services by the City, the preferences stated within this section are not applicable.
   e) DIRECT CONTACT WITH CITY ELECTED OFFICIALS OR CITY STAFF DURING THE BID PROCESS (from Public Notice through Award), OTHER THAN PURCHASING SECTION STAFF, WILL RENDER THE BID NON-COMPLIANT AND UNACCEPTABLE FOR AWARD.
   f) Bidder agrees to comply with all City, State and Federal rules and regulations.
   g) Bidder is responsible for complying with criminal laws prohibiting bribes, gratuities and kickbacks.
2) Bids must:
   a) be submitted typed or in ink on **UNALTERED City bid forms** for bid to be considered.
   b) be complete with required information.
   c) be signed by an authorized representative.
   d) be submitted separately and labeled as such when submitting more than one bid.
   e) state the manufacturer BRAND/MODEL NUMBER offered on all items along with brochures and specifications.
   f) include samples at no cost for evaluation purposes when required by the bid specifications or otherwise requested by the City.
   g) include a request for return of samples, by the supplier, otherwise samples shall become the property of the City after 60 days. (Bidders must arrange for and absorb the cost of any sample return.)
   h) be submitted in PDF format via e-mail to bidclerk@lascruces.gov with the bidder's company name, bid number and title, and due date/time in the subject line of the message.
   i) be received by the City Purchasing Section in the Bid Clerk e-mail inbox by the specified due date and time. Late bids shall not be accepted.
3) Pricing shall:
   a) state the UNIT PRICE and EXTENDED AMOUNT for each item or service offered. UNIT PRICES GOVERN ANY ERRORS IN THE EXTENSION and shall be stated F.O.B. - Destination; Prepaid Full Freight Allowed
   b) exclude any applicable taxes.
   c) be effective for 45 days.
4) Questions:
   a) MUST be submitted in writing and emailed to bidclerk@lascruces.gov referencing the bid number and title.
   b) will be accepted only up to one week prior to the bid due date/time.
5) Addenda:
   a) Any changes or clarifications to bid requirements will be made via written addendum when required. Verbal understanding shall not be binding.
   b) In the event an addendum is received by a bidder after a bid is submitted, the bidder must acknowledge receipt of the addendum by notice to the Bid Clerk via email or mail.
   c) If an addendum changes a bid already submitted, a revised bid must be sent and clearly marked REVISED.
   d) Failure to acknowledge receipt of an addendum may result in the bid being non-compliant.
6) The City reserves the right to:
   a) determine responsible bidders and responsive bids.
   b) accept and award compliant bids based on the lowest:

CITY OF LAS CRUCES
P.O. BOX 20000
LAS CRUCES, NEW MEXICO 88004

2024 - 5

Type	Number
Business Registration License - CONSTRUCTION / CONTRACTING	16042-22
	Issue Date
	06/01/2023
	Expires
	5/30/2024

** NOTICE **

This license becomes null & void if ownership, business name or address is changed. Licensee must apply within 10 days of such changes for transfer. Fees may apply. All applicable building & zoning regulations pertaining to business location must be followed.

Business Name: GCC Sun City Materials LLC
181 WESTGATE St
Las Cruces,

***** POST THIS CERTIFICATE IN A CONSPICUOUS PLACE*****

BID SUBMITTAL CHECK LIST

DESCRIPTION	COMMENT
Bid Form	Ensure bid is signed by representative stated on the form and completely filled out, as applicable, and especially that all addenda are acknowledged.
Resident Preference	To receive a 5% resident preference, submit Resident Business / Contractor certificate issued by the NM Tax and Revenue Department.
Resident Veteran Preference	To receive a 10% resident veteran preference, submit Resident Veteran Business / Contractor certificate issued by the NM Tax and Revenue Department.
Local Preference	To receive a 5% local preference, submit a current Business Registration License issued by the City of Las Cruces Community Development Department.
Federal Certifications	All Federal Certifications **must** be signed and submitted with bid
Disadvantaged Business Enterprise (DBE) Program Race Neutral	Form **must** be completed, singed and submitted with bid

i) Individual Unit Price, or
ii) Grouped Unit Price, or
iii) Lump Sum Unit Price; whichever is deemed most beneficial to the City.

c) determine and waive minor technicalities in the bid form or requirements not affecting price, quality, quantity, or delivery of items or services sought.
d) negotiate an extension of effective price dates.
e) change the quantity of bid items within their effective price date.
f) reject any or all bids partially or wholly.

7) It is the City's intent to award bids within 45 days of the bid due date.
   a) Bidders may obtain bid results by contacting the Bid Clerk at bidclerk@las-cruces.org.
   b) The contract terms/conditions resulting from this bid solicitation may be extended by the awarded contractor to other public entities in compliance with the laws and regulations of those public entities. The City is not subject to any obligation or responsibility regarding such extension.

Bid Form

Receipt of Addenda Nos. 2 is hereby acknowledged. (Where none received, place '0' in this space.)

Payment Terms: Net 30 Days   Bidder guarantees delivery of items within 2 days

Pricing for this bid is effective through 1 year (price agreements are effective for one year from date of award)

NM Tax & Revenue Department Combined Reporting System (CRS) # 03-365781-00-7

Current NM Secretary of State Business ID # 5285143 (corporations only)

Current CLC Business Registration # 16042-22 (for businesses residing within Las Cruces city limits)

NM Resident Certificate from NM Tax and Revenue Department enclosed ____ Yes ✓ No

NM Resident Veteran Certificate from NM Tax and Revenue Department enclosed ____ Yes ✓ No

Federal Employer / Tax Identification # 81-3983213 (mandatory for all respondents)

In compliance with the Bid Specifications, Bidding Conditions, and Purchase Order Terms and Conditions, I, the undersigned, offer and agree to furnish any or all items upon which prices are offered at the price set opposite each item, to the City within the time specified.

I (we) 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 Register Rules and Regulations.

COMPANY NAME & ADDRESS:

GCC SunCity Materials
181 Westgate
Las Cruces N.M 88005
575 524-8291
Phone
575 527-8156
Fax

Jose Cobos Sales
Typed or Printed Name of Authorized Representative & Title

[signature] 9-25-2023
Signature Date

JCobos@GCC.Com
Email

Revised June 2023

City of Las Cruces
NO-BID

Please return this form only if NOT SUBMITTING a bid.

In an effort to make the procurement of the City of Las Cruces goods and services as competitive as possible, we are soliciting information from vendors who cannot bid.

Completion of this form will assist us in evaluation factors, which relate to the competitiveness of our bids. Please check any of the boxes below which apply.

- ☐ Specifications – Restrictive, unclear, specialty item, etc.
- ☐ Manufacturing – Unique item, production time for model or item has expired, etc.
- ☐ Bid Time – Insufficient time to properly bid.
- ☐ Delivery Time – Specified delivery time cannot be met.
- ☐ Payment – Delay in payment process.
- ☐ Miscellaneous – Do not wish to bid, do not handle this type of item(s), unable to compete, etc.

The intent in obtaining this information is to utilize it to adjust procedures, if appropriate and to obtain maximum participation in the competitive bid process. Vendor comments are not restricted to those items listed. Please submit any statement relative to this bid, which you feel has an impact on your ability to bid.

VENDOR STATEMENT

____

____

____

____

____

____

COMPANY NAME & ADDRESS:

____

____

____

____
Phone

____
Fax

TYPED OR PRINTED NAME OF AUTHORIZED REPRESENTATIVE & TITLE:

____

____
Signature Date

____
Email

CITY OF LAS CRUCES
(Title)

I. Introduction: Introduction: The City of Las Cruces is seeking vendors with which to enter into a price agreement for road construction materials, as detail within.

II. Bid Items

ITEM	DESCRIPTION	UNIT	EST QTY	UNIT PRICE
1	Ready Mix Concrete 3000 PSI Conforming with Section 500 of specifications (Less than 3 Yd^3)			
A	Delivered to site	Yd^3	1 – 1,000	$ 422.50
2	Ready Mix Concrete 3000 PSI Conforming with Section 500 of specifications (3 Yd^3 and greater)			
A	Delivered to site	Yd^3	1 – 1,000	$ 422.50
3A	Ready Mix Concrete 3000 PSI including Polypropylene/fiber-glass Fiber added to Yd^3 concrete mix Conforming with Section 500 of specifications (Less than 3 Yd^3)			
A	Delivered to site mixed in concrete	Yd^3	1 – 250	$ 430.00
3B	Ready Mix Concrete 3000 PSI including Polypropylene/fiber-glass Fiber added to Yd^3 concrete mix Conforming with Section 500 of specifications (3 Yd^3 and greater)			
B	Delivered to site in concrete	Yd^3	1 – 250	$ 430.00
4A	Flowable Fill (Less than 3 Yd^3) Conforming with Section 515 of specifications-flow fill must be greater than 100 PSI and less than 150 PSI			
A	2 Sack Mix – Delivered to site	Yd^3	1 – 1,000	$ 401.50
B	3 Sack Mix – Delivered to site	Yd^3	1 – 1,000	408.50
4B	Flowable Fill (3 Yd^3 and greater) Conforming with Section 515 of specifications-flow fill must be greater than 100 PSI and less than 150 PSI			
A	2 Sack Mix – Delivered to site	Yd^3	1 – 1,000	401.50
B	3 Sack Mix – Delivered to site	Yd^3	1 – 1,000	408.50
5	Crusher Fines Conforming with Section 235 of specifications			

A	City to pick up	Ton	1 – 8,000	$ 8.50
B	Delivered to site	Ton	1 – 10,000	$ 25.00
6	Select Pipe Bedding			
A	City to Pick Up	Ton	1 – 8,000	$ 9.50
B	Delivered to site	Ton	1 – 10,000	$ 26.50
7	Base course – ¾" Aggregate Conforming with Section 210 of specifications			
A	City to pick up	Ton	1 – 1,000	$ 11.00
B	Delivered to site	Ton	1 – 4,000	$ 36.00

8	Rip Rap Rock Type H Conforming with Section 225 of specifications			
A	City to pick up	Ton	1 – 500	NO Bid
B	Delivered to site	Ton	1 – 500	NO Bid
9	Rip Rap Rock Type L Conforming with Section 225 of specifications			
A	City to pick up	Ton	1 – 1,000	NO Bid
B	Delivered to site	Ton	1 – 4,000	NO Bid
10	Rip Rap Rock Type VL Conforming with Section 225 of specifications			
A	City to pick up	Ton	1 – 1,000	NO Bid
B	Delivered to site	Ton	1 – 4,000	NO Bid
11	Rip Rap Rock Type M Conforming with Section 225 of specifications			
A	City to pick up	Ton	1 – 1,000	NO Bid

Bid # 23-24-032

B	Delivered to site	Ton	4,000	NO Bid
12	Hot Mix Asphalt Type A Conforming with Section 325 of specifications			
A	City to pick up	Ton	1 – 500	NO Bid
B	Delivered to site	Ton	1 – 250	NO Bid
13	Hot Mix Asphalt Type B Conforming with Section 325 of specifications			
A	City to pick up	Ton	0 – 2,500	$ 414.57
B	Delivered to site	Ton	0 – 5,000	$ 414.57
		Ton	5,001 - 10,000	$ 414.57
14	Hot Mix Asphalt Type C Conforming with Section 325 of specifications			
A	City to pick up	Ton	0 – 2,500	$ 414.57
B	Delivered to site	Ton	0 – 5,000	$ 414.57
		Ton	5,001 – 10,000	$ 414.57

15	Cold Mix Asphalt Conforming with Section 320 of specifications			
A	City to pick up	Ton	1 – 1,000	NO Bid
16	¾" Gravel Conforming with Section 230 of specifications			
A	City to pick up	Ton	1 – 200	NO Bid
17	1" Gravel Conforming with Section 230 of specifications (over 6 tons)			
A	City to pick up	Ton	1 – 200	NO Bid
18	¾" Gravel Conforming with Section 230 of specifications			
A	City to pick up	Ton	1 – 500	NO Bid

19	4" to 6" River Rock (clean, native rock) Must meet the approval of engineer or designee prior to delivery			
A	Delivered to site	Ton	500	NO Bid
20	Superpave, SP III, Oil PG76-16 Conforming to NMSHTD Section 423. These specifications can be reviewed on the NMDOT website under "Standard specifications for Highways and Bridge construction". Delivered to site	Ton	0 – 5,000	NO Bid
			5,001 – 12,500	NO Bid
			12,501 – 20,000	NO Bid
21	Superpave, SP IV, Oil PG76-16 Conforming to NMSHTD Section 423. These specifications can be reviewed on the NMDOT website under "Standard specifications for Highways and Bridge construction". Delivered to site	Ton	0 – 5,000	$ 414.57
			5,001 – 12,500	$ 414.57
			12,501 – 20,000	$ 414.57
22	5/8" Aggregate Conforming with Section 410 of specifications			
A	Delivered to site	Ton	1 – 200	NO Bid
23	1/2" Aggregate Conforming with Section 410 of specifications			
A	Delivered to site	Ton	1 – 1,500	NO Bid
24	3/8" Aggregate Conforming with Section 410 of specifications			
A	Delivered to site	Ton	1 – 1,500	$ 46.00
25	Plaster Sand Conforming with Section 240 of Specifications (over 6 tons)			
A	City to pick up	Ton	500	$ 31.25

(REQUIRED) TOTAL BID $ 11,408,424.00

II. VENDOR NOTES

A. QUANTITIES

Quantities listed are estimated usages for one year and will be ordered and delivered on an as-needed basis.

B. CONTRACT PERIOD

The price agreement resulting from this bid will be from date of award until June 30, 2020, with the option for three (3) annual renewal, initiated by the City and mutually agreed upon in writing.

The price agreement resulting from this bid, unless amended in writing by mutual agreement of the parties will be as stated above. Vendor is not obligated to continue work or provide services and the City is not obligated to compensate the vendor for expenses incurred or commitments made before or after these dates.

The City of Las Cruces shall reserve the right to terminate any contract entered into as a result of the bid at any time giving thirty (30) days written notice of its intent to cancel. The vendor must also provide a thirty (30) day written notice of cancellation or non-renewal.

C. PRICE ADJUSTMENTS FOR NON-PETROLEUM PRODUCTS

Price Increase: All bid prices for non-petroleum products shall be firm and fixed for one year of the agreement. Pass-through price adjustments will be accepted after one year and adjusted on a yearly basis thereafter, provided said adjustments(s) are submitted in writing with thirty (30) calendar days advance notice and are accompanied by written documentation of the manufacturer's price increase. Price adjustment requests shall be sent to.

Price Decrease: If the offeror receives any cost decrease from the supplier of the goods sold to the City through a contract resulting from this request, the offeror shall notify the City within 24 hours of such decrease and pass such decreases to the City immediately.

D. PRICE ADJUSTMENT FOR PETROLEUM PRODUCTS

An adjustment will be made to bid items of asphalt binder if the monthly price index of asphalt fluctuates from the established base price index beyond 10% as maintained by the New Mexico Department of Transportation (NMDOT) State Materials Bureau during any subsequent monthly period. Adjustment is not optional. The tonnage of asphalt binder will be determined by taking the tonnage of asphalt binder purchased, or in the case of total HMA, the percentage of asphalt binder in the purchased (approved) mix design.

Items subject to adjustment are:

a. Asphalt Paving (all types)
b. Asphalt Treated Base (ATB)
c. Open Graded Base Course (OGFC)
d. Asphalt Patching
e. Plant Mix Bituminous Pavement (all types)

The supplier shall submit an approved mix design(s), including the percentage of asphalt binder and tonnage of HMA supplied for the month for inclusion in the price adjustment for each asphalt or HMA bid item supplied under this contract.

For **increasing prices**, the monthly adjustment shall apply on those contracts whose monthly fluctuations are above a (B/C) ratio, defined below, of 1.10 using Equation (1).

For **decreasing prices**, the monthly adjustment shall apply on those contracts whose monthly fluctuations are below a (B/C) ratio, defined below, of 0.90 to minimum (B/C) ratio of 0.60 using Equation (2).

Only the differential percentage change beyond 10% will be used to calculate the asphalt binder price adjustment per Equations (1) or (2):

Equation (1): $A = [B - (1.1 \times C)] \times D$
Equation (2): $A = [B - (0.9 \times C)] \times D$

Where:

A = Adjustment to the Contract for asphalt binder in dollars ($).

B = Latest Average Monthly Rack Price per ton of asphalt binder.

C = Base Price Index: Average Monthly Rack Price per ton of asphalt binder for the month of the bid opening.

D = Tons of Asphalt binder delivered.

Monthly Adjustment: Asphalt price adjustment process is the comparison between the "Rack Price" for the month the contract was signed (or each year's extension signed thereafter) with the "Rack Price" for the month the asphalt was supplied. For each monthly price adjustment, the asphalt binder tonnage that has been supplied that month will be totaled and an adjustment determined by either Equations (1) or (2), as appropriate, using that latest monthly average asphalt rack price. If the use of Equation (2) results in a (B/C) ratio less than 0.60, then the (B/C) ratio will be fixed at a value of 0.60.

For the purposes of making these calculations, the NMDOT State Materials Bureau maintains a database of average weekly selling price indexes. The index will be based on the average weekly selling price of asphalt binder for New Mexico. In order to have a "real time" cost index more indicative of the actual market conditions in New Mexico the NMDOT will use the published rack prices of the major suppliers in the state. The cost of the two major types of asphalt used in the New Mexico construction program PG 64-28 and PG 70-22 will be used to set the high and low range for asphalt material in the index and the Department will use the average of these two prices as its monthly index. The rack prices will be taken from the prices published by the state producers weekly and the average of these prices used to determine the average asphalt index in the state monthly. These rack prices are documented by the suppliers to the NMDOT via direct hard copy reports. The published Average Monthly Rack Price will be calculated using the following formula:

Average Monthly Rack Price = Average of the reported average weekly selling prices using the last four reported weeks on or prior to the last day of a given month as published by the New Mexico Department of Transportation Materials Bureau.

The current New Mexico Asphalt Rack Price Data and Average Monthly Rack Price Index are sent, by NMDOT via e-mail, to the City of Las Cruces (Public Works Project Development & Street Operations) and the Albuquerque office of the Associated Contractors of New Mexico for distribution to their members. This same price information is also published on the NMDOT web site.

THE FOLLOWING EXAMPLE WILL EXPLAIN THE ASPHALT BINDER PRICE ADJUSTMENT PROCEDURE:

The type of asphalt is Type "B", with required asphalt content from the approved mix design of 6%.

The project was bid during the month of July 2008.

The amount of hot mix placed during the month of September 2008 is 1,000 tons. The bid item for this work is paid by the ton.

Step One: Determine the tonnage of hot mix supplied during the month.
(sum of all hot mix asphalt supplied = 1,000 Tons)

Step Two: Determine the tonnage of binder placed from mix design used.
1,000 Tons (hot mix placed) X 6% = 60 Tons.

Step Three: Determine the B/C ratio.
From the attached spreadsheet for the Average Monthly Rack Price: C = $800.00

Assuming that the Average Monthly Rack Price for September 2008 is $1,000.00.
B = $1,000.00
B/C = 1000/800 = 1.25

Now therefore since the B/C ratio is greater than 1.1, apply Equation (1):
A = [B – (1.1 X C)] X D = [1000.00 – (1.1 X 800.00)] X 60 = $7,200.00

Payment will be made to the Supplier in the amount of $7,200.00 for the month of September 2008.

New Mexico Department of Transportation

State Materials Bureau
ASPHALT DESIGN UNIT
P.O. Box 1149, Santa Fe, NM 87504-1149

Current New Mexico Asphalt Rack-Price Data
(As per Asphalt Price Modification IDC from State Construction Engineer Mr. Joe S. Garcia, dated July 28, 2008)

	70-22					64-28						
Week Ending	Holly Asphalt Co	Western Refineries	Valero	Nustar	Average Price	Holly Asphalt Co.	Western Refineries	Valero	Nustar	Average Price	Average Weekly Rack Price	Average Monthly Rack Price
07/26/08	$ 920.00	$ 737.50	$ 720.00	$ 780.00	$ 789.38	$ 930.00	-	$ 720.00	$ 780.00	$ 810.00	$800	$800
08/01/08	$ 850.00	$ 1,017.50	$ 770.00	$ 855.00	$ 873.13	$ 860.00	-	$ 770.00	$ 855.00	$ 828.33	$851	
08/08/08												
08/15/08												
08/22/08												
08/29/08												
09/05/08												$851
09/12/08												
09/19/08												
09/26/08												
10/03/08												
10/10/08												
10/17/08												
10/24/08												
10/31/08												
11/07/08												
11/14/08												
11/21/08												
11/28/08												
12/05/08												
12/12/08												
12/19/08												
12/26/08												
01/02/09												
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02/20/09												
02/27/09												
03/06/09												
03/13/09												
03/20/09												
03/27/09												

III. SPECIFICATIONS

A. The individual bid price shall reflect the total cost for that material without penalties or surcharges for varying load sizes.

B. Specifications listed are from the **City of Las Cruces Standard Specifications for Road Construction**, 2000 Edition. Copies are available for purchase in the Community Development

Department, Permitting Desk, 700 North Main Street, Las Cruces NM 88001 (Mailing Address: P.O. Box 20000, Las Cruces NM 88004), Telephone: (575) 528-3222 or on the Public Works/Engineering Services Web site at: http://www.las-cruces.org/departments/public-works/contracts-administration , then click on "CLC Standards for Roadway Construction"

The following specifications are based on **Section 235 (Crusher Fines)** of the City of Las Cruces Road Standards (2000) and are modified to add clarification for the other aggregate screens and plasticity index.

235.10 Manufacturer: The standard size of aggregates described in this classification will be manufactured through the rock crushing and screening process used to separate raw material into the desirable size ranges.

235.20 Classification: The classification of the Crusher Fines and Select Pipe Backfill material shall be based on the size number and size ranges shown below with the material being sampled in compliance with ASTM D75 and tested for grading using ASTM C 136.

235.40 Aggregate Properties: Fines subjected to five cycles of the soundness test shall have a weighted average loss of not greater than 10% when sodium sulfate is used or 15% when magnesium sulfate is used in accordance with ASTM C-33. Fines shall contain no more than 2% by weight of contaminants such as clay lumps and friable particles. The bidder must provide a sufficient quantity to 1) an independent laboratory for required testing of the listed specifications to ensure that the material classifications meets the requirements listed and 2) to the City for visual inspections with submitted bid, 3) a signed certificate of sample results from an independent laboratory **must** be submitted with the bid clearly stating the results of the specification and gradation levels.

C. Referenced NMDOT Specifications can be accessed through the following website: http://www.dot.state.nm.us/content/nmdot/en.html Click on "Site Index", then "Plans, Specifications and Estimates (PS&E)", then on "Specs for Highway and Bridge Construction".

D. The vendor shall maintain an approved mix design not older than one (1) year for Items 12, 13, 14, & 20 for submission to the Public Works Department annually.

E. Upon 24-hour notice, the supplier must provide hot mix, concrete and flowable fill at a rate that will match the anticipated rate of application provided by the City's contractor. The rate varies from 1 tons per day to 100 tons per day. A day shall be considered not more than 9 hours of production.

F. Per Section 5 of the City of Las Cruces Bid and Quote Conditions the City may award to the lowest:
   1. Individual Unit Price
   2. Grouped Unit Price or
   3. Lump Sum Unit price whichever is deemed most beneficial to the City.

G. Prospective bidders are advised of that the City of Las Cruces reserves the right to issue award to multiple sources. This understanding is based upon the City's need to obtain timely delivery of specific items and concern that a single source award may not be able to supply sufficient material to meet the City's demand. In this event, subsequent orders will always be lowest cost and timely delivery determinants that are in the best interest of the City.

The successful respondent awarded a contract as a result of this selection process may extend the same terms and conditions of the contract to other governmental entities pursuant to the governing laws of those entities with condition that the City of Las Cruces shall not have any liability as a result of such extension.

LOCAL PREFERENCE NOTICE

To receive 5% local preference, submit a current copy of the respondent's Business Registration License issued by the City of Las Cruces Community Development Department.

NEW MEXICO RESIDENT PREFERENCE NOTICE

Pursuant to §13-1-21 & §13-4-2, NMSA, 1978, of the State of New Mexico Statutes, as amended, a respondent who submits, within its bid or proposal documents, a copy of its resident business or resident contractor certificate issued by the New Mexico Tax and Revenue Department will qualify for preference as authorized by the statutes.

Bids or proposals submitted without the certificate issued by the New Mexico Tax and Revenue Department will not qualify for this preference.

Firms seeking this 5% preference are encouraged to apply with the New Mexico Tax and Revenue Department to receive certification as a "resident business" or "resident contractor". Firms may obtain application forms by contacting the New Mexico Tax and Revenue Department at 575-524-6225 or may apply online at the following web address:

http://www.tax.newmexico.gov/Pages/TRD-Homepage.aspx

NEW MEXICO RESIDENT VETERAN BUSINESS NOTICE

To receive 10% veteran preference, submit a Resident Veteran Business / Contractor certificate issued by the NM Tax & Revenue Department. **Effective July 1, 2016 per New Mexico House Bill 93, certificates issued under previous legislation are no longer valid.**

Firms may obtain application forms by contacting the New Mexico Tax and Revenue Department at 575-524-6225 or may apply online at the following web address:

http://www.tax.newmexico.gov/Pages/TRD-Homepage.aspx

PREFERENCE FOR RECYCLED CONTENT GOODS

Whenever specifications for supplies or materials provide bidders opportunity to offer items made with recycled content good, and, when bids are received for both recycled content goods and non-recycled content goods, bids submitted for recycled content goods shall be deemed five percent (5%) lower than the bids actually submitted provided that the recycled materials content meets or exceeds the minimum content standards required by bid specifications. "Recycled content goods" means supplies and materials composed of a minimum of twenty-five percent (25%) of recycled materials or more as specified herein.

CITY OF LAS CRUCES

ADDENDUM ONE

August 12, 2023

BID NUMBER: **23-24-032**

BID TITLE: **Road Construction Materials**

DUE DATE/TIME: **August 26, 2023 / 2:00PM**

The following clarifications/modifications/requirements are made part of the above referenced bid and shall be adhered to in responding to this solicitation.

This addendum is 1 page including this cover sheet.

Q1: What is the start date/end date for construction?
A1: This invitation to bid is for general purchases of road construction materials. This is not tied to a specific project but can be used for numerous projects during the duration of the contract.

Q2: What is the estimated value for this project?
A2: The contract total will not exceed $500,000.00 for its entire term.

Q3: Are there union requirements for this project?
A3: There are no union requirements.

END OF ADDENDUM ONE

Phone: 575-541-2525 Fax: 575-541-2515 Email: bidclerk@lascruces.gov

23-24-032_PA

Final Audit Report 2023-10-20

Created:	2023-10-20
By:	Virginia Barela (vbarela@las-cruces.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAApDc9_VqITiAIVN0iIMZrhpflWICU0rdZ

"23-24-032_PA" History

Document created by Virginia Barela (vbarela@las-cruces.org)
2023-10-20 - 2:44:56 PM GMT

Document emailed to Alicia Hernandez (alhernandez@las-cruces.org) for signature
2023-10-20 - 2:45:44 PM GMT

Email viewed by Alicia Hernandez (alhernandez@las-cruces.org)
2023-10-20 - 4:44:43 PM GMT

Document e-signed by Alicia Hernandez (alhernandez@las-cruces.org)
Signature Date: 2023-10-20 - 4:45:12 PM GMT - Time Source: server

Agreement completed.
2023-10-20 - 4:45:12 PM GMT

Attachment "A"

City of Las Cruces Purchasing Section

Bid # / Title: 23-24-032 Road Construction Materials

Opening Date: September 26, 2023 @ 2:00 pm

			GCC - Sun City Materials		Mesilla Valley Concrete & Materials	
			Lupe Cobos 575-524-8691 jcobos@gcc.com		Benjamin B. Sanchez 575-523-5650 ccpsanchez@yahoo.com	
ITEM	**DESCRIPTION**	**QTY**	**UNIT PRICE per TON**	[redacted]	**UNIT PRICE per TON**	[redacted]
1	Ready Mix Concrete 3000 PSI - Delivered to site Conforming with Section 500 of specifications (Less than 3 Yd3)	1 – 1,000	$422.50		No Bid	
2	Ready Mix Concrete 3000 PSI - Delivered to site Conforming with Section 500 of specifications (3 Yd3 and greater)	1 – 1,000	$422.50		No Bid	
3A	Ready Mix Concrete 3000 PSI including Polypropylene/fiber-glass Fiber added to Yd3 concrete mix Conforming with Section 500 of specifications (Less than 3 Yd³) - Delivered to site	1 - 250	$430.00		No Bid	
3B	Ready Mix Concrete 3000 PSI including Polypropylene/fiber-glass Fiber added to Yd3 concrete mix Conforming with Section 500 of specifications (3 Yd³ and greater) - Delivered to site	1 - 250	$430.00		No Bid	
4A	Flowable Fill (Less than 3 Yd³) Conforming with Section 515 of specifications-flow fill must be greater than 100 PSI and less than 150 PSI					
Opt A	2 Sack Mix – Delivered to site	1 – 1,000	$401.50		No Bid	
Opt B	3 Sack Mix – Delivered to site	1 – 1,000	$408.50		No Bid	
4B	Flowable Fill (3 Yd³ and greater) Conforming with Section 515 of specifications-flow fill must be greater than 100 PSI and less than 150 PSI					
Opt A	2 Sack Mix – Delivered to site	1 – 1,000	$401.50		No Bid	
Opt B	3 Sack Mix – Delivered to site	1 – 1,000	$408.50		No Bid	
5	Crusher Fines Conforming with Section 235 of specifications					
Opt B	Delivered to site	1 - 8,000	$8.50		$4.50	
Opt B	Delivered to site	1 - 10,000	$25.00		$10.00	
6	Select Pipe Bedding					
Opt A	City to pick up	1 - 8,000	$9.50		$4.50	
Opt B	Delivered to site	1 - 10,000	$26.50		$10.00	
7	Base course – ¾" Aggregate Conforming with Section 210 of specifications					
Opt A	City to pick up	1 – 1,000	$11.00		$8.75	
Opt B	Delivered to site	1 – 4,000	$36.00		$15.75	
8	Rip Rap Rock Type H Conforming with Section 225 of specifications					
Opt A	City to pick up	1 – 500	No Bid		No Bid	
Opt B	Delivered to site	1 – 500	No Bid		No Bid	
9	Rip Rap Rock Type L Conforming with Section 225 of specifications					
Opt A	City to pick up	1 – 1,000	No Bid		No Bid	
Opt B	Delivered to site	1 – 4,000	No Bid		No Bid	
10	Rip Rap Rock Type VL Conforming with Section 225 of specifications					
Opt A	City to pick up	1 – 1,000	No Bid		No Bid	
Opt B	Delivered to site	1 – 4,000	No Bid		No Bid	
11	Rip Rap Rock Type M Conforming with Section 225 of specifications					
Opt A	City to pick up	1 – 1,000	No Bid		No Bid	
Opt B	Delivered to site	1 – 4,000	No Bid		No Bid	
12	Hot Mix Asphalt Type A Conforming with Section 325 of specifications					
Opt A	City to pick up	1 – 500	No Bid		No Bid	
Opt B	Delivered to site	1 – 250	No Bid		No Bid	
13	Hot Mix Asphalt Type A Conforming with Section 325 of specifications					
Opt A	City to pick up	1 – 2,500	$414.57		No Bid	
Opt B	Delivered to site	1 – 5,000	$414.57		No Bid	
	Delivered to site	5,001 - 10,000	$414.57		No Bid	
14	Hot Mix Asphalt Type C Conforming with Section 325 of specifications					
Opt A	City to pick up	1 – 2,500	$414.57		No Bid	
Opt B	Delivered to site	1 – 5,000	$414.57		No Bid	
	Delivered to site	5,001 - 10,000	$414.57		No Bid	
15	Cold Mix Asphalt - City to pick up Conforming with Section 320 of specifications	1 – 1,000	No Bid		No Bid	
16	¼" Gravel - City to pick up Conforming with Section 230 of specifications	1 – 200	No Bid		$16.00	
17	1" Gravel - City to pick up Conforming with Section 230 of specifications (over 6 tons)	1 – 200	No Bid		$16.00	
18	¾" Gravel - City to pick up Conforming with Section 230 of specifications	1 – 500	No Bid		No Bid	
19	4" to 6" River Rock (clean, native rock) - City to pick up Must meet the approval of engineer or designee prior to delivery	500	No Bid		No Bid	
20	Superpave, SP III, Oil PG76-16					
	Conforming to NMSHTD Section 423. These specifications can be reviewed on the NMDOT website under "Standard specifications for Highways and Bridge construction".	0 – 5,000	No Bid		No Bid	
	Delivered to site	5,001 – 12,500	No Bid		No Bid	
		12,501 – 20,000	No Bid		No Bid	
21	Superpave, SP IV, Oil PG76-16					
	Conforming to NMSHTD Section 423. These specifications can be reviewed on the NMDOT website under "Standard specifications for Highways and Bridge construction".	0 – 5,000	$414.57		No Bid	
	Delivered to site	5,001 – 12,500	$414.57		No Bid	
		12,501 – 20,000	$414.57		No Bid	
22	5/8" Aggregate - Delivered to site Conforming with Section 410 of specifications	1 – 200	No Bid		$26.50	
23	1/2" Aggregate - Delivered to site Conforming with Section 410 of specifications	1 – 1,500	No Bid		$26.50	
24	3/8" Aggregate - Delivered to site Conforming with Section 410 of specifications	1 – 1,500	$46.00		$26.50	
25	Plaster Sand - City to pick up Conforming with Section 240 of Specifications (over 6 tons)	500	$31.25		$15.00	
		Delivery:	2 Days		2 Days	
		Prices Effective Through:	1 Year		1 Year	
		Preference Type / Number:	Local		Resident	

Preferences - 10% max
NM Resident - 5%
NM Veteran - 10%
Local - 5%

No bids:

Prepared by: Virginia M. Barela, Buyer II

Verified by: Lucio Sandoval, Streets Manager

Page 1

24-048

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:**	November 6, 2023
Drafter:	Barbara Bencomo	**Department:**	City Manager's Office
Program:	Council & Community Support	**Line of Business:**	Council & Community Support

Title:	**A RESOLUTION TO ADOPT A NEW JOINT POWERS AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND COUNTY OF DONA ANA, AS WELL AS A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAS CRUCES AND THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY.**

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

PURPOSE(S) OF ACTION:
To recommend a Joint Powers Agreement and a Memorandum of Understanding.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The current Joint Powers Agreement (JPA) between the City of Las Cruces (City) and the County of Doña Ana (County) which established the Animal Services Center of the Mesilla Valley (ASCMV) was executed on August 15, 2012. Since then, many changes have taken place including the ownership of the land on which the ASCMV is sited; the addition of a new building and structures to the site; and the responsibilities of the ASCMV and the City as its fiscal agent.

City and County elected officials and staff have proposed revisions to the JPA and the creation of a Memorandum of Understanding (MOU) which would outline the fiscal agent relationship and responsibilities. Proposed changes were reviewed with the ASCMV board of directors at a regular board meeting on August 24, 2023 and at a special work session on September 20, 2023. The ASCMV board adopted the proposed changes at their meeting on September 28, 2023.

SUPPORT INFORMATION:
Exhbit "A" ASCMV JPA Amended 092823
Exhibit "B" ASCMV MOU Amended 092823
Attachment "A" - ASCMV JPA Draft 092123

PLAN(S):
None

COMMITTEE/BOARD REVIEW:
ASCMV Board

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 recommendations for changes to the JPA and for the establishment of a MOU.
2. Vote "No"; this will not approve recommendations for changes to the JPA and for the establishment of a MOU.
3. Vote to "Amend"; this will approve recommendations for changes to the JPA and for the establishment of a MOU, with any approved changes by board members.
4. Vote to "Table"; this will postpone any action on the resolution until a future date.

REFERENCE INFORMATION:

Attachment "A" Redlined copy of JPA

RESOLUTION 24-048

A RESOLUTION TO ADOPT A NEW JOINT POWERS AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND COUNTY OF DONA ANA, AS WELL AS A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF LAS CRUCES AND THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY.

The City Council is informed that:

WHEREAS, the current Joint Powers Agreement (JPA) between the City of Las Cruces (City) and the County of Doña Ana (County) which established the Animal Services Center of the Mesilla Valley (ASCMV) was executed on August 15, 2012; and

WHEREAS, many changes have taken place including the ownership of the land on which the ASCMV is sited; the addition of a new building and structures to the site; and the responsibilities of the ASCMV and the City as its fiscal agent; and

WHEREAS, City and County elected officials and staff have proposed revisions to the JPA and the creation of a Memorandum of Understanding (MOU) which would outline the fiscal agent relationship and responsibilities; and

WHEREAS, proposed changes were reviewed with the ASCMV board of directors at a regular board meeting on August 24, 2023, and at a special work session on September 20, 2023; and

WHEREAS, the ASCMV board of directors adopted the proposed changes at the regular board meeting on September 28, 2023.

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

(I)

THAT the Joint Powers Agreement as shown in Exhibit “A”, attached hereto and made part of this resolution, is hereby adopted.

(II)

THAT the Memorandum of Understanding as shown in Exhibit “B”, attached hereto and made part of this resolution, is hereby adopted.

(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

Exhibit "A"

SECOND AMENDED JOINT POWERS AGREEMENT TO ESTABLISH THE ANIMAL SERVICES CENTERS FOR THE MESILLA VALLEY AND TO PROVIDE FOR THE FINANCING, OPERATION AND MAINTENANCE OF THE CENTERS

THIS Second Amended Joint Powers Agreement (JPA) is entered into between the City of Las Cruces ("City"), a New Mexico home rule municipality, and the County of Doña Ana ("County"), a Class A New Mexico county, hereafter collectively referred to as the "Parties", to create the Animal Services Center for the Mesilla Valley, hereafter referred to as "Center", on this ____ day of _______________, 2023, and is effective as of the date of approval by the New Mexico Department of Finance and Administration.

BACKGROUND

1. The City owns the animal shelter real property and all improvements thereon located at 3551 and 3543 Bataan Memorial West (Facility). The City and County have been the primary financial supporters of the Facility.

2. On January 29, 2008, the City and County entered into a Memorandum of Agreement (MOA) to temporarily operate the Facility after DACHS notified the Parties that it would no longer operate the Facility. Efforts by the City and County to solicit a new animal shelter operator were unsuccessful.

3. The City and County determined that it was imperative that the Parties enter into a JPA, pursuant to the Joint Powers Agreements Act, NMSA § 11-1-1, et seq., to create an independent public agency to provide regional animal shelter services to be named the "**Animal Services Center of the Mesilla Valley**" (Center) and to set out the general principles concerning responsibility for operation of the Center and the funding sources to pay for the costs of providing such services.

4. The Parties have created an independent public agency tasked to operate the Center. This public agency will consist of a Board of Directors (Board) comprised of City and County elected officials or staff, a Chief Executive Officer (Director) hired by the Board, and employees of the public agency hired by the Director to operate the Center and the Facility.

5. This JPA replaces any prior JPA's between the Parties concerning the Facility including the JPA between the Parties dated January 21, 1985 for the lease and use of the

proposed animal shelter, and the JPA between the Parties dated August 4, 2008 which JPA established the Center.

CONDITIONS

1. **Purposes** – The purpose of this JPA is to establish a mechanism for financing, operating, and maintaining a regional animal shelter and related facilities. The purpose of the Center is to provide regional animal shelter services.

2. **Establishment** – The Parties hereby establish the Center to exercise in accordance with the JPA the powers common to each of the Parties. The Center shall be a public agency separate from the Parties.

3. **Service Area** – The service area of the Center shall be the City of Las Cruces and the unincorporated portions of the County of Doña Ana. The Board may change the Center's service area as it deems necessary.

4. **Real and Personal Property**

A. Real Property - Any of the Real Property and improvements located thereon leased, licensed, permitted, or transferred to the Center will be used by the Center solely for the purpose of implementing this JPA and operating and maintaining the Facility absent the express written consent of the City.

(1) The City shall enter into a lease, license, or permitted use agreement with the Center for the approximate 7.9266 acres of the Real Property located east of Rinconada Boulevard and north of Bataan Memorial West. This tract has a street address of 3551 and 3543 Bataan Memorial West and is improved and is legally described as Lot 2 Rinconada Summary Subdivision. The existing Facility improvements consist of but are not limited to two buildings and adjacent structures, a paved parking lot, and landscaping.

(2) Any lease, license, or permitted use agreement of the Real Property will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council and the Center Board or its successor.

(3) Any agreement transferring ownership of all or part of the Real Property to the Center will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council, the Center Board or its successor.

B. Personal Property – Ownership of any personal property located within any building on the Real Property that is not considered to be a fixture shall be transferred by the

Parties to the Center and shall be used by the Center solely for the purpose of implementing this Joint Powers Agreement and operating and maintaining the Facility.

5. **Center Organization**

A. Board – The Center shall be governed by the Board. The Board shall establish its own policies and procedures to carry out the purposes of this JPA.

B. Any change in Board structure and/or voting rights is outside the authority of the Board and must be approved in writing by all Parties to the JPA.

C. Members – The Board shall consist of eight (8) voting members, who shall be two (2) elected officials from the city and two (2) elected officials from the county; and four (4) public voting members appointed by consent of the parties' governing bodies (two (2) by the city, two (2) by the county). The two (2) ex-officio, non-voting, members shall be the City Manager, the County Manager, or their designees.

(1) The term of an elected official shall expire when their official term in office is completed, or at the time the respective governing body appoints a replacement. All members may be reappointed. Appointees can serve a maximum of two (2), two (2) year terms.

(2) Attendance is required for all Board meetings. A member may be removed, by a majority board vote, for failure to attend more than fifty (50) percent of the regular meetings in any twelve (12) month period.

(3) All members may be removed for any acts of nonfeasance, malfeasance, misfeasance by a majority vote of the governing board that appointed the member.

D. Voting and Quorum – A majority of the voting members shall constitute a quorum for all meetings in accordance with the Open Meetings Act. A majority vote of the quorum shall be required for the adoption of a resolution. In the event that the number of regular voting members in attendance at any meeting of the Board is insufficient to establish a quorum for the transaction of business, an ex-officio member in attendance at such meeting may act as an alternate member for their respective governmental body's regular voting member for the purpose of establishing a quorum and may vote on matters before the Board at such meeting.

E. Meetings – Meetings shall be conducted in accordance with Robert's Rules of Order.

(1) Regular Meetings – The Board shall hold one regular meeting each quarter.

(2) Special Meetings – Special meetings of the Board may be called in accordance with the New Mexico Open Meetings Act.

(3) Notice of Meetings – All meetings of the Board shall be held in accordance with the New Mexico Open Meetings Act.

(4) Minutes – The Board shall keep minutes of all meetings and shall have draft minutes available within 10 working days in accordance with the Open Meetings Act..

F. Director – The Center will be led by a Director who will be hired by the Board pursuant to an employment agreement. The Director will report to the Board. The Director's job performance will be evaluated by the Board at least yearly. The Director shall conduct the business of the Center, serve as personnel officer, budget officer, property custodian, and shall generally aid and assist the Board in the exercise of its duties and responsibilities. Upon request, the Director will provide reports to the City and County on all matters relating to the operation of the Center.

G. Employees – The authority and direction of the Director will be implemented by employees hired by the Director to operate the Center.

H. Powers – The Board is authorized to exercise all powers common to each of the Parties with respect to the purposes of the Center, including but not limited to the following:

(1) To make and enter into contracts.

(2) To apply for and accept grants and contributions.

(3) To employ or contract for the services of employees, consultants, and such other persons as it deems necessary, and under such terms and conditions as may be established by the Board in the agreements relating to such persons.

(4) To make plans and conduct studies.

(5) To acquire, construct, operate and maintain buildings, improvements, and facilities.

(6) To acquire and dispose of real property.

(7) To establish a mission statement.

(8) To sue and be sued in its own name.

(9) To borrow money if approved by the governing bodies of the Parties and further subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of the State of New Mexico.

(10) To set fees and charges.

(11) To bill and collect fees and charges set by the Center and establish a procedure for the resolution of disputed fees and charges.

(12) To adopt resolutions necessary to carry out the purposes of this JPA.

(13) To obtain necessary public liability and property insurance coverage. Such coverage shall comply with the statutory requirements of the New Mexico Tort Claims Act and shall include coverage for civil rights claims.

(14) To create from time to time *ad hoc* committees and/or advisory boards of suitable membership, scope, and duration for the purpose of providing advice and recommendations on particular matters of interest to the Board.

I. Purchase and Ownership of Assets – All assets of the Center, whether real or personal property, including those assets that may be transferred by the City and the County, but excluding the Real Property and improvements located thereon leased, licensed, or permitted to the Center, shall be owned in the name of the Center.

J. Budgetary Reserve – Any annual revenue in excess of operating and capital expenditures shall be carried over to the next fiscal year.

6. **Fiscal Agent**

The City shall be the Fiscal agent for the Center and responsibilities of the Center and the City shall be documented in a separate, agreed upon Memorandum of Understanding.

7. **Duties, Rights and Authority of the Center**

The purpose of the ASCMV is to continue providing and maintaining a safe place for county and city domestic animals and provide a positive live outcome whenever possible through programs managed by the ASCMV, included but not limited to:

A. Accepting domestic animals for impound from county, city and other contracting entities as capacity allows, then accepting impounds as set in ASCMV policy and procedure.
B. Operating and maintaining a volunteer program to help socialize, exercise, and engage animals and help with all ASCMV daily duties.
C. Operate and maintain a foster program to focus on the infant, young, senior, injured, and sick animals of the ASCMV.

D. Operate and maintain a community cat program to increase the sterilization and vaccination of community cats in the Dona Ana County area.

E. Operate and maintain an adoption program of available animals.

F. Operate and maintain a redemption program where impounded animals are redeemed by their owner.

8. **Financial Contributions of City and County**

A. Contributions for Operating Budget -

(1) The Center shall, on an annual basis, submit a proposed operating budget to the Board, which will be taken to the City Council and County Budget Work Sessions each year. Proposed budget will be based on the Center's operating needs. The Center shall also submit proposed capital improvements and special projects budgets when required by the Parties.

(2) The Board shall review and make recommendations regarding any proposed budget prior to the Center submitting the proposed budget to the Parties for consideration.

(3) The Center's budgets are subject to appropriation of sufficient funds by the City and County and shall be deemed approved upon approval of the City's and the County's budgets.

(4) The Parties intend to each pay for 50% of the Center's net operating budget; however, the Parties' respective financial contributions for the Center's net operating budget for a particular fiscal year will be whatever sum is approved in the City's and County's respective budgets for that expense.

(5) The Parties shall re-evaluate every three (3) years from the effective date of this JPA whether a 50% allocation to each Party for the Center's net operating budget is reasonable based on the total animals attributable to each Party as set forth below. The Parties may re-allocate the percentage of their financial contributions based on the re-evaluation.

(6) Starting January 1, 2012, the Center shall maintain records as to the total number of animals handled by the Center and where each animal came from (City or County); and then shall calculate the percentage of total animals attributed to the City and to animals attributed to the County. This calculation may be used by the Parties when they re-evaluate the operating budget contribution percentages as provided above. The animal head count report shall include animals brought to the Center by City or County animal control officers, by City or County

residents, or held under court order. Animals that are abandoned at the Center without identification shall be evenly allocated between the Parties.

B. Contributions for Capital Improvements – The Parties may require that the Center develop and submit a capital improvements plan and budget and may provide funding for capital improvements shown on the plan in the Parties' sole discretion.

C. Contributions for Special Projects — The Parties may require that the Center develop and submit a special projects plan and budget for projects not covered in the Center's operating budget or capital improvements budget and may provide funding for special projects in the Parties' sole discretion.

D. Payment of Contributions –

(1) The Parties shall pay to the Center on or before July 15 of the upcoming fiscal year twenty-two percent (22%) of the total financial contributions budgeted by the Parties for that fiscal year. The remaining budgeted financial contributions will be paid to the Center in eleven (11) equal payments due on or before August 15 and on the 15th day of each month thereafter for the remainder of that fiscal year.

(2) The fiscal agent shall invoice the County monthly for its budgeted financial contribution for the upcoming month. Payment is due to the fiscal agent within thirty (30) days of receipt of the invoice.

9. **Term and Termination**

A. Term – The term of the JPA shall be renewed every 5 years. If any dispute arises concerning this JPA, the Parties agree to attempt to resolve such dispute in an amicable manner at the least possible expense. If such dispute cannot be resolved and either Party deems the dispute to be of major proportion, then the dispute shall be submitted for mediation in compliance with the New Mexico Mediation Procedures Act.

B. Mutual Termination of JPA –

(1) The JPA may be terminated by the mutual consent of the Parties.

(2) If the Center is mutually terminated where there is a successor public entity which will carry on all of the activities of the Center and assume all of its obligations, then all property, rights and assets of the Center shall be transferred to the successor public entity.

(3) If the Center is mutually terminated when there is no successor public entity which will carry on any of the activities of the Center or assume any of its obligations, then all property, rights and assets of the Center shall be equally divided between the Parties.

(4) If the Center is mutually terminated when there is a successor public entity which would undertake some, but not all, of the functions of the Center and assume some, but not all, of its obligations, then all property, rights and assets of the Center shall be allocated by the Board between the successor public entity and the Parties.

(5) In the event that the Center is mutually terminated under the circumstances falling within (3) and (4) above, all decisions of the Board with regard to the property, rights and assets to be transferred to the Parties or any successor public entity shall be final.

C. Unilateral Termination of JPA –

(1) If either Party unilaterally withdraws from the JPA without the consent of the other Party, then all of its rights under the JPA shall be transferred to the remaining Party and the JPA shall be deemed to be terminated. The Party unilaterally withdrawing shall have no claim to a division or partition of Center assets, or a right to use services of the Center.

(2) The failure of either Party to pay its monthly financial contributions within 90 days of billing shall be considered a unilateral withdrawal.

10. **Miscellaneous Provisions**

A. Headings – The headings of the various sections of this JPA are inserted only for convenience or reference and are not intended nor shall they be construed to modify, define, limit or expand the intent of the Parties.

B. Entire Agreement – This JPA represents the entire agreement and understanding between the Parties.

C. Amendments – The Parties acknowledge and agree that this JPA may be amended in writing upon approval of the governing bodies of each Party and that any such amendments shall not become effective until signed by the Parties and approved by the New Mexico Department of Finance and Administration.

D. Effective Date – This JPA shall become effective upon execution by the Parties and approval by the New Mexico Department of Finance and Administration.

11. **Tort Claims Act** – By entering into this JPA, the Parties and their "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq., do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision of this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

EXECUTED in duplicate on the date first written above.

CITY OF LAS CRUCES

By: ______________________________
Ifo Pili
City Manager

COUNTY OF DOÑA ANA

By: ______________________________
Fernando Macias
County Manager

APPROVED AS TO FORM:

____
City Attorney

____
County Attorney

STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION

By: ______________________________

Cabinet Secretary Designate

Date: ______________________

APPROVED BY:

____
Office of the General Counsel

Exhibit "B"

MEMORANDUM OF UNDERSTANDING OF FISCAL AGENT AGREEMENT
BETWEEN THE CITY OF LAS CRUCES, NEW MEXICO AND
THE ANIMAL SERVICES CENTER OF THE MESILLA VALLEY

This Memorandum of Understanding (referred to herein as the "MOU") is entered into by and between the **City of Las Cruces** (referred to herein as the "City") and the **Animal Services Center of the Mesilla Valley** (referred to herein as the "Center.")

Whereas, the Center seeks to retain the services of the City as its fiscal agent; and

Whereas, the City has previously served as the fiscal agent for the Center and has agreed to perform the duties of fiscal agent for the Center; and

Whereas, the Center and the City desire to establish terms under which the Center can employ the City to perform essential fiscal duties for the Center as set forth in this MOU;

IT IS THEREFORE MUTUALLY AGREED BY AND BETWEEN THE PARTIES:

1. PURPOSE

The purpose of this MOU is to employ the City to perform some of the essential fiscal duties for the Center which are required for effective operations. The method by which the purposes of this MOU will be accomplished are as follows:

a. The City shall be the fiscal agent for the Center. The City shall serve in this capacity until such time as the Board of Directors (the "Board") of the Center or the City shall take formal action terminating this MOU. The duties of the City shall be those listed in Section 2 and shall be performed by the City unless the Board and the City make provisions for the services to be otherwise performed or until such time as the services are rendered redundant.

b. In addition to all of its other functions, the Center shall continue to perform the functions listed in Section 3 but in no event shall the Center act or assume any obligations or duties which would be in contravention of this MOU, the Joint Powers Agreement of the Center and/ or any applicable law.

2. DUTIES OF THE CITY

a. The City shall provide the following financial services as fiscal agent:
   1) Maintain fiscal records in accordance with generally accepted accounting principles and procedures.
   2) Maintain a uniform system of accounts, consistent with the current City account structures with additional accounts, as necessary.
   3) Provide procurement support by coordinating the preparation and administration the evaluation of bids and proposal, selection of contractors,

negotiation of contracts, and purchase order processing to procure the most cost-effective supplies, materials and services from highly qualified and responsive vendors.

4) Provide support to the state and serve as the Center's Chief Purchasing Officer (CPO).
5) Provide administration and coordinates the Center's purchase card program to ensure compliance.
6) Timely process Center's approved payments to contractors and/or vendor and/or operator in accordance with contract obligations and in compliance with City work process and requirements.
7) Record cash deposits made and reported daily by the Center incompliance with applicable City policy.
8) Provide accountability of all disbursements and advise the Center regarding disbursements that need correction or additional information based on information provided by the Center.
9) Record accounts receivable in general ledger account based on the information provided by the Center.
10) Prepare unaudited quarterly financial reports and present to the Center's Board; may provide monthly financial reports to the Center's Finance Committee as requested.
11) Prepare the Center's Annual Comprehensive Financial Report in accordance with generally accepted accounting principles (GAAP). The Center's financial statements shall be audited by an independent CPA selected by the fiscal agent and all applicable reports shall be included in the annual audited financial statement referred to herein. Such audit shall be performed in accordance with government audit standards. The audit may be performed in conjunction with the fiscal agent's annual audit as required by the Office of the State Auditor.
12) Provide budget forms and support to the Center for annual and mid-year budget preparation and review.
13) Record and tag the Center's fixed assets in the City's Enterprise Resource Planning system in accordance with the City's Capital Policy. Conduct biennial

physical inventory of the Center's fixed assets and record in an inventory report, certified by the Center, in accordance with NM State Audit Rule.

14) Charge in its discretion monthly interest that accrues when Center operations result in a negative cash position based upon completely updated transaction processing.
15) Bill and collect all financial contributions from both the City and Dona Ana County.
16) Review and post all revenue or budget adjustments for the Center as directed by its Director or his or her designee consistent with the authority granted by the Board.
17) Provide training for permissions and use of the City's Enterprise Resource Planning system as provided for City employees utilizing methods determined by the City.

b. The City shall provide the following human resource services as fiscal agent:

1) Provide employees of the Center access and benefit administration and enrollment opportunities to City insurance such as employee health, dental, and life insurance plans, as provided for City employees utilizing forms and methods determined by the City.
2) The fiscal agent shall house all personnel files of Center employees. The Director shall be responsible for providing updated personnel documentation to the fiscal agent to maintain said files.
3) The fiscal agent shall provide human resource in-processing and maintenance for Center employees' payroll system based upon the payroll data provided by the Director.
4) Maintain payroll records based on data entry performed by the Center, withholding deposits, payroll taxes and other information.
5) Make payments on behalf of the Center and its employees for all state and federal taxes associated with the operations of the Center, including, but not limited to, income taxes and other withholdings provided for employees.
6) Issue bi-weekly payroll through direct deposits or other methods determined by the City.

7) Make payments on behalf of the Center for employees and employer's contributions to Public Employee Retirement Association (PERA).
8) Comply with all state and federal reporting and payment requirements. Perform payments of payroll using City software programs. No special software accommodations for changes will be provided. Although these services are to be provided using standard City forms and checks, it is understood that the checks and payments issued hereunder are issued on behalf of the Center, not the City.
9) Administration of a tuition reimbursement program.

c. The City shall provide the following Risk Management services as fiscal agent:
   1) Administration of a risk management program, to include pre-employment testing, random testing, post-accident testing, and reasonable suspicion testing.

d. The City shall provide the following Information Technology services as fiscal agent:
   1) Purchasing standards for all computers.
   2) Information Technology Policies.
   3) Network support for all computer systems that are compliant with the City's technology standards.
   4) Provide remote support and maintenance of computers that that are part of the City's Active Directory domain and are compliant with the City's technology standards.
   5) Remote support, and maintenance of City approved software for computers that are part of the City's Active Directory domain.
   6) Supply, support, and maintain phones directly connected to the City's phone system.
   7) Support, and maintain fiber optics cabling and/or microwave systems that are used to connect to the City's network.
   8) End user licensing for network access, computer operating systems, information security software, and the City's office productivity suite.
   9) End user account and administrative support for the City's Enterprise Resource Planning system.

10) Provide training to comply with the City's cyber security training requirements as provided for City employees utilizing methods determined by the City.

e. The City shall provide the following Fleet services as fiscal agent:
   1) Repair and maintenance
   2) Purchasing of vehicles, to include acquisition of asset tags and state license plates.

f. As the fiscal agent, the City reserves the right to audit Center activities related to City policies adopted by the Center.

3. DUTIES OF THE CENTER

a. Adopt certain City codes, policies, procedures, and manuals, including Direct deposit for payroll, Procurement Code, Financial Policies and SOP's, Information Technology Policies, and Travel Policy.

b. Adopt a risk management policy on substance abuse prevention/detection to address pre-employment testing, random testing, post-accident testing, and reasonable suspicion testing. The Center will budget and pay for testing expenses.

c. Maintain responsibility for the collection and depositing of receivables and follow the City's Manager Cash Handling Policy

d. Dedicate staff time for the regular Budget management and attend budget trainings

e. Dedicate staff time for all interactions with the City's departments providing services to the Center.

f. Be responsible for submitting monthly reports to the City that are balanced as to billing amounts, payments made, to include unpaid balances at the end of each fiscal year.

g. Procure and contract an independent auditing firm for the Comprehensive Annual Financial Report when service is not contracted as part of the City's procurement.

h. Prepare, develop, circulate, review, and select any specifications and scope of services to be procured, for its operations as needed and forward the recommendation to the Board for approval, if necessary.

i. Comply with the City's regular budget cycles following the procedures and submittal deadlines established by the City.

j. Notify the City of any processing problems or anticipated delays.

k. Prepare and approve the Center own budget. Center will enter budget information into the Enterprise Resource Planning System.
l. Maintain responsibility for the calculations and amounts reported to the City for estimated revenues, capital expenditures, and operating expenses.
m. Maintain responsibility for all deficits or potential shortfalls.
n. Perform a preliminary fixed asset count for the Center's biennial fixed assets verification performed by the City. Once agreed upon, the Center will certify the asset list as true and correct.
o. Is responsible for all liability and property losses incurred.
p. Make necessary corrections or provide additional information on requisitions and purchase orders to the City as requested.
q. Center will be responsible for all financial resolutions to their Board. Exhibits needed for resolutions from the city will require 30 days notification.
r. Center shall abide by the City Procurement Code and Purchase Card Procedural Manual.
s. Comply with all City and County animal control ordinances and/or court orders as it relates to animals held and/or leaving the facility.
t. Center will budget and pay for access to the City's designated training system.
u. Cooperate with any City audits of activities related to City policies adopted by the Center.

4. COMPENSATION

a. In consideration of the performance of the forgoing services, the City, as fiscal agent for the Center, shall be compensated for services rendered to the Center as outlined in the City Cost Allocation Plan. Separate from the annual increases referenced in Section 4(b) below, any modifications to the base rate shall be approved in writing by both parties.

b. If the City Cost Allocation Plan has lapsed the current rate will be increased each year by the Consumer Price Index plus audit fees, personnel, or other direct costs. Such compensation shall be considered an operation and maintenance expense of the Center.

c. In the event that the Center takes over certain of the functions assumed by the City in this MOU, the charges will be pro-rated for the fiscal year in which the Center performs the services otherwise to be performed by the City.

5. **EFFECTIVE DATE.**

This MOU shall become effective on the date the MOU is approved by and fully executed by the City and the Center.

6. **TERM.**

This MOU shall be in effect from the effective date and shall remain in effect until written termination by the Parties.

7. **TERMINATION.**

This MOU may be terminated by either the City or the Center upon delivery of written notice at least ninety (90) days prior to the intended date of termination. In tendering such notice of termination, neither party may nullify its obligations already incurred for performance or failure to perform prior to the date of termination.

8. **STATUS OF CITY AND CENTER**

The City and the Center are separate legal entities. The City's agents and employees are not employees or agents of the Authority. The Center’s agents and employees are not employees of the City. No powers of the Center, expressed or implied, shall be granted to the City on behalf of the Center, excepting those set forth herein. In any event, the City's role as fiscal agent for the Center shall be limited to those purposes consistent with the Joint Powers Agreement of the Center, this MOU and all applicable laws.

9. **THIRD PARTY BENEFICIARIES**

By entering into this MOU the parties do not intend to create any right, title or interest in or for the benefit of any person other than the City and the Center. No person shall claim any right, title or interest under this MOU or seek to enforce this MOU as a third-party beneficiary of this MOU.

10. **LIABILITY.**

The Center is solely responsible for all liabilities related to their premises and the actions of their Officers, Members and Employees while within the course and scope of their operations. The Center shall indemnify, defend, and hold harmless the City of Las Cruces, its officers, agents and employees for any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this agreement. It is the intent of the Parties to this MOU to provide the broadest possible coverage for the City. The Center shall reimburse the City for all costs, attorney's fees, expenses, and liabilities incurred with respect to any litigation in which the Center is obligated to indemnify, defend, and hold harmless the City under this agreement.

Notwithstanding the foregoing, nothing in this MOU shall be construed as a waiver by the City or the Center, or of their respective employees, of its statutory immunity or limitations of liability to include, but not be limited to, those provisions set forth in the New Mexico Tort Claims Act.

11. INSURANCE

The Center shall procure and maintain for the duration of the MOU, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of their work or the work of their agents, representatives, employees and subcontractor. The minimum scope and limit of insurance shall be at least as broad as the Tort Claim Act of New Mexico.

The Center shall provide evidence of the above listed insurance by way of an Acord 25 certificate of insurance with endorsements meeting requirements listed above.

12. **AMENDMENT.**

This MOU shall not be altered, changed, or amended except in writing and signed by the parties.

13. **DISPUTE RESOLUTION.**

Should a dispute arise between the parties regarding this MOU, the parties shall first attempt to resolve their dispute by nonbinding mediation. Should mediation be unsuccessful, the dispute shall be settled by binding arbitration. The parties shall agree to a mutually acceptable arbitrator who shall render a final, binding decision upon the parties. The prevailing party, as determined by the arbitrator, shall be entitled to payment of reasonable attorney's fees, costs and expenses in addition to any other award conferred at the arbitration.

14. **APPLICABLE LAW AND VENUE.**

This MOU and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico, without regard to conflicts of law principles. Venue for mediation and arbitration shall be within the County of Dona Ana, State of New Mexico.

15. **NOTIFICATION.**

All notices required or permitted under this MOU shall be in writing and shall be deemed sufficiently served if served by Certified Mail addressed as follows:

TO ASCMV:Animal Services Center of the Mesilla Valley

3551 Bataan Memorial West

Las Cruces, New Mexico 88012

ATTENTION: Executive Director

With Copies to:

TO CITY: City Of Las Cruces

700 N. Main

Las Cruces, New Mexico 88001

ATTENTION: City Manager

With Copies to: Las Cruces City Attorney

700 N. Main

Las Cruces, New Mexico 88001

ATTENTION: City Attorney

16. **SEVERABILITY.**

If any clause or provision of the MOU is held to be illegal, invalid, or unenforceable, then it is the intention of the parties that the remainder of the MOU shall remain in full force and effect.

17. **ENTIRE AGREEMENT.**

This MOU incorporates all the agreements, covenants, and understandings between the City and the Authority and all such covenants, promises, and agreements have been merged into this MOU. No prior agreement, covenant or understanding, verbal or otherwise, of the parties or their agents shall be valid or enforceable unless embodied in this MOU or upon appropriate amendment to this MOU as described in Paragraph 5.

IN WITNESS WHEREOF, this MOU will become effective upon its approval and execution by the City and the Center.

CITY OF LAS CRUCES:

______________________________ ____________________

By: Date

ATTEST:

______________________________ ____________________

By: Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

______________________________ ____________________

Attorney for the City of Las Cruces Date

ANIMAL SERVICES CENTER OF THE MESILLA VALLEY:

______________________________ ____________________

Director Date

Animal Services Center of the Mesilla Valley

ATTEST:

______________________________ ____________________

Dona Ana County Clerk Date

APPROVED AS TO LEGAL FORM AND SUFFICIENCY:

______________________________ ____________________

Name Date

Attorney for Animal Services Center of the Mesilla Valley

Attachment “A”

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~~FIRST~~ SECOND AMENDED JOINT POWERS AGREEMENT TO ESTABLISH THE ANIMAL SERVICES CENTERS ~~OF~~ FOR THE MESILLA VALLEY AND TO PROVIDE FOR THE FINANCING, OPERATION AND MAINTENANCE OF THE CENTERS

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THIS ~~First~~ Second Amended Joint Powers Agreement (“JPA”) is entered into between the City of Las Cruces (“City”), a New Mexico home rule municipality, and the County of Doña Ana (“County”), a Class A New Mexico county, hereafter collectively referred to as the “Parties”, to create the Animal Services Center for the Mesilla Valley, here-after referred to as “Center”, on this ____ day of ______________, 20~~11~~2~~2~~3, and is effective as of the date of approval by the New Mexico Department of Finance and Administration.

Commented [CT1]: Added this so "Center" will be recognized later in JPA.

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BACKGROUND

1. The City owns the animal shelter real property and all improvements thereon located at ~~3551~~ 3551 and 3543 Bataan Memorial West (“Facility”). ~~The Facility had been operated for a number of years by a third party~~third-party ~~contractor, the Dona Ana County Humane Society (“DACHS”).~~ The City and County have been the primary financial supporters of the Facility.

2. On January 29, 2008, the City and County entered into a Memorandum of Agreement (“MOA”) to temporarily operate the Facility after DACHS notified the Parties that it would no longer operate the Facility. Efforts by the City and County to solicit a new animal shelter operator were unsuccessful.

3. The City and County determined that it was imperative that the Parties enter into a ~~joint powers agreement~~JPA, pursuant to the Joint Powers Agreements Act, NMSA § 11-1-1, et seq., to create an independent public agency to provide regional animal shelter services to be named the “**Animal Services Center of the Mesilla Valley**” (“Center”) and to set out the general principles concerning responsibility for operation of the Center and the funding sources to pay for the costs of providing such services.

4. The Parties have created an independent public agency tasked to operate the Center. This public agency will consist of a Board of Directors (“Board”) comprised of City and County elected officials or staff, a Chief Executive Officer (“Director”) hired by the Board, and employees of the public agency hired by the Director to operate the Center and the Facility.

5. This JPA replaces any prior JPA’s between the Parties concerning the Facility including the JPA between the Parties dated January 21, 1985 for the lease and use of the

proposed animal shelter, and the JPA between the Parties dated August 4, 2008 which JPA established the Center.

6. ~~The 2008 JPA, which is amended herein, provided that the City would transfer ownership of the Facility to the Center. The City acquired ownership of the Facility and surrounding land in 1983 by Special Warranty Deed from the City of Albuquerque to the City of Las Cruces recorded with the Office of the Dona Ana County Clerk on June 10, 1983. The deed conveyed 15.1008 acres, more or less (the "Real Property"), to the City of Las Cruces. On __________ 2019 the City purchased the 15.1008 acres from the City of Albuquerque out right. While researching land records to prepare the necessary ownership transfer documents, City staff discovered that the 1983 deed from the City of Albuquerque to the City of Las Cruces contained a reversionary clause that may be triggered if the City deeded the Facility to the Center. Therefore, to minimize the risk of ownership of the Real Property reverting to the City of Albuquerque, the City will enter into a lease, license, or permitted use agreement with the Center for the Real Property located east of Rinconada Boulevard less any rights of way previously dedicated; and the City may enter into a lease, license, or permitted use agreement with the Center for the Real Property located west of Rinconada Boulevard less any rights of way previously dedicated. However, if the City of Albuquerque consents, the City will negotiate with the Center to transfer ownership of all or part of the Real Property to the Center.~~

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CONDITIONS

1. **Purposes** – The purpose of this JPA is to establish a mechanism for financing, ~~operating~~operating, and maintaining a regional animal shelter and related facilities. The purpose of the Center is to provide regional animal shelter services.

2. **Establishment** – The Parties hereby establish the Center to exercise in accordance with the JPA the powers common to each of the Parties. The Center shall be a public agency separate from the Parties.

3. **Service Area** – The service area of the Center shall be the City of Las Cruces and the unincorporated portions of the County of Doña Ana. The Board may change the Center's service area as it deems necessary.

4. **Real and Personal Property**

A. Real Property - Any of the Real Property and improvements located thereon leased, licensed, ~~permitted~~permitted, or transferred to the Center will be used by the Center solely for the purpose of implementing this JPA and operating and maintaining the Facility absent the express written consent of the City.~~nd~~ ~~and any additional facilities.~~

(1) The City shall enter into a lease, license, or permitted use agreement with the Center for the approximate 7.92668~~.4~~ acres of the Real Property located east of Rinconada Boulevard and north of Bataan Memorial West. This tract has a street address of 3551 and 3543 Bataan Memorial West and is improved and is legally described as Lot 2 Rinconada Summary Subdivision. ~~-~~ The existing Facility improvements consist of but are not limited to ~~a~~ two buildings and adjacent structures, a paved parking lot, and landscaping.

~~(2) The City may enter into a lease, license or permitted use agreement with the Center in the City's sole discretion for the approximate 4.0 acres of Real Property located west of Rinconada Boulevard and north of Bataan Memorial West. This tract is not improved.~~

(3) ~~The City may transfer ownership of all or part of the Real Property to the Center if the City secures permission to do so from the City of Albuquerque.~~

(4) Any lease, license, or permitted use agreement of the Real Property will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council and the Center Board or its successor. ~~, and will contain language deemed necessary to minimize the risk of ownership of the Real Property reverting to the City of Albuquerque.~~

(5) Any agreement transferring ownership of all or part of the Real Property to the Center will comply with applicable state statutes and municipal ordinances. Any such agreement will be subject to the approval of the City Council, the Center Board or its successor. ~~, and, if deemed necessary, the approval of the City of Albuquerque.~~

B. Personal Property – Ownership of any personal property located within any building on the Real Property that is not considered to be a fixture shall be transferred by the Parties to the Center and shall be used by the Center solely for the purpose of implementing this Joint Powers Agreement and operating and maintaining the Facility.

5. **Center Organization**

A. Board – The Center shall be governed by the Board. The Board shall establish its own policies and procedures to carry out the purposes of this JPA.

B. Any change in board structure and/or voting rights is outside the authority of the board and must be approved in writing by all parties to the JPA.

Commented [CT2]: I am not aware of any lease or use agreement currently in place. Does the city intend to do so? Do we keep or jettison?

Commented [BH3]: This section can be stricken. The +-4.0 acres was traded to Eddie Binns in 2020 in exchange for the land for the Veteran's Park parking expansion

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Commented [BDL4]: Under review by CLC Legal

Commented [CT5]: Eric will send new language

Commented [CT6R5]: Eric will get language

Commented [CT7R5]: Eric will send new language

C. Members – The Board shall consist of ~~six~~ eight (~~6~~8) voting members, who shall be one elected official from the city and one from the county~~;~~, ~~members shall be~~ the City Manager, ~~and~~ the County Manager, or their designees. ~~;City and County elected officials or staff, and two (2) ex-officio members.~~ ~~Three (3)~~ Four (4) public ~~appointed~~ voting members ~~shall be~~ appointed by ~~the Mayor with the advice and~~ consent of the parties governing bodies (two (2) by the city, ~~2~~two (2) -by the county) ~~City Council, and two (32) voting members shall be appointed by the parties governing parties~~. ~~County Commission.~~ ~~The two (2) ex-officio members shall be the City Manager and the County Manager or their designees.~~

(1) The term of an elected official shall expire when ~~his or her~~their official term in office is completed, or at the time the respective governing bod~~ies~~y appoints a replacement. All members may be reappointed. Appointe~~des~~es can serve a maximum of two (2), two (2) year terms. ~~City staff members, if any, are subject to the term limitations and other provisions of the City's Board Ordinance.~~

(2) Attendance is required for all Board meetings. A member ~~shall~~ may be removed, by a majority board vote, for failure to attend more than ~~twenty-five~~fifty (~~25~~50)~~%~~ percent of the regular meetings in any twelve (12) month period.

(3) ~~A County appointed~~ All members may be removed for any acts of nonfeasance~~.~~, ~~maleficence~~malfeasance, misfeasance ~~other reason~~ by a majority vote of the governing board that appointed the member. ~~County Commission.~~

~~(4) A City appointed member may be removed for any other reason with five (5) affirmative votes of the City Council.~~

~~C~~D. Voting and Quorum – A majority of the voting members shall constitute a quorum for ~~the transaction of business~~all meetings in accordance with the Open Meetings Act. A majority vote of the quorum shall be required for the adoption of a resolution. In the event that the number of regular voting members in attendance at any meeting of the Board is insufficient to establish a quorum for the transaction of business, an ex-officio member in attendance at such meeting may act as an alternate member for their respective governmental body's regular voting member for the purpose of establishing a quorum, and may vote on matters before the Board at such meeting.

~~D~~E. Meetings – Meetings shall be conducted in accordance with Robert's Rules of Order.

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Commented [CT8]: We discussed only 2 of the three having to be elected officials. I see 5B giving the freedom to choose that. Do we need to make it more restrictive by adding that two from each side must be elected officials?

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Commented [CT9]: We discussed only 2 of the three having to be elected officials. I see 5B giving the freedom to choose that. Do we need to make it more restrictive by adding that two from each side must be elected officials?

Commented [CT10]: Eric will look into on what this means

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Commented [CT11]: Is there a reason this is not "majority"?

Commented [CT12]: Does Roberts rules state if no majority then no meeting? There has been some issue with no board majority, then no meeting. I think the meeting should go forward, even if no majority so the board can still get the info as needed from presentations, especially if we do quarterly meeting. I also think this (meetings go forward but cannot vote) needs to go in the JPA.

Commented [CT13R12]: Jonathan will look into.

(1) Regular Meetings – The Board shall hold one regular meeting each ~~month.~~ q~~Q~~uarter.

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(2) Special Meetings – Special meetings of the Board may be called in accordance with the New Mexico Open Meetings Act.

(3) Notice of Meetings – All meetings of the Board shall be held in accordance with the New Mexico Open Meetings Act.

(3~~4~~) Minutes – The Board shall keep minutes of all meetings and shall have draft minutes available within 10 working days in accordance with the Open Meetings Act. ~~and, as soon as possible after each meeting, shall forward a copy of the minutes to each member of the Board, including ex-officio members~~.

~~E~~F. Director – The Center will be led by a Director who will be hired by the Board pursuant to an employment agreement. The Director will report to the Board. The Director's job performance will be evaluated by the Board at least yearly. The Director shall conduct the business of the Center, serve as personnel officer, budget officer, property custodian, and shall generally aid and assist the Board in the exercise of its duties and responsibilities. Upon request, the Director will provide reports to the City and County on all matters relating to the operation of the Center.

~~F~~G. Employees – The authority and direction of the Director will be implemented by employees hired by the Director to operate the Center.

~~G~~H. Powers – The Board is authorized to exercise all powers common to each of the Parties with respect to the purposes of the Center, including but not limited to the following:

(1) To make and enter into contracts.

(2) To apply for and accept grants and contributions.

(3) To employ or contract for the services of employees, consultants, and such other persons as it deems necessary, and under such terms and conditions as may be established by the Board in the agreements relating to such persons.

(4) To make plans and conduct studies.

(5) To acquire, construct, operate and maintain buildings, improvements, and facilities.

(6) To acquire and dispose of real property.

(7) To establish a mission statement.

(8) To sue and be sued in its own name.

(9) To borrow money if approved by the governing bodies of the Parties and further subject to the provisions of the Joint Powers Agreements Act and the constitutional provisions of the State of New Mexico.

(10) To set fees and charges.

(11) To bill and collect fees and charges set by the Center and establish a procedure for the resolution of disputed fees and charges.

(12) To adopt resolutions necessary to carry out the purposes of this JPA.

(13) To obtain necessary public liability and property insurance coverage. Such coverage shall comply with the statutory requirements of the New Mexico Tort Claims Act and shall include coverage for civil rights claims.

(14) To create from time to time *ad hoc* committees and/or advisory boards of suitable membership, scope, and duration for the purpose of providing advice and recommendations on particular matters of interest to the Board.

~~H~~I. Purchase and Ownership of Assets – All assets of the Center, whether real or personal property, including those assets that may be transferred ~~to it~~ by the City and the County, but excluding the Real Property and improvements located thereon leased, licensed, or permitted to the Center, shall be owned in the name of the Center.

~~I. Procurement and Payment for Costs and Procured Services – The Director shall work with the fiscal agent to accomplish procurement of all goods and services in compliance with the fiscal agent's procurement code and consistent with New Mexico law. Such procurement shall include all professional and technical services as well as operating costs such as supplies, services, workers' compensation, general liability, and commercial insurance for the Facility and contents, and construction services deemed necessary for the operation of the Center.~~

J. Budgetary Reserve – Any annual revenue in excess of operating ~~and maintenance~~ and capital expenditures ~~shall be used to create special reserve funds for capital acquisition or~~ shall be carried over to the next fiscal year. ~~operating carryover as determined through the budget process.~~

6. **Fiscal Agent**

The City shall be the Fiscal agent for the Center and responsibilities of the Center and the City shall be documented in a separate, agreed upon Memorandum of Understanding.

A. ~~The City shall be the fiscal agent for the Center for the term of this JPA.~~

~~B. The duties of the fiscal agent shall be as follows:~~

Commented [CT14]: Clint to look into.

Commented [CT15R14]: Eric will look into with legal in relation to real property.

Commented [BDL16]: Moved to MOU

Commented [JT17]: Maintenance is part of operating expenditures

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Commented [JT18]: Shall be used? Currently they do not have a required reserve, may need to remove this item.

Commented [BDL19]: Entire section moved to MOU

Commented [BDL20R19]: With the exception of the first sentence.

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~~(1) Bill and collect all financial contributions from both Parties as provided herein.~~

~~(2) Maintain separate accounting designated specifically for the Center revenue and operational accounts and related budgets.~~

~~(3) Make all revenue or budget transfers and all disbursements for the Center as directed by its Director or his or her designee consistent with the authority granted by the Board.~~

Commented [LD21]: Work on this with Matt

~~(4) Charge in its discretion monthly interest that accrues when Center operations result in a negative cash position based upon completely updated transaction processing.~~

~~(5) Not allow any department of the fiscal agent to charge against any account unless the department submits an invoice with supporting documentation approved by the Center Director or Board, consistent with policies and procedures established by the Board and Director and the fiscal agent's procurement code and consistent with New Mexico law.~~

Commented [JT22]: Internal billings are done thru MUNIS, no invoice is created. May need to remove this section or reword

~~(65) Prepare financial reports for the Center on an annual basis and as may be requested by the Center's Board from time to time, andtime and present the reports to the Center's Board for review and approval.~~

Commented [JT23]: Annual basis? We prepare monthly but more beneficial doing quarterly
Prepare unaudited quarterly financial reports and present to the Center's Board, may provide monthly finance reports to the Center's Finance Committee as requested.

~~(76) Strictly account for all receipts and disbursements made pursuant to this JPA in accordance with all applicable laws and regulations and with the fiscal agent's procurement code and consistent with New Mexico law.~~

~~(8) Account for all transactions on behalf of the Center including those related to fixed assets and provide for internal controls relating to the acquisition and disposal of fixed assets and proper recording of all liabilities.~~

Commented [LD24]: See 10 below

~~(97) Provide all necessary accounting records sufficient to facilitate a "stand alone" financial statement. Prepare the Center's Annual Comprehensive Financial Report in accordance with generally accepted accounting principles (GAAP). The Center's financial statements shall be audited by an independent CPA selected by the fiscal agent and all applicable reports shall be included in the annual audited financial statement referred to herein. Such audit shall be performed in accordance with government audit standards. The audit may be performed in conjunction with the fiscal agent's annual audit as required by the Office of the State Auditor.~~

Commented [JT25]: The Center's ACFR is a stand-alone separate from the City's

~~(108) Record and tag the Center's fixed assets in the City's Enterprise Resource Planning (ERP) Munis system in accordance with the City's Capital Policy. Conduct bi-~~

7

~~annual physical inventory of the Center's fixed assets and record in an inventory report, certified by the Center, in accordance with NM State Audit Rule.~~

~~C. Personnel Administration~~

~~(1) The fiscal agent shall house all personnel files of Center employees. The Director shall be responsible for providing updated personnel documentation to the fiscal agent to maintain said files.~~

~~(2) The fiscal agent~~The Human Resources (HR) Department shall ~~provide human resource in processing~~in process newly hired employee paperwork and maintain ~~and maintenance for~~ the Center employees' ERP ~~payroll system based upon the payroll data provided~~ for the Center employees ~~by the Director.~~

~~D. Program participation~~

~~The fiscal agent shall include the ASCMV employees in the following programs.~~

~~monthly random drug testing program.~~

~~Employee training services.~~

~~Employee assistance program~~

~~E. Information Technology Services~~

~~(1). **The City shall provide for 24 months from the date of this signed agreement, the following information technology services as fiscal agent:**~~

~~Provide purchasing standards for all computers.~~

~~Information Technology Policies.~~

~~Provide network support for all computer systems that are compliant with the City's technology standards.~~

~~Provide remote support and maintenance of computers that that are part of the City's Active Directory domain and are compliant with the City's technology standards.~~

~~Provide remote support, and maintenance of City approved software for computers that are part of the City's Active Directory domain.~~

~~Supply, support, and maintain phones directly connected to the City's phone system.~~

~~Support, and maintain fiber optics cabling and/or microwave systems that are used to connect to the City's network.~~

~~Provide end user licensing for network access, computer operating systems, information security software, and the City's office productivity suite.~~

~~Provide end user account and administrative support for the City's ERP system.~~

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Commented [JR26]: Risk? I'll support if the ASCMV follows all Drug Test related policies, including mandatory drug testing of new hires, and not hiring applicants with positive test results. There's no point, in my opinion, of doing randoms, when the other policies aren't followed.

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Commented [JR27]: Please be more specific. What type of training and is it online or in person that you are requesting? Related to Munis only.

Commented [JR28]: These services are provided for by the State of NM thru the benefit plans.

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~~After the initial 24 months of this agreement, The City shall continue to provide the following IT Services:~~

~~Provide end user account and administrative support for the City's ERP system.~~

~~Support and maintain a network connection to the City's ERP system.~~

~~D. Limitations on Duties The fiscal agent shall not be required to provide any services not described herein, including but not limited to:~~

~~(1) Training services.~~

~~(2) Benefits, programs or services specifically created for use by the fiscal agent's employees, other than administration of benefits provided through the Center's personnel policies.~~

~~(3) Legal services.~~

~~E. Compensation The fiscal agent shall be compensated for services rendered to the Center as set forth herein in the amount of $86,000 per year base rate as of FY08-09. The base rate will be increased each year by the Consumer Price Index plus audit fees or other direct costs. Such compensation shall be considered an operation and maintenance expense of the Center and may be modified by resolution of the Board with the consent of the fiscal agent.~~

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7. **Duties, Rights and Authority of the Center**

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The purpose of the ASCMV is to continue providing and maintaining a safe place for county and city domestic animals and provide a positive live outcome whenever possible through programs managed by the ASCMV, included but not limited to:

A. Accepting domestic animals for impound from county, city and other contracting entities as capacity allows, then accepting impounds as set in ASCMV policy and procedure.
B. Operating and maintaining a volunteer program to help socialize, exercise, and engage animals and help throw-out the ASCMV daily duties.
C. Operate and maintain a foster program to focus on the infant, young, senior, injured, and sick animals of the ASCMV.
D. Operate and maintain a community cat program to increase the sterilization and vaccination of community cats in the Dona Ana County area.

E. Operate and maintain an adoption program of available animals.

F. Operate and maintain a redemption program where impounded animals are redeemed by their owner.

8~~7~~. **Financial Contributions of City and County**

A. Contributions for Operating Budget -

(1) The Center shall, on an annual basis, submit a proposed operating budget to the Board, which will be taken to the City Council and County Budget Work Sessions each year. Proposed budget ~~City and to the County~~ will be based on the Center's ~~approved budget and any budget adjustments from the prior fiscal year~~operating needs.~~, plus proposed increases/decreases for the new fiscal year.~~ The Center shall also submit proposed capital improvements and special projects budgets when required by the Parties.

(2) The Board shall review and make recommendations regarding any proposed budget prior to the Center submitting the proposed budget to the Parties for consideration.

(3) ~~The Center shall comply with the City's regular budget cycles following the procedures and all budgetary submission deadlines and procedures established by each of the Partiesthe City.~~

~~(4) Proposed budgets shall be cooperatively reviewed Jointly by City and County Staff, who shall provide budget development guidance and advice to the Center.~~

(~~5~~3) The Center's budgets are subject to appropriation of sufficient funds by the City and County and shall be deemed approved upon approval of the City's and the County's budgets.

(~~6~~4) The Parties intend to each pay for 50% of the Center's net operating budget; however, the Parties' respective financial contributions for the Center's net operating budget for a particular fiscal year will be whatever sum is approved in the City's and County's respective budgets for that expense.

(~~7~~5) The Parties will re-evaluate every three (3) years from the effective date of this JPA whether a 50% allocation to each Party for the Center's net operating budget is reasonable based on the total animals attributable to each Party as set forth below. The Parties may re-allocate the percentage of their financial contributions based on the re-evaluation.

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Commented [JT29]: Center's Board?

Commented [JT30]: Comply with the City's regular budget cycles following the procedures and submittal deadlines established by the City.

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Commented [JT31]: ?

Commented [LD32R31]: Not sure about this one either. I think we took care of this in (3).

Commented [BDL33]: MOU

Commented [CT34]: City and County need to agree on this

(~~8~~6) Starting January 1, 2012, the Center shall maintain records as to the total number of animals handled by the Center and where each animal came from (City or County); and then shall calculate the percentage of total animals attributed to the City and to animals attributed to the County. This calculation may be used by the Parties when they re-evaluate the operating budget contribution percentages as provided above. The animal head count report shall include animals brought to the Center by City or County animal control officers, by City or County residents, or held under court order. Animals that are abandoned at the Center without identification shall be evenly allocated between the Parties.

B. Contributions for Capital Improvements – The Parties may require that the Center develop and submit a capital improvements plan and budget, and may provide funding for capital improvements shown on the plan in the Parties' sole discretion.

C. Contributions for Special Projects — The Parties may require that the Center develop and submit a special projects plan and budget for projects not covered in the Center's operating budget or capital improvements budget, and may provide funding for special projects in the Parties' sole discretion.

D. Payment of Contributions –

(1) The ~~fiscal agent~~Parties shall pay to the Center on or before July 15 of the upcoming fiscal year twenty-two percent (22%) of the total financial contributions budgeted by the Parties for that fiscal year. The remaining budgeted financial contributions will be paid ~~by the fiscal agent~~ to the Center in eleven (11) equal payments due on or before August 15 and on the 15th day of each month thereafter for the remainder of that fiscal year.

(2) The fiscal agent shall ~~monthly~~ invoice ~~each Party~~the County monthly for its budgeted financial contribution for the upcoming month. Payment is due to the fiscal agent ~~by each Party~~ within thirty (30) days of receipt of the invoice.

9~~8~~. **Term and Termination**

A. Term – The term of the JPA shall be ~~perpetual~~ ~~reviewed~~renewed every 5 years~~.~~ If any dispute arises concerning this JPA, the Parties agree to attempt to resolve such dispute in an amicable manner at the least possible expense. If such dispute cannot be resolved and either Party deems the dispute to be of major proportion, then the dispute shall be submitted for mediation in compliance with the New Mexico Mediation Procedures Act.

B. Mutual Termination of JPA –

(1) The JPA may be terminated by the mutual consent of the Parties.

Commented [JT35]: July 15, Should follow the billing cycle

Commented [JT36]: (1)Cover the City, (2) should only mention the County

Commented [CT37]: Mary Lou will look into how much County pays at start of fiscal year.

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(2) If the Center is mutually terminated where there is a successor public entity which will carry on all of the activities of the Center and assume all of its obligations, then all property, rights and assets of the Center shall be transferred to the successor public entity.

(3) If the Center is mutually terminated when there is no successor public entity which will carry on any of the activities of the Center or assume any of its obligations, then all property, rights and assets of the Center shall be equally divided between the Parties.

(4) If the Center is mutually terminated when there is a successor public entity which would undertake some, but not all, of the functions of the Center and assume some, but not all, of its obligations, then all property, rights and assets of the Center shall be allocated by the Board between the successor public entity and the Parties.

(5) In the event that the Center is mutually terminated under the circumstances falling within (3) and (4) above, all decisions of the Board with regard to the property, rights and assets to be transferred to the Parties or any successor public entity shall be final.

C. <u>Unilateral Termination of JPA</u> –

(1) If either Party unilaterally withdraws from the JPA without the consent of the other Party, then all of its rights under the JPA shall be transferred to the remaining Party and the JPA shall be deemed to be terminated. The Party unilaterally withdrawing shall have no claim to a division or partition of Center assets, or a right to use services of the Center.

(2) The failure of either Party to pay its monthly financial contributions within 90 days of billing shall be considered a unilateral withdrawal.

9. <u>**Miscellaneous Provisions**</u>

A. <u>Headings</u> – The headings of the various sections of this JPA are inserted only for convenience or reference, and are not intended nor shall they be construed to modify, define, limit or expand the intent of the Parties.

B. <u>Entire Agreement</u> – This JPA represents the entire agreement and understanding between the Parties.

C. <u>Amendments</u> – The Parties acknowledge and agree that this JPA may be amended in writing upon approval of the governing bodies of each Party and that any such amendments shall not become effective until signed by the Parties and approved by the New Mexico Department of Finance and Administration.

D. Effective Date – This JPA shall become effective upon execution by the Parties and approval by the New Mexico Department of Finance and Administration.

10. **Tort Claims Act** – By entering into this JPA, the Parties and their "public employees" as defined in the New Mexico Tort Claims Act, NMSA 1978, § 41-4-1, et seq., do not waive sovereign immunity or any defense or limitation of liability pursuant to law. No provision of this JPA modifies or waives any provision of the New Mexico Tort Claims Act.

EXECUTED in duplicate on the date first written above.

CITY OF LAS CRUCES

By: ______________________________
~~Robert L. Garza, P.E.~~ Ifo Pili
City Manager

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COUNTY OF DOÑA ANA

By: ______________________________
~~Brian D. Haines~~ Fernando Macias
County Manager

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APPROVED AS TO FORM:

____
~~Harry S. (Pete) Connelly~~ ~~Jennifer Vega-Brown~~Jocelyn Garrison
City Attorney

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~~John W. Caldwell~~
County Attorney

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STATE OF NEW MEXICO, DEPARTMENT OF FINANCE AND ADMINISTRATION

By: ____________________________
~~Richard E. May~~
Cabinet Secretary Designate

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Date: ________________________

APPROVED BY:

____
Office of the General Counsel

~~Make necessary corrections or provide additional information on requisitions and purchase orders to the City as requested.~~

24-049

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:**	November 6, 2023
Drafter:	Larry Nichols	**Department:**	Community Development
Program:	Office of the Director - Administrative	**Line of Business:**	Office of the Director - Adminstrative
Title:	**A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 375 KAREN AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, FIRE DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED.**		

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

PURPOSE(S) OF ACTION:
Abate and remove the structure at 375 Karen Avenue.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City of Las Cruces (City) has received complaints regarding the property at 375 Karen Avenue related to fire damaged and collapsing structure. The City's Chief Building Official submitted a property report with the findings of site and structural conditions included construction debris, severe hazards and fire damaged conditions which deemed the property substandard. Please see Attachment "A" for a more detailed summary of the conditions. The proposed resolution complies with state law and is a remedial measure taken to protect the health and safety of the community. Council approval is required in accordance with NMSA 1978, §3-18-5. The statute allows the governing body of a municipality to remove a structure that is a menace to the public comfort, health, peace, or safety.

SUPPORT INFORMATION:
Attachment "A" - 375 Karen Ave Property Report

PLAN(S):
City Council Strategic Plan, Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:
None

DOES THIS AMEND THE BUDGET?:
☐ Yes
☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the demolition of the building located at 375 Karen Avenue.
2. Vote "No"; this will not approve the demolition the building located at 375 Karen Avenue.
3. Vote to "Amend"; will require additional direction to staff.
4. Vote to "Table"; this will not allow for the building to be demolished.

RESOLUTION 24-049

A RESOLUTION APPROVING A NUISANCE, SUBSTANDARD STRUCTURE IN NEED OF ABATEMENT AT 375 KAREN AVENUE WITHIN THE CITY LIMITS OF LAS CRUCES, NEW MEXICO, SO RUINED, FIRE DAMAGED, AND DILAPIDATED, AS TO BE A MENACE TO THE PUBLIC COMFORT, HEALTH, PEACE, OR SAFETY AND THAT IS REQUIRED TO BE DEMOLISHED.

The City Council is informed that:

WHEREAS, the building, structure, or premises is located at 375 Karen Avenue, Las Cruces, NM; and

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

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

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

(I)

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

(II)

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

(III)

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

(IV)

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

Property Report

375 Karen Ave May 24, 2023

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

LCPD Brian Klimeck (575) 932-8009

Code – Officer Ellis (575-528-4525)

OWNER:

Owner Name Victoria and Lorenzo Chavez
Owner Address 189 Broadview Pl Las Cruces NM 88005
Legal Summary S: 1 T: 23S R: 1E BRM 9B PT OF TR 40, INST# 2208566
Parcel Number 4-006-133-364-508

SITE ADDRESS: 375 Karen Ave Las Cruces NM 88007

EXISTING ZONING: Residential

REQUEST: **Site assessment to determine property condemnation**

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

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

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

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

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

Section 104 and section 116

CODE ENFORECEMENT:	**unsafe structure /unsanitary premise**
	Post Notice of Condemnation
	Revoke Certificate of Occupancy
	unsafe structure – no entry

SUMMARY OF SITE ASSESSMENT: The site inspection determined that the property is unsafe for habitation. Due to the excessive Fire Damage, electrical hazards, inoperative plumbing, inoperative heating / cooling, unsanitary premise, structural failure of the residence, impeded egress from rooms and general debris surrounding the perimeter of the facility.

Therefore, the Community Development Department recommends the following action plan.

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

1) That the facility is substandard, unfit for habitation or use and a hazard to the public safety, and welfare; and
2) That it is an unsafe facility due to the physical condition of the living and sleeping rooms: and
3) That the Certificate of Occupancy be revoked; and
4) That the structure is not in substantial compliance with the municipal Building Codes regulating habitable occupancy; and
5) That the responsible party shall abide by all permitting requirements; and work be performed by NM Licensed contractors; and
6) That upon failure by the owner or any other interested party to comply with the order within 30 days of Unsafe Structure Notice, the City Community Development Department, may take whatever action is necessary to bring the property into compliance, including disconnect of utility service, and or demolition.

PROPERTY INFORMATON AND CHRONOLOGY:

An inspection report is available for review by the Community Development Department - Building Official for site condition and determination of corrective action.

According to City of Las Cruces Land Use Classification the property is listed as residential. The structure is a residential home. The structure is constructed of a combination of Wood frame and adobe walls, stucco exterior cover, CMU and asphalt rolled roofing material.

As of May 21, 2023, property taxes are current.

- 2021- March – First report of fire
- 2022-December- Fire damaging structural integrity
- 2023 – May – Unsafe Structure / Stop Work Order
- 2023 - May 10 – Notice of Condemnation posted.
- 2023 – June 15 – Report of fire

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT: Condemnation Notice / Unsafe structure was mailed to all property owners of the subject property on 5/10/2023.

The City's Code Enforcement Office and Las Cruces Police Department has received numerous complaints from the surrounding neighborhood.

Dona Ana County Treasurer
845 Motel Blvd.
Las Cruces, NM 88007

Account	Parcel Number	Receipt Date	Receipt Number
R0200597	4006133364508	May 2, 2023	2023-05-02-isabelh-18407

REALTEK INC
315 KAREN RD
LAS CRUCES, NM 88005

Situs Address	Payor
375 KAREN AVE	FAY SERVICING LERETA

Legal Description

S: 1 T: 23S R: 1E BRM 9B PT OF TR 40, INST# 2208566

Property Code	Actual	Assessed	Year	Area	Mill Levy
RESIDENTIAL LAND - 0100	6,800	2,267	2022	2IN_R	31.365
RESIDENTIAL IMPROVEMENT - 0120	63,575	21,192	2022	2IN_R	31.365

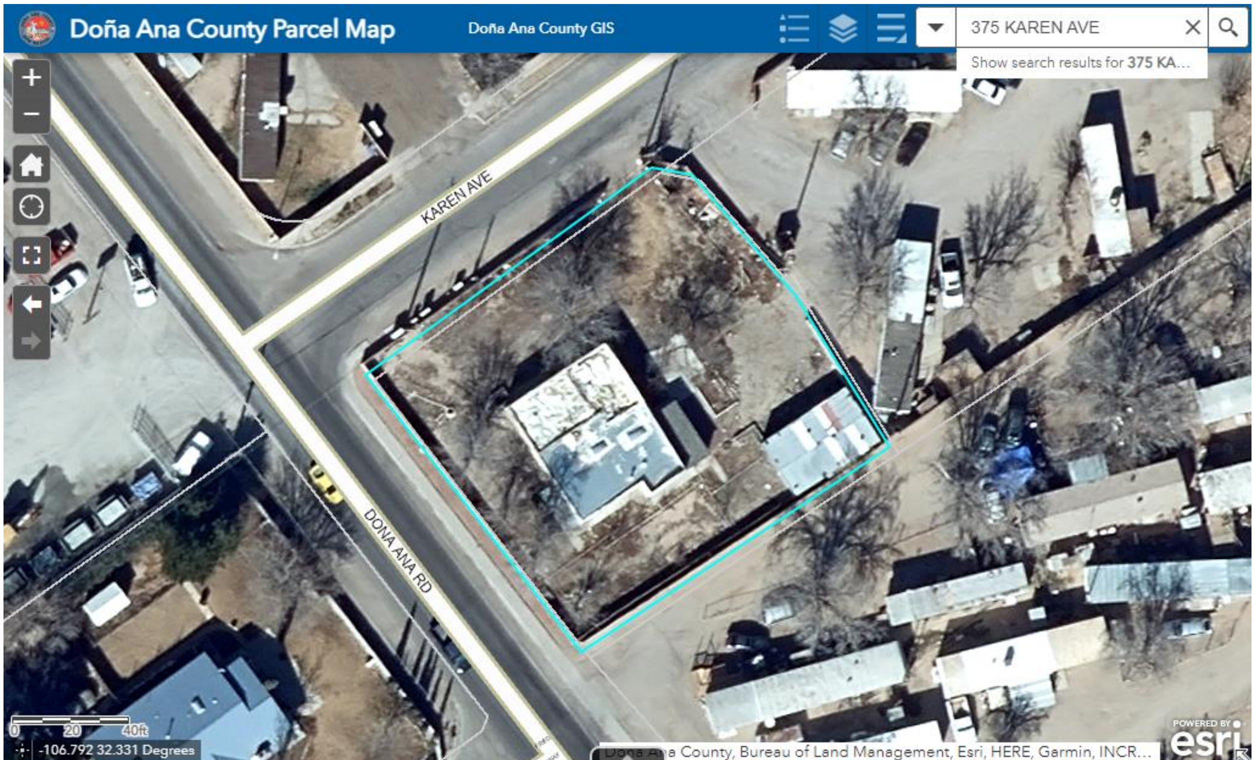
Payments Received

Check/MO	$367.90
Check/MO Number 1212958	

Payments Applied

Year	Charges	Billed	Prior Payments	New Payments	Balance
2022	Tax	$735.80	$367.90	$367.90	$0.00
				$367.90	$0.00
		Balance Due as of May 2, 2023			**$0.00**

ATTACHMENTS:
Vicinity map



24-050

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:**	November 6, 2023
Drafter:	Larry Nichols	**Department:**	Community Development
Program:	Office of the Director - Administrative	**Line of Business:**	Office of the Director - Administrative

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

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

PURPOSE(S) OF ACTION:

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

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

SUPPORT INFORMATION:

Exhibit "A" FY24 Fund Summary_CD
Attachment "A" - 643 E Picacho Ave Property Report
Attachment "B" - 643 E Picacho Ave Quote

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

ADA Advisory Committee

DOES THIS AMEND THE BUDGET?:

☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

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

Funding Source(s):
10146001-721080

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

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

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

RESOLUTION 24-050

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

The City Council is informed that:

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

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

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

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

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

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

(I)

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

(II)

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

(III)

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

(IV)

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

(V)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

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

Exhibit "A"

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

City of Las Cruces®
PEOPLE HELPING PEOPLE

Property Report

643 E Picacho July 25, 2023

STAFF CONTACT:	Larry F Nichols, CBO, CPM (575) 528-3340, lnichols@las-cruces.org __________________________ Building Inspector C. Grado (575) 528-3282 LCPD Code Officer Wieland (575-297-7672)
OWNER:	**Owner Name** CITY OF LAS CRUCES **Owner Address** PO BOX 20000 LAS CRUCES, NM 88004 **Legal Summary** Subd: COUNTY ASSESSORS PLAT 2 (BK 6 PG 64 - 477724) 346 Lot: PT OF LT 13 Block: 204 S: 7 T: 23S R: 2E **Parcel Number** 4-007-134-352-472
District:	1 - Councilor Gandara
SITE ADDRESS:	643 E Picacho Ave Las Cruces NM 88001
EXISTING ZONING:	RESIDENTIAL MEDIUM/HIGH DENSITY (R-2)
REQUEST:	**Site assessment to determine property condition**
SATUTORY AUTHORITY:	*Substandard dwelling (Section 60-13-9,60-13-10.3 and 60-13-44 NMSA 1978):* [14.5.1.3 NMAC -Rp14.5.1.2 NMAC,11/15/2016] LCMC Ord. No. 2478 Article II, Division 1, Sec, 30-137 14.5.1.12 Unsafe structure or other Life Safety Hazard: A.(2) and A. (3) LCMC 2015 International Building code, as adopted by NMAC 14.7.3.8 - 14.7.2.44 Section 104 and section 116

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

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

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

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

STAFF AND PUBLIC COMMENTS

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

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

PROPERTY INFORMATON AND CHRONOLOGY:

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

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

STAFF AND PUBLIC COMMENTS

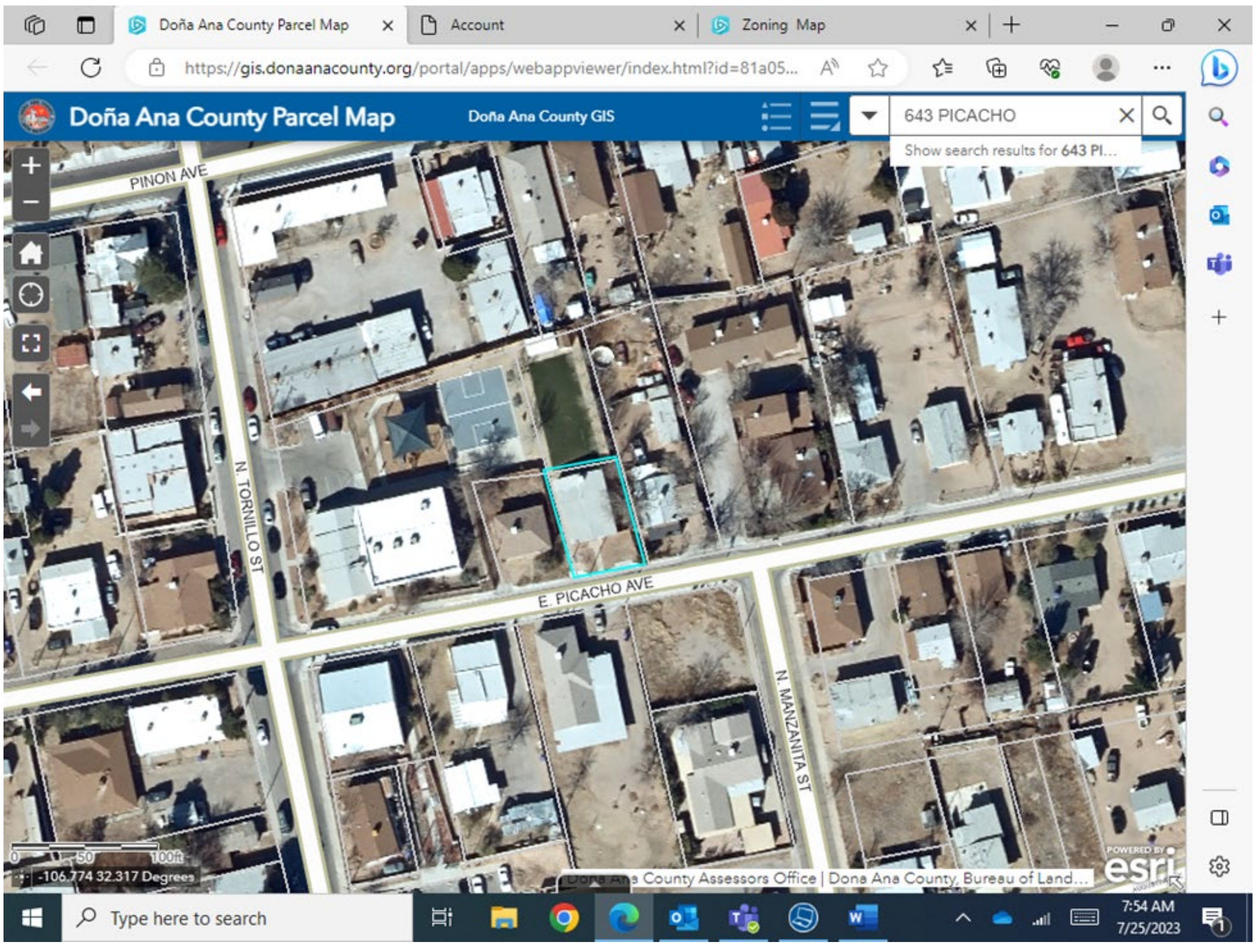
PUBLIC NOTIFICATION AND INPUT:

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

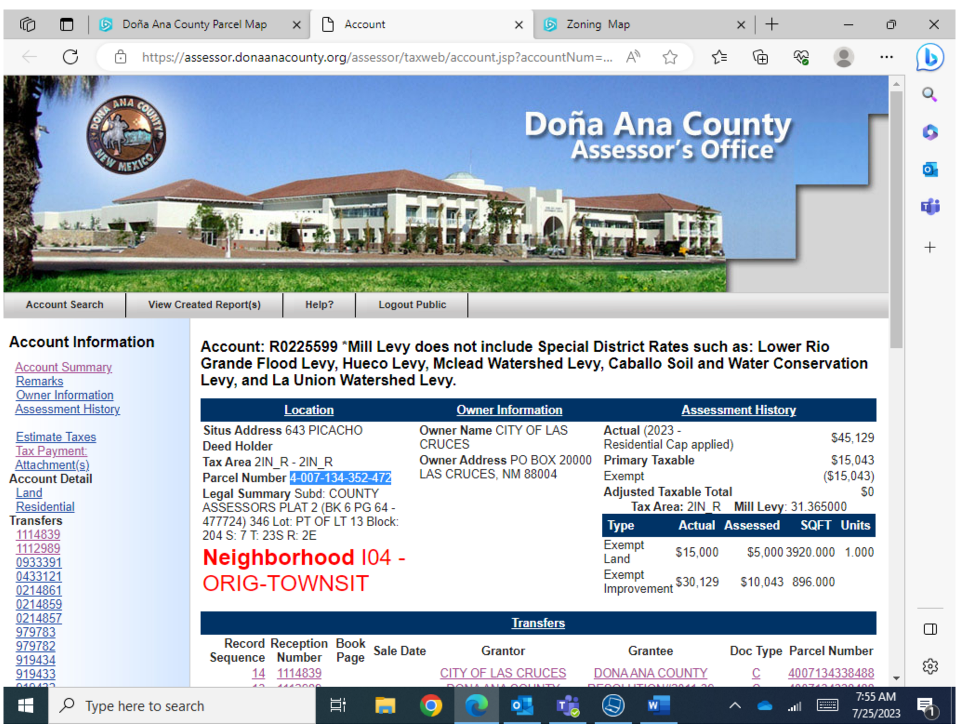
This property is City owned and being scheduled for demolition in 2023.

ATTACHMENTS:

Vicinity Map:



County Tax Assessors Information:



ATTACHMENT "B"

PROPOSAL

ESC19 Contract # 21-7410

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

DATE: 7/10/2023

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

DESCRIPTION	Cost
City of Las Cruces 643 E. Picacho Demolition of a House	
Demolition of an Existing House to include Removal/Disposal of any Concrete, Foundation, Utilities and Site Elements. Southwest Hazard Control Asbestos Testing Disposal Fees Hauling of Materials Off Premises Misc. Materials	$25,862.50

Subtotal:		$25,862.50
Tax:	**8.0625%**	$2,085.16
TOTAL:		$27,947.66

Prepared by:
Michael Q. Hernandez, Project Manager

24-051

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:**	November 6, 2023
Drafter:	Leeann DeMouche	**Department:**	Financial Services
Program:	Budget	**Line of Business:**	Fiscal Management
Title:	**A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) FY2024 BUDGET AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP) FOR VARIOUS CITY DEPARTMENTS.**		

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

PURPOSE(S) OF ACTION:
To request various budget adjustments for compliance and operational needs of the City.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
City of Las Cruces (City) staff recently prepared the first quarter budget adjustment. However, after the quarterly adjustments were approved by Council, some minor adjustments were requested for various programmatic, maintenance, and repair of City buildings and capital projects.

These adjustments include the following:

1. $285,000 for the repair of a broken water line on the property located at 530 N. Telshor Blvd (adjacent to I-25 and Lohman Ave);
2. $114,000 for additional funding and to amend the Capital Improvement Plan (CIP) for the Apodaca splash pad;
3. $150,000 funding for various properties deemed dilapidated;
4. $150,000 funding for a new Compliance Program in the Human Resources department;
5. Closeout and transfer $400,408 from the Employee Health Fund (6320) to the General Fund (1000), and
6. An adjustment for $17.1 million New Mexico Environment Department (NMED) loan/grant from the Clean Water State Revolving Fund for the multiple wastewater projects.

The budget adjustment proposed within this Resolution will not deplete the City's 2/12ths reserve requirement for the General Fund.

SUPPORT INFORMATION:
Exhibit "A" FY24 Fund Summary
Exhibit "B" FY24-29 CIP

PLAN(S):
None

COMMITTEE/BOARD REVIEW:

DOES THIS AMEND THE BUDGET?:

☒ Yes
☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Various **AVAILABLE AMOUNT:** Various **EXPENDITURE AMOUNT:** Various

Funding Source(s):
Various

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

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

☒ Yes
☐ No

Does this action align with Elevate Las Cruces?

☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote “Yes”; this will approve the Resolution and accept the budget adjustments as presented, and will adjust the City’s FY2024 budget and the FY2024 Capital Improvement Plan (CIP).
2. Vote “No”; this will not approve the Resolution nor accept the budget adjustments as presented, and will not adjust the City’s FY2024 budget and the FY2024 Capital Improvement Plan (CIP).
3. Vote to “Amend”; this will delay the process of spending the funds within the predetermined funding schedule and require direction to staff.
4. Vote to “Table”; this will impact the City’s ability to utilize funds and may impact programs and services.

REFERENCE INFORMATION:

Attachment "A" Budget Adjustment Summary

RESOLUTION 24-051

A RESOLUTION APPROVING AN AMENDMENT TO THE CITY OF LAS CRUCES (CITY) FY2024 BUDGET AND THE FY2024 CAPITAL IMPROVEMENT PLAN (CIP) FOR VARIOUS CITY DEPARTMENTS.

The City Council is informed that:

WHEREAS, City staff members have prepared a monthly budget adjustment for the fiscal year starting July 1, 2023 through June 30, 2024; and

WHEREAS, the monthly budget adjustment includes funding for supplies, services, equipment, and projects to meet the demands of a growing community and to align budgets for effective and efficient City of Las Cruces operations; and

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

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

(I)

THAT the budget adjustments as indicated in Exhibit “A”, attached hereto and made a 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

Mayor

ATTEST:

City Clerk

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES

Exhibit "A"

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	1000 GENERAL FUND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	$ 64,287,294	64,287,294	0	64,287,294
Revenues				
Municipal Gross Receipts Tax	54,285,239	54,285,239	0	54,285,239
Public Safety Gross Receipts Tax	4,880,700	4,880,700	0	4,880,700
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	47,825,436	47,825,436	0	47,825,436
Environmental Gross Receipts Tax	2,259,525	2,259,525	0	2,259,525
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	15,000	15,000	0	15,000
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	825,000	825,000	0	825,000
Lodgers Tax	0	0	0	0
Property Taxes	13,655,649	13,655,649	0	13,655,649
Payment In Lieu of Property Tax	867,573	867,573	0	867,573
Franchise Fees	2,805,951	2,805,951	0	2,805,951
Payment In Lieu of Franchise Fees	1,236,000	1,236,000	0	1,236,000
Licenses, Fees & Permits	3,123,510	3,128,510	0	3,128,510
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	81,100	81,100	0	81,100
Charges For Services	2,367,209	2,372,209	0	2,372,209
Natural Gas Sales - Commodity	0	0	0	0
Motor Pool Maintenances Charges	0	0	0	0
Fuel Charges	0	0	0	0
Intergovernmental	4,224,128	4,224,128	0	4,224,128
Investment Income	141,000	141,000	0	141,000
Miscellaneous Revenues	140,112	140,112	0	140,112
Federal Grants	0	0	0	0
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	**138,733,132**	**138,743,132**	**0**	**138,743,132**
TOTAL RESOURCES	**$ 203,020,426**	**203,030,426**	**0**	**203,030,426**
Expenditures				
General Government	4,781,377	4,781,377	0	4,781,377
Legislative	519,035	519,035	0	519,035
Municipal Court	2,106,314	2,106,314	0	2,106,314
Chief Administrative Officer	285,228	285,228	0	285,228
City Manager	6,641,813	6,805,313	0	6,805,313
Legal	2,728,546	2,728,546	0	2,728,546
Las Cruces Police Department	34,427,931	34,495,395	0	34,495,395
Las Cruces Fire Department	21,499,980	21,782,476	0	21,782,476
Utilities	0	0	0	0
Economic Development	4,372,325	4,372,325	0	4,372,325
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	3,438,804	3,438,804	150,000	3,588,804
Financial Services	7,467,508	7,467,508	0	7,467,508
Information Technology	6,352,622	6,355,158	0	6,355,158
Fleet	0	0	0	0
Assistant City Manger-500	9,471,636	9,488,017	0	9,488,017
Parks & Recreation	18,511,145	19,162,121	114,000	19,276,121
Community Development	5,126,792	5,126,792	150,000	5,276,792
Quality of Life	8,779,933	9,891,796	0	9,891,796
Public Works	10,479,099	10,493,077	285,000	10,778,077
Legislative Reserve	0	0	0	0
Total Expenditures	**$ 146,990,088**	**149,299,282**	**699,000**	**149,998,282**
Other Resources				
Operating Transfers In	0	0	400,408	400,408
Operating Transfers Out	(19,369,208)	(19,504,221)	0	(19,504,221)
Total Other Resources	**$ (19,369,208)**	**(19,504,221)**	**400,408**	**(19,103,813)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 36,661,130**	**34,226,923**	**(298,592)**	**33,928,331**
Required Reserve:				
State Required 1/12th	12,249,174	12,441,607	58,250	12,499,857
Local CLC 1/12th	12,249,174	12,441,607	58,250	12,499,857
AVAILABLE BALANCE	**$ 12,162,782**	**9,343,709**	**(415,092)**	**8,928,619**

CITY OF LAS CRUCES

Exhibit "A"

BUDGET ADJUSTMENT REQUEST

BUDGET FISCAL YEAR 2023-24

	5496 WW23 PROJECT 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	0	0	0	0
State Grants	0	0	227,240	227,240
Local Grants	0	0	0	0
Debt Service	0	0	16,916,853	16,916,853
Total Revenues	**0**	**0**	**17,144,093**	**17,144,093**
TOTAL RESOURCES	**$ 0**	**0**	**17,144,093**	**17,144,093**
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	17,144,093	17,144,093
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	**$ 0**	**0**	**17,144,093**	**17,144,093**
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

	6320 EMPLOYEE HEALTH 2023-24			
	Original Budget	**Amended Budget**	**Req. Adjustment**	**Adjusted Budget**
RESOURCES				
Beginning Balance	$ 415,304	415,304	0	415,304
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	**$ 415,304**	**415,304**	**0**	**415,304**
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	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	**$ 0**	**0**	**0**	**0**
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	(400,408)	(400,408)
Total Other Resources	**$ 0**	**0**	**(400,408)**	**(400,408)**
Accrual Adjustments	0	0	0	0
ENDING BALANCE	**$ 415,304**	**415,304**	**(400,408)**	**14,896**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Exhibit "B"

Amended 11/06/2023

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 11/06/2023

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	2,397,032	375,000	375,000	375,000	375,000	375,000	Taxes, TIDD, Bonds
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 - Branigan Cultural Center							
8 - Railroad Museum							
9 - Police Department Academy							
10 - Roof Inspections							
Safety, Health, Environmental & Emergency	28,448						Taxes
1 - City Hall Security Upgrades							
2 - Parks Sidewalk Replacement							
3 - Pool Hoist							
4 - Fire Alarm & Security Upgrades							
5 - Pigeon Abatement							
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		50,000	50,000	50,000	50,000	50,000	Taxes
Fire Stations							
Refuse & Recycling Buffer Program		50,000	50,000	50,000	50,000	50,000	Taxes
Henry R Benavidez Community Center							
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 - 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	219,417				4,200,000	8,400,000	Grants, Taxes, Other
1 - Environmental Assessment							
2 - Design							
3 - Construction							
LRU Runway 12/30 Extension	262,902				13,500,000		Grants, Taxes, Other
1 - Environmental Assessment							
2 - Design							
3 - Construction							
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**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 11/06/2023

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 - 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**	
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
2023 Legislative Appropriation		*1,050,000*					
LRU Airport Maintenance Equipment		850,000					Bonds, Grants, Taxes, Other
LRU Runway 4/22 Rehabilitation			1,605,000				Grants, Taxes, Other
2023 Legislative Appropriation		*595,000*					
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	**$ -**	**$ 10,669,647**	**$ 22,280,000**	**$ 4,275,000**	**$ 2,625,000**	**$ 11,465,000**	
Total Las Cruces Airport	**$ 1,848,692**	**$ 10,914,647**	**$ 30,963,963**	**$ 4,350,000**	**$ 20,400,000**	**$ 19,940,000**	
NON-PROFIT ORGANIZATIONS							
Non-Profit Organizations - Carryover Projects							
Arts and Cultural District Improvements	1,776,147						**Grants**
2023 Legislative Appropriation		*815,128*					
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	50,000						**Grants**
2023 Legislative Appropriation		*1,150,000*					
MV Community of Hope - Health Facility Improvements	1,853,922						**Grants**
Non-Profit Organizations - Total Carryover Projects	**$ 4,532,011**	**$ 3,812,128**	**$ -**	**$ 600,000**	**$ -**	**$ -**	
Non-Profit Organizations - Future Projects							
MV Community of Hope - Campus Extension		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
MV Community of Hope - Cocina de Peregrinos/El Caldito Kitchen			1,125,000	7,000,000	2,700,000		Grants
2023 Legislative Appropriation							
La Clinica de Familia - Behavioral Health Facility							Grants
2023 Legislative Appropriation		*922,349*					
Children's Museum Facility			100,000	400,000	5,500,000		Bonds, Grants
2023 Legislative Appropriation		*601,175*					
MV Community of Hope - Jardin de los Niños Re-Roof							Grants
2023 Legislative Appropriation		*250,000*					

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 11/06/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
MV Community of Hope - Flooring							Grants
2023 Legislative Appropriation		*10,317*					
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	**$ -**	**$ 10,783,841**	**$ 5,375,000**	**$ 12,600,000**	**$ 12,200,000**	**$ 4,000,000**	
Total Non-Profit Organizations	**$ 4,532,011**	**$ 14,595,969**	**$ 5,375,000**	**$ 13,200,000**	**$ 12,200,000**	**$ 4,000,000**	
PARKS & RECREATION							
Parks & Recreation - Carryover Projects							
A. Fielder Memorial Safe Haven Renovations	685,905						Taxes
Apodaca Park Aquatic Playground and Multi-Use Path	1,601,820						PIF
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	175,699		600,000	600,000	600,000	600,000	Grants
2023 Legislative Appropriation		*660,000*					
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	**$ 12,698,626**	**$ 3,887,781**	**$ 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	239,477		200,000	200,000	200,000	200,000	Grants, Loans, Taxes
2023 Legislative Appropriation		*411,957*					
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	**$ 3,988,257**	**$ 2,843,457**	**$ 1,976,500**	**$ 1,996,700**	**$ 1,996,700**	**$ 1,996,700**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 11/06/2023

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
Various Park Restroom Replacement/Repairs & Upgrades		360,000					Grants
Parks and Recreational Facilities Structural Renovations			399,000	125,000			Grants, Taxes
2023 Legislative Appropriation		*286,000*					
Veterans' Memorial Park Enhancements			412,500	662,500	662,500	662,500	Bonds, Grants
2023 Legislative Appropriation		*250,000*					
Klein Park Improvements			590,000				Grants, Taxes
2023 Legislative Appropriation		*210,000*					
Indoor/Outdoor Aquatic Amenities		195,000					Grants, Taxes
East Mesa Bataan Memorial Pool - HVAC Replacement		78,000					Grants
Trail Renovations			480,000	500,000	500,000	500,000	Bonds, Grants
2023 Legislative Appropriation		*100,000*					
Albert Johnson Park Electrical Improvements		70,000					Grants, Taxes
Park Drinking Fountains			70,000				Grants, PIF, Taxes
2023 Legislative Appropriation		*14,000*					
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	**$ -**	**$ 61,563,000**	**$ 2,775,000**	**$ 7,699,000**	**$ 1,202,500**	**$ 2,362,500**	
Total Parks & Recreation	**$ 16,686,883**	**$ 68,294,238**	**$ 7,145,500**	**$ 14,095,700**	**$ 3,799,200**	**$ 5,059,200**	
PUBLIC SAFETY							
Public Safety - Newly Funded Projects							
Fire Station Alerting System	434,492						**Taxes**
Fire Department Training tower	99,000	120,000					Grants, **Taxes**
Public Safety - Total Newly Funded Projects	**$ 533,492**	**$ 120,000**	**$ -**	**$ -**	**$ -**	**$ -**	
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 11/06/2023

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
Fire Station 2 Bay Remodel							Grants
2023 Legislative Appropriation		*100,000*					
Fire Station 5			214,000	230,000			Bonds, Grants, Taxes, Other
1 - North/South Aprons							
2 - Parking Lot							
3 - Improvements							
2023 Legislative Appropriation		*100,000*					
Fire Station 6 Repairs							Grants
2023 Legislative Appropriation		*100,000*					
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	**$ -**	**$ 8,281,000**	**$ 214,000**	**$ 564,000**	**$ 5,495,000**	**$ 66,270,000**	
Total Public Safety	**$ 1,917,011**	**$ 13,791,315**	**$ 932,400**	**$ 1,089,000**	**$ 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							
Resiliency	3,000,000	1,250,000	1,250,000	1,000,000	1,250,000	1,250,000	**Bonds**
Public Works - Total Newly Funded Projects	**$ 10,660,000**	**$ 3,000,000**	**$ 3,000,000**	**$ 2,500,000**	**$ 3,000,000**	**$ 3,000,000**	
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 - Fire Station 9	9,800,000						**Bond**
GO Bond 2022 - Parks Improvements	1,960,000						**Bond**

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 11/06/2023

Project Title	Funded FY2024	Infrastructure Capital Improvement Plan (Unfunded) FY 2025	FY 2026	FY 2027	FY 2028	FY 2029	Funding Source(s)
GO Bond 2022 - East Mesa Recreation Facility	4,900,000						Bond
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	1,010,523						Bonds
Hoagland Rd & N Alameda Blvd							
Roadrunner Parkway & Sonora Springs							
Sonoma Ranch Blvd & Northrise							
Telshor ADA Improvements Phase VI	316,659						Grants, Taxes
Telshor Spruce Intersection Improvements	586,959		850,000				Grants
2023 Legislative Appropriation		*250,000*					
Voluntary Assessment District Phase I	69,808						Bonds
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							
Voluntary Assessment District Phase II	3,196,542						Bonds
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							
Villa Mora Dam Park Study	612,588						Grants, Taxes
Walnut-Madrid TAP Bike/Pedestrian Improvements	982,250						Bonds, Grants
Public Works - Total Carryover Projects	**$ 48,347,207**	**$ 10,303,103**	**$ 4,700,000**	**$ 3,450,000**	**$ 500,000**	**$ 500,000**	
Public Works - Annual Projects							
Active Transportation	5,115,779	350,000	350,000	350,000	350,000	350,000	Bonds, Taxes
Bicycle Facilities							
Pedestrian Safety Improvements							
ADA							
Sidewalk Gap							
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	3,068,122	500,000	500,000	500,000	500,000	500,000	Bonds, Taxes
EBID Drains & Laterals							
Land Acquisition							
Other Improvements							
Land Acquisition - Public Works	200,000	250,000	250,000	250,000	250,000	250,000	Taxes
Flood Control							
Rights of Way							
East Mesa							
Other							
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	10,238,981	6,300,000	6,300,000	6,300,000	6,300,000	6,300,000	Bonds, Taxes
Pavement Condition Index Improvements							
Pavement Overlays							
Pavement Replacement							
Pavement Treatment							

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 11/06/2023

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
Mesquite Historical District Renovations							Grants
2023 Legislative Appropriation		*1,025,000*					Grants
Lift Up Las Cruces - Street Improvements			600,000	600,000	600,000	600,000	Grants
2023 Legislative Appropriation		*595,000*					
University Ave. Complete Street Improvements-Design			480,000				Grants, Bonds, Taxes
2023 Legislative Appropriation		*520,000*					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	**$ -**	**$ 32,124,750**	**$ 8,148,000**	**$ 9,323,200**	**$ 8,204,000**	**$ 7,969,400**	
Total Public Works	**$ 82,402,796**	**$ 57,117,853**	**$ 27,288,000**	**$ 26,963,200**	**$ 23,144,000**	**$ 23,159,400**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 11/06/2023

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 System Technology Improvements	210,000						TIDD
Quality of Life - Total Newly Funded Projects	**$ 210,000**	**$ -**	**$ -**	**$ -**	**$ -**	**$ -**	
Quality of Life - Carryover Projects							
Branigan Cultural Center Improvements	124,363	93,000	1,000,000	1,000,000	1,200,000		Grants, Taxes
2023 Legislative Appropriation		*165,000*					
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	**$ 2,369,613**	**$ 8,408,579**	**$ 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
Museum of Nature and Science - Atrium Redesign			15,000				Grants, Taxes
2023 Legislative Appropriation		*50,000*					
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	**$ -**	**$ 2,691,000**	**$ 3,960,940**	**$ 4,048,800**	**$ 3,042,500**	**$ 40,611,000**	
Total Quality of Life	**$ 2,688,119**	**$ 11,399,579**	**$ 6,910,940**	**$ 5,348,800**	**$ 4,542,500**	**$ 40,911,000**	

City of Las Cruces
Capital Improvements Program
FY 2024-2029

Amended 11/06/2023

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	1,088,572	405,000	125,000	125,000	125,000	125,000	Other
Fiberoptic Cable Replacement from Roundtree to JU							Other

City of Las Cruces
Capital Improvements Program
FY 2024-2029

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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	**$ 27,374,378**	**$ 4,885,588**	**$ 3,196,569**	**$ 2,530,000**	**$ 3,030,000**	**$ 3,030,000**	
Total Carryover Projects	**$ 99,840,712**	**$ 47,051,495**	**$ 20,515,363**	**$ 9,800,000**	**$ 20,350,000**	**$ 9,950,000**	
Total Annual Projects	**$ 42,819,340**	**$ 58,712,725**	**$ 26,829,762**	**$ 17,879,041**	**$ 17,301,700**	**$ 16,926,700**	
Total Future Projects	**$ -**	**$ 138,817,507**	**$ 63,558,227**	**$ 48,364,000**	**$ 33,379,000**	**$ 133,287,900**	
GRAND TOTAL	**$ 170,034,430**	**$ 249,467,315**	**$ 114,099,921**	**$ 78,573,041**	**$ 74,060,700**	**$ 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*

3048; Council Bill 24-006

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	October 16, 2023	**Adopted:**	November 6, 2023
Drafter:	Erika Jaquez	**Department:**	Financial Services
Program:	Treasury	**Line of Business:**	Revenue Management

Title:	**AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.**

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

PURPOSE(S) OF ACTION:
Authorize issuance of debt.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
The City Charter authorizes City Council to borrow funds. The New Mexico Finance Authority (NMFA) has instituted a program for financing public projects and equipment. As part of the program, City Council is required by NMFA to authorize the submission of the application. The proposed action will allow the Fire Department to finance the acquisition of

A proposed resolution approved at the October 16, 2023, City Council meeting authorized City staff to submit an application for financial assistance from NMFA for equipping fire stations and acquiring fire trucks and fire equipment for the City's fire department.

Approval of this Ordinance authorizes the execution and delivery of a loan agreement between the City and NMFA. The City would borrow up to $5,600,000 to finance the acquisition of fire trucks and fire equipment, equipping fire stations, and pay the related debt issuance costs (Series 2023A). The revenue pledged to finance the project would come from a subordinate lien on the City's state-shared gross receipts tax distribution.

Due to the timing of the bond approval scheduling with NMFA, the attachments, and ordinance will not be included in the staff report until the *Second Reading* occurs on November 6, 2023. NMFA prices the loan, Bond Counsel prepares the final documents incorporating the final terms upon receipt of the debt service schedule verified by the City's Municipal Advisor. Clean and redlined copies of the final

bond ordinance are then provided in the agenda packets for the meeting at which the final adoption is scheduled.

SUPPORT INFORMATION:

ATTACHMENT "A" Bond Purchase Agreement SSGRT Sub Lien 2023A
ATTACHMENT "B" Intercept Agreement SSGRT Sub Lien 2023A
ATTACHMENT "C" Redlined Bond Ordinance SSGRT Sub Lien 2023A

PLAN(S):

Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes
☒ No

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

☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

☐ Yes
☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Ordinance and will allow the City to accept the loan from NMFA and proceed with the acquisition of fire trucks and equipment and equipping fire stations.
2. Vote "No"; this will not approve the Ordinance and will not allow the City to accept the loan from NMFA and use this funding mechanism to finance the acquisition of fire trucks and equipment and equipping fire stations.
3. Vote to "Amend"; this could delay the execution and delivery of the loan from NMFA and the acquisition of fire trucks and equipment and equipping fire stations.
4. Vote to "Table"; this could delay the financing opportunity and increase the projected cost of the fire trucks and equipment and equipping fire stations.

ORDINANCE 3048; COUNCIL BILL 24-006

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Bond Ordinance unless the context requires otherwise.

The City Council is informed that:

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico and is operating as a home rule City pursuant to Article X, Section 6 of the Constitution of the State and the Charter of the City; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the (“Pledged Revenues”); and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides as follows:

> C.Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor; and

WHEREAS, except for the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2020B Subordinate Lien Bonds, the 2022 Subordinate Lien Bonds, and the 2023 Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2023A Bonds be issued with a subordinate lien, but not an exclusive subordinate lien, on the Pledged State Shared Gross Receipts Tax Revenues subordinate to the lien thereon of outstanding Parity Bonds and on parity with the lien thereon of the outstanding Parity Subordinate Obligations; and

WHEREAS, the proposed forms of this Bond Ordinance, the Bond Purchase Agreement and Intercept Agreement have been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2023A Bonds in a private placement to the New Mexico Finance Authority (the "Purchaser"), as determined pursuant to the Pricing Certificate supplementing this Bond Ordinance, and to delegate authority to the City Manager or City Financial Services Director (the "Delegate") to execute and deliver the Pricing Certificate to the Purchaser, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Pricing Certificate be within the parameters set forth in this Ordinance; and

WHEREAS, the specific principal amounts, interest rates, maturity dates, prices and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy and a Reserve Fund Insurance Policy (if any) will be established in the Pricing Certificate; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

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

Section 1.Definitions. As used in this Bond Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

"Bond Insurance Policy" means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Bond Ordinance" means this City Ordinance No. 3048 adopted on November 6, 2023, as supplemented by the Pricing Certificate.

"Bond Purchase Agreement" means the agreement between the City and the Purchaser providing for the sale of the Bonds by the City and the purchase of the Bonds by the Purchaser pursuant to the terms set forth therein and in the Pricing Certificate.

"Bondholder," "holder," "owner" or "Owner" means the registered owner of any Bond as shown on the registration books of the City for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Bondholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.

"Bonds" or "Series 2023A Bonds" or "2023A Bonds" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

"Business Day" means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

"Charter" means the home rule charter of the City submitted to Las Cruces City Commission on January 7, 1985, and approved by the voters of the City on March 5, 1985, as amended and supplemented.

"City" means the City of Las Cruces, in the County of Doña Ana and State of New Mexico.

"City Council" means the City Council of the City or any future successor governing body of the City.

“Code” means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

“Continuing Disclosure Undertaking” means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser, if required by the Purchaser.

“Depository” means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

“Event of Default” means any of the events stated in Section 25 of this Bond Ordinance.

“Expenses” means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including, to the extent applicable, the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, the Insurer and legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and accounting fees and expenses.

“Fiscal Year” means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the City as its fiscal year.

“Fitch” means Fitch Ratings, Inc., its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“Herein,” “hereby,” “hereunder,” “hereof,” “hereinabove” and “hereafter” refer to the entire Bond Ordinance and not solely to the particular section or paragraph of this Bond Ordinance in which such word is used.

“Hold Harmless Distribution” means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978.

“Independent Accountant” means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (i) is, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

“Insured Bank” means a bank or savings and loan association insured by an agency of the United States.

“Intercept Agreement” means the Intercept Agreement, if any, dated the Closing Date between the City and the New Mexico Finance Authority providing for the direct payment, if required, by the New Mexico Department of Taxation and Revenue to the New Mexico Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Bonds, and any amendments or supplements to the Intercept Agreement.

“Interest Payment Date” means each June 1 and December 1, commencing June 1, 2024 (or such other date specified in the Pricing Certificate).

“Moody's” means Moody's Investor Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

“NMSA 1978” means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

“Notice of Sale” means, if the Bonds are sold in a competitive sale, the official notice of sale of the Bonds.

“Official Statement” means the final disclosure document relating to the issuance and sale of the Bonds, if any.

“Outstanding” or “outstanding” when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under this Bond Ordinance except:

A.those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B.those otherwise deemed to be paid in accordance with Section 28 or Section 31 of this Bond Ordinance;

C.those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

“Parity Bonds” or “Parity Obligations” means the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2023 Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues.

“Parity Subordinate Obligations” means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Subordinate Bonds, the 2022 Subordinate Bonds, the Series 2023A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

“Paying Agent” means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

“Permitted Investments” means, but only to the extent permitted by applicable laws of the State or ordinances of the City, the following:

A.Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B.Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1.U.S. Export-Import Bank (Eximbank)
Direct obligations or fully guaranteed certificates of beneficial ownership.
2.Farmers Home Administration (FmHA)
Certificates of beneficial ownership
3.Federal Financing Bank
4.Federal Housing Administration Debentures (FHA)
5.General Services Administration
Participation certificates
6.Government National Mortgage Association (GNMA or "Ginnie Mae")
GNMA - guaranteed mortgage-backed bonds
GNMA - guaranteed pass-through obligations
7.U.S. Maritime Administration
Guaranteed Title XI financing
8.U.S. Department of Housing and Urban Development (HUD)
Project Notes
Local Authority Bonds
New Communities Debentures - U.S. government guaranteed debentures
U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C.Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1.Federal Home Loan Bank System
Senior debt obligations
2.Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")
Participation Certificates
Senior debt obligations
3.Federal National Mortgage Association (FNMA or "Fannie Mae")
Mortgage-backed securities and senior debt obligations
4.Student Loan Marketing Association (SLMA or "Sallie Mae")
Senior debt obligations
5.Resolution Funding Corp. (REFCORP) obligations
6.Farm Credit System
Consolidated system wide bonds and notes

D.Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E.Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F.Certificates of deposit, savings accounts, deposits accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G.Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements.

H.Commercial paper rated, at the time of purchase, “Prime - 1” by Moody's and “A-1” or better by S&P.

I.Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

J.Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody's and “A-1” or “A” or better by S&P.

K.Repurchase Agreements for 30 days or less must follow the following criteria.

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1.Repos must be between the City and a dealer bank or securities firm

a.Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or

b.Banks rated “A” or above by S&P and Moody's.

2.The written repo contract must include the following:

a.Securities which are acceptable for transfer are:

(1)Direct U.S. governments, or

(2)Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)

b.The term of the repo may be up to 30 days

c.The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

d.Valuation of Collateral

(1)The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(a)The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3.Legal opinion which must be delivered to the City:

a.Repo meets guidelines under state law for legal investment of public funds.

L.The State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the State Treasurer.

“Pledged Revenue Fund” means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

“Pledged State Shared Gross Receipts Tax Revenues” or “Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i)

1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

"Preliminary Official Statement" means the initial disclosure document relating to the issuance and sale of the Bonds, if any.

"Pricing Certificate" means one or more certificates executed by the City Manager or City Finance Director, dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the amount of the Reserve Requirement, if any, and whether such Reserve Fund shall be funded with proceeds of the Bonds or through the deposit of a Reserve Fund Insurance Policy; and (x) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Ordinance.

"Purchaser" means the New Mexico Finance Authority or such other purchaser as set forth in the Pricing Certificate.

"Rating Category" means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

"Registrar" means the City Treasurer, as agent for the City for transfer and exchange of the Bonds or any other entity at the time appointed by resolution of the City Council.

"Reserve Fund Insurance Policy" means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund, if any, as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"State" means the State of New Mexico.

"2014 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal amount of $10,000,000 and authorized by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

"2015 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of $19,195,000 and authorized by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

"2016 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016" authorized in the original aggregate principal amount of $8,585,000 and authorized by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

"2017 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017" issued in an original aggregate principal amount of $10,570,000 and authorized by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

"2019 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019 authorized in the original aggregate principal amount of $8,870,000 and authorized by City Council Ordinance No. 2894 adopted on August 5, 2019.

"2020 Refunding Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020" authorized in the original aggregate principal amount of $15,435,000 and authorized by City Council Ordinance No. 2912 adopted on February 18, 2020.

"2020A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A" authorized in the original aggregate principal amount of $7,190,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2020B Subordinate Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B" authorized in the original aggregate principal amount of $6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2022 Subordinate Lien Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022" authorized in the original aggregate principal amount of $5,000,000 and authorized by City Council Ordinance No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate executed on August 18, 2022.

"2023 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023" authorized in the original aggregate principal amount of $12,000,000 and authorized by City Council Ordinance No. 3024 adopted on February 21, 2023, as supplemented by the Pricing Certificate executed on March 7, 2023.

"2023A Acquisition Fund" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Improvement Project Acquisition Fund" established by Section 16 of the Bond Ordinance.

"2023A Debt Service Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Debt Service Fund" established in Section 16 of this Bond Ordinance.

"2023A Improvement Project" means (1) equipping fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire emergency vehicles) and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2023 Bonds.

"2023 Minimum Reserve" means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2023A Bonds, (ii) the maximum annual debt service on the outstanding Series 2023A Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2023A Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

"2023A Reserve Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Reserve Fund" established by Section 16 of this Bond Ordinance.

Section 2.Ratification. All action heretofore taken (not inconsistent with the provisions of this Bond Ordinance) by the City Council and the officers of the City, directed toward the Improvement Project, the issuance of the Bonds for the Improvement Project and the sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the 2023A Improvement Project. The 2023A Improvement Project and the method of financing the 2023A Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

Section 4. Findings; Declaration. The City Council hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The 2023A Improvement Project is needed to meet the needs of the City and its inhabitants.

B. Moneys available for the 2023A Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2023A Improvement Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D. It is economically feasible to defray, in part, the cost of the 2023A Improvement Project by the issuance of the Bonds.

E. The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2023A Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F. The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5. Bonds – Authorization, Parameters and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue one series of its negotiable, fully registered, revenue bonds to be designated the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A" in an aggregate principal amount not to exceed $5,600,000, and the issuance, sale and delivery of the Bonds is hereby authorized.

B. Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A. The Series 2023A Bonds shall be issued subject to the following parameters:

(i) The Series 2023A Bonds shall be issued in an aggregate principal amount not to exceed $5,600,000 for the 2023A Improvement Project.

(ii) The net effective interest rate on the Series 2023A Bonds shall not exceed 12% per annum.

(iii) The final maturity of the Series 2023A Bonds shall not be later than fifteen (15) years from the date of issuance.

(iv) The Series 2023A Bonds shall be sold with an underwriting or purchaser's discount not to exceed 1.00%.

(iv) The Series 2023A Bonds shall be payable solely from, and shall constitute a subordinate lien upon the Pledged Revenues, subordinate to the lien thereon of the Parity Obligations and on a parity with the outstanding Parity Subordinate Obligations.

(v) The Series 2023A Bonds shall be sold to the Purchaser pursuant to private placement with the Purchaser.

(vi)The maximum sale price of the Series 2023A Bonds shall be not more than $5,600,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii)The Series 2023A Bonds shall be in substantially the form set forth in this Ordinance.

C.The Delegate will set the date to determine the terms and provisions of the Bonds for the purchase of the Bonds by the Finance Authority as provided in this section ("Pricing Date") upon no less than five (5) business days' prior notice (or such pother prior notice as accepted by the Finance Authority) of such Pricing Date to the Finance Authority. The Delegate is hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate and the Bond Purchase Agreement. The forms of the Bond Purchase Agreement and Intercept Agreement submitted with the adoption of this Ordinance are hereby approved with such changes as are approved by the Delegate consistent with the parameters outlined in this Ordinance.

D.The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on June 1, 2024 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

Section 6.Redemption of Bonds.

A.Notice of Redemption. In the event that the Bonds are subject to redemption prior to maturity, as may be established in the Pricing Certificate, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

B.Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7.Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro Tem and City Clerk shall each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8.Execution and Authentication of Bonds.

A.Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B.Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9.Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10.Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the “Record Date”). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time. If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11.Registration, Transfer, Exchange and Ownership of Bonds.

A.Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B.Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C.Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D.Lost Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E.Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F.Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G.Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than $50,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another Depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the City are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Bond Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the City to the Depository as provided in the Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

Section 12. Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 17 of this Bond Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in this Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13.Form of Bonds. The forms, terms and provisions of the Bonds shall be substantially in the form set forth below, with such changes therein as are not inconsistent with the Bond Ordinance.

(Form of Bond)

UNITED STATES OF AMERICA
STATE OF NEW MEXICOCOUNTY OF DOÑA ANA
CITY OF LAS CRUCES, NEW MEXICO
SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX
IMPROVEMENT REVENUE BONDS,
SERIES 2023A

Bond No. _______ $_________
INTEREST RATEMATURITY DATEDATE OF BOND CUSIP
% per annumJune 1, ______________ , 2023 _____
REGISTERED OWNER: _________________________________
PRINCIPAL AMOUNT: _________________________________

The City of Las Cruces (the "City"), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on June 1, 2024 and on June 1 and December 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $___________ issued in denominations of $5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A (the "Series 2023A Bonds") issued under and pursuant to City Ordinance No. ____, as supplemented by a Pricing Certificate dated _________________ , 2023 (as supplemented, the "Bond Ordinance").

The Series 2023A Bonds maturing on and after June 1, ____, are subject to prior redemption at the City's option in one or more units of principal of $5,000 on and after June 1, ____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2023A Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Series 2023A Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Series 2023A Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Bond Ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2023A Bonds on the Pledged Revenues is an irrevocable and subordinate lien, but not necessarily an exclusive subordinate lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with or senior to the lien on the Pledged Revenues of the Series 2023A Bonds Amounts and securities held in the 2023A Debt Service Fund and 2023A Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Series 2023A Bonds.

The Series 2023A Bonds are issued to provide funds to defray in part the costs of (1) equipping fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2023A Bonds.

The City covenants and agrees with the owner of this Bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

This Bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication.

IN WITNESS WHEREOF, the City of Las Cruces, New Mexico has caused this bond to be signed and executed on the City's behalf with the facsimile or manual signature of the Mayor or Mayor Pro Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF LAS CRUCES, NEW MEXICO

By____
Mayor

By____
City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)
Certificate of Authentication

This is one of the Bonds described in the Bond Ordinance, and this bond has been registered on the registration books kept by the undersigned as Registrar for the Bonds.

Date of Authentication:

City Treasurer of the City of Las Cruces,
New Mexico, as Registrar

By____
Authorized Officer

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, ________________________________ hereby sells, assigns and transfer unto ____ the within bond and hereby irrevocably constitutes and appoints ____ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

_____________________________________ _____________________________________

Social Security or Tax Identification No. of Assignee_____________________________________

Dated: __________________________

Signature Guarantee:

____

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)
(End of Form of Bond)

Section 14.Period of 2023A Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2023A Improvement Project financed with the proceeds of the Series 2023A Bonds will not expire prior to the final maturity date of the Series 2023A Bonds.

Section 15.Use of Bond Proceeds and Other Funds; Completion of 2023A Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2023A Improvement Project.

A.Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

B.Acquisition Fund. Proceeds derived from the sale of the Series 2023A Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2023A Acquisition Fund to be held by the trustee for the Purchaser. Until the completion of the 2023A Improvement Project, the money in the 2023A Acquisition Fund shall be used and paid out solely for the purpose of the 2023A Improvement Project in compliance with applicable law.

C.Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2023A Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D.2023A Improvement Project Completion. As soon as practicable after completion of the 2023A Improvement Project, and in any event not more than 60 days after completion of the 2023A Improvement Project, any proceeds remaining unspent (other than any amount retained by the City for any 2023A Improvement Project costs not then due and payable) shall be transferred and deposited in the 2023A Debt Service Fund and used by the City to pay principal and interest on the Series 2023A Bonds as same become due.

E.Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

F.Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2023A Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

Section 16.Funds and Accounts. The City hereby creates and continues the following special and separate funds and accounts:

A.2023A Acquisition Fund. The “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Improvement Project Acquisition Fund” to be maintained by the City or by the trustee for the Purchaser.

B.Pledged Revenue Fund. The “City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund” (the “State Shared Gross Receipts Tax Revenue Fund”) to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

C.2023A Debt Service Fund. The “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Debt Service Fund” (the “2023A Debt Service Fund”) to be maintained by the City or by the trustee for the Purchaser.

D.2023A Reserve Fund. The “City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Reserve Fund” (the “2023A Reserve Fund”) to be maintained by the City or by the trustee for the Purchaser.

Section 17.Deposit of Pledged Revenues and Flow of Funds. So long as any of the outstanding obligations payable from the Pledged Revenues shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

A.Payment of Parity Obligations. As a first lien on amounts on deposit in the Pledged Revenue Fund, the City shall pay the of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations payable from the Pledged Revenues as required by the ordinances authorizing the issuance of the Parity Obligations. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Obligations, for the payment of principal of and interest on all series of outstanding Parity Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Obligations.

B. Payment of Parity Subordinate Obligations. Subsequent to the payments required by the outstanding Parity Obligations, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of the Series 2023A Bonds and all other Outstanding Parity Subordinate Obligations or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Parity Obligations hereafter authorized, issued and payable from the Pledged Revenues, as the same become due. So long as any of the Series 2023A Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i)2023A Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the 2023A Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023A Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2023A Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2023A Bonds then outstanding.

bb)Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023A Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Series 2023A Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2023A Bonds then outstanding.

(ii)Credit. In making the deposits required to be made into the 2023A Debt Service Fund, if there are any amounts then on deposit in the 2023A Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (aa) above shall be reduced by the amount available in such fund for such purpose.

(iii)Transfer of Money out of 2023A Debt Service Fund. Each payment of principal and interest becoming due on the Series 2023A Bonds shall be transferred from the 2023A Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

(iv)2023A Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2023A Reserve Fund upon the issuance of the Series 2023A Bonds or any time thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds and the Parity Subordinate Obligations. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023A Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months, an amount equal to the 2023A Minimum Reserve will be held in the 2023A Reserve Fund.

After funding the 2023A Reserve Fund in an amount equal to the 2023A Minimum Reserve, no additional payments need be made into the 2023A Reserve Fund so long as the moneys therein shall equal not less than the 2023A Minimum Reserve. The moneys (if any) in the 2023A Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph (F) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023A Bonds resulting from failure to deposit into the 2023A Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023A Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2023A Minimum Reserve.

(v)Defraying Delinquencies in the 2023A Debt Service Fund and 2023A Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2023A Debt Service Fund is insufficient to pay principal of and interest on the Series 2023A Bonds then due, then an amount shall be paid into the 2023A Debt Service Fund on such date from the 2023A Reserve Fund (if moneys are then on deposit in the 2023A Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2023A Debt Service Fund from the 2023A Reserve Fund, if any, shall be replaced in the Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2023A Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by subparagraph I(i)(aa)(1) and (2) of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2023A Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2023A Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the Series 2023A Bonds; provided, however, that any moneys at any time in excess of the 2023A Minimum Reserve in the 2023A Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2023A Reserve Fund shall not be invested in a manner which could cause the Series 2023A Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2023A Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2023A Reserve Fund exceeds the 2023A Minimum Reserve, all amounts in excess of the 2023A Minimum Reserve shall be transferred to the 2023A Debt Service Fund and used to pay principal of and interest on the Series 2023A Bonds.

(vi)Payment of Parity Subordinate Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by subparagraphs B(i), (iv) and (v) of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Subordinate Obligations payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the Series 2023A Bonds and any other outstanding Parity Subordinate Obligations, then the available funds in the Pledged Revenue Fund will be used, first (after payment of the Parity Obligations), on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Subordinate Obligations, for the payment of principal of and interest on all series of outstanding Parity Subordinate Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Subordinate Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Subordinate Obligations.

(vii)Termination Upon Deposits to Maturity. No payment shall be made into the 2023A Debt Service Fund or the 2023A Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2023A Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2023A Debt Service Fund and the 2023A Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2023A Debt Service Fund and the 2023A Reserve Fund may be used as provided below.

(viii)Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 18.General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys in the 2023A Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the 2023A Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2023A Reserve Fund, value the 2023A Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2023A Reserve Fund. If, upon any valuation, the value of the 2023A Reserve Fund exceeds the 2023A Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2023A Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2023A Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2023A Reserve Fund may be used to pay the final installments of principal and interest on the Series 2023A Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2023A Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2023A Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2023A Reserve Fund and deposited into the 2023A Debt Service Fund to prevent a default on the Series 2023A Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2023A Reserve Fund to the 2023A Minimum Reserve. Such repayment shall be made as required by Section 17 of this Bond Ordinance.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2023A Debt Service Fund and the 2023A Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2023A Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2023A Bonds constitute an irrevocable and subordinate lien, but not an exclusive subordinate lien on the Pledged Revenues, subordinate to the lien thereon of the outstanding Parity Obligations and additional Parity Obligations, if any, hereafter authorized to be issued and payable from Pledged Revenues, and on parity with the lien thereon of the outstanding Parity Subordinate Obligations and additional Parity Subordinate Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues.

Section 20. Additional Obligations Payable from Pledged Revenues.

A. Parity Obligations. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Parity Obligations in accordance with the ordinances authorizing the issuance of the outstanding Parity Obligations.

B. Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2023A Bonds.

C. Superior Obligations Prohibited. The City shall not issue any obligation having a lien on any of the Pledged Revenues pledged by this Bond Ordinance which is prior and superior to the Parity Obligations.

Section 21. Additional Parity Subordinate Obligations Payable from Pledged Revenues.

A. Parity Subordinate Obligation Test. This Bond Ordinance shall not prevent the issuance of additional Parity Subordinate Obligations payable from and constituting a subordinate lien upon the Pledged Revenues on parity with the lien of the Series 2023A Bonds. Before any additional Parity Subordinate Obligations are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in 2023A Debt Service Fund and 2023A Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2) The Pledged State Shared Gross Receipts Tax Revenues (not including any Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Subordinate Lien Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Obligations, (2) outstanding Parity Subordinate Obligations, and (3) the Parity Subordinate Obligations proposed to be issued.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Subordinate Obligations, (a) any amount of the reserve fund requirement for the additional Parity Subordinate Obligations is immediately deposited in or credited to the reserve fund for the additional Parity Subordinate Obligations or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Subordinate Obligations is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Subordinate Obligations, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Subordinate Obligations or any issue of outstanding Parity Subordinate Obligations for which such reserve fund was created.

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or City Financial Services Director, that the Pledged Revenues (not including any Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Subordinate Obligations. The Independent Accountant, City Treasurer or City Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Super Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2023A Bonds.

Section 22.Refunding Bonds. The provisions of Section 20 and Section 21 of this Bond Ordinance are subject to the following exceptions:

A.Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding Parity Obligations, or any part thereof, such obligations may be refunded, but only in accordance with the ordinances authorizing the issuance of such Parity Obligations.

B.Limitation Upon Issuance of Parity Subordinate Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2023A Bonds, unless:

(1)The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2023A Bonds; or

(2)The refunding obligations are issued in compliance Section 21 of this Bond Ordinance.

C.Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1)The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2)The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3)The refunding bonds or other refunding obligations are issued in compliance with Section 20 (in the case of Parity Refunding Obligations) or Section 21 (in the case of Parity Subordinate Refunding Obligations) of this Bond Ordinance.

D.Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph B of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2023A Bonds.

Section 23.Equality of Parity Subordinate Obligations. The Parity Subordinate Obligations from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Subordinate Obligations regardless of whether they are actually issued and delivered or incurred at different times.

Section 24.Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A.Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Bond Ordinance.

B.Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2023A Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C.City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

D.Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

E.Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F.Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

G.Other Liens. Other than as described and identified by this Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

H.Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 30 of this Bond Ordinance.

I.Debt Service Fund and Reserve Fund. The 2023A Debt Service Fund and the 2023A Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

J.Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

K.Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.

L.Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the "Rebate Fund"). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 25. Preliminary Official Statement and Continuing Disclosure Undertaking.

A. Preliminary Official Statement. If required by the Purchaser, the preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Preliminary Official Statement is not required.

B. Continuing Disclosure Undertaking; Disclosure to Finance Authority. If required by the Purchaser, the officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 26 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

If the Finance Authority is the purchaser of the Bonds, for so long as the Finance Authority is the holder of the bonds, the City shall notify the Finance Authority of the approval by the City of the issuance of any additional Parity Obligation or Parity Subordinate Obligations upon the City's approval of the issuance of such additional Parity Obligation or Parity Subordinate Obligations as set forth in the Pricing Certificate.

Section 26. Events of Default. Each of the following events is hereby declared an "event of default":

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D. Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

E. Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 27. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 26 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 28. Duties Upon Default. Upon the happening of any of the events of default provided in Section 26 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 29. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 30. Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 31.Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

A.An extension of the maturity of any Bond; or

B.A reduction of the principal amount or interest rate of any Bond; or

C.The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or

D.A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or

E.The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or

F.The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 32.Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 33.Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 34.Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 35.Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 36.Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 37 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 37.General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico
Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on November 6, 2023, relating to the authorization and issuance of the City's Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, in an aggregate principal amount not to exceed $5,600,000 for (1) equipping fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2023A Bonds; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.
(End of Form of Summary for Publication)

DONE AND APPROVED this day of

APPROVED

____

ATTEST:

____

Moved by:

Seconded by:

AYES

NAYS

$5,580,000
SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX
IMPROVEMENT REVENUE BONDS
SERIES 2023A

BOND PURCHASE AGREEMENT

November __, 2023

City of Las Cruces, New Mexico
Las Cruces, New Mexico

The New Mexico Finance Authority (the "Purchaser") enters into this Bond Purchase Agreement ("Agreement") with the City of Las Cruces, New Mexico (the "City") to purchase the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A in the aggregate principal amount of $5,580,000 (the "Series 2023A Bonds" or the "Bonds"). The Bonds are issued pursuant to the charter of the City, NMSA 1978, Sections 3-31-1 through 3-31-12, Section 6-14-10.2 and Section 6-21-9, as amended (collectively referred to hereafter as, the "Act"), and Ordinance No. 3048 of the City Council of the City (the "City Council") adopted on November 6, 2023, as supplemented by the Sale Certificate executed on November __, 2023 (collectively, the "Ordinance") authorizing the sale of the Series 2023A Bonds at a purchase price of $5,580,000 (the "Series 2023A Purchase Price" or the "Purchase Price"). Capitalized terms in this Agreement (including Exhibits) shall have the same definitions as set forth in the Ordinance, unless the term is defined herein or the context used clearly requires otherwise.

1. Purchase, Sale and Delivery of the Bonds.

A. On the basis of the representations, warranties, covenants and agreements contained in this Agreement, the Ordinance and the Bonds, and subject to the terms and conditions set forth herein and therein, the City agrees to sell to the Purchaser, and the Purchaser agrees to purchase from the City, the Bonds for the Purchase Price as set forth in the form of Delivery, Deposit and Cross-Receipt Certificate attached as Exhibit A to this Agreement. The Bonds shall be in the principal amounts, mature on the dates, bear interest at the rates and have the terms set forth the Ordinance.

B. The date of delivery of and payment for the Bonds is referred to in subparagraph C below in this Agreement as the "Closing Date." The Bonds shall be delivered to the Purchaser in typewritten form on the Closing Date upon receipt of the Purchase Price by the City, and a copy of the Bonds shall be available for examination by the Purchaser prior to the Closing Date.

C. The parties hereto understand and agree that the Closing Date will occur on or about December 15, 2023 or such other mutually agreeable date.

D. The net proceeds from the issuance of the Series 2023A Bonds will be used for (1) equipping fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2023A Bonds (the "2023A Improvement Project" or the "Project").

E. Proceeds from the sale of the Bonds in an amount equal to the amount of the deposit into the City's Accounts in the Program Fund (as such term is defined in the General Indenture of Trust and Pledge dated as of June 1, 1995, as amended and supplemented, by and between the Purchaser and BOKF, NA, as successor trustee (the "Trustee"), and the Subordinated General Indenture of Trust and Pledge dated as of March 1, 2005, as supplemented, by and between the Purchaser and the Trustee (collectively, the "Indenture") and as set forth in the form of Delivery, Deposit and Cross-Receipt Certificate attached as Exhibit A to this Agreement shall be available for requisition beginning on the Closing Date, upon receipt of a properly executed requisitions in substantially the same forms attached to this Agreement as Exhibit B.

2. Representations, Warranties and Covenants of the City. By the City's acceptance of this Agreement, the City hereby represents and warrants to, and agrees with, the Purchaser as follows:

A. The City is a political subdivision of the State, duly organized and validly existing under the laws of the State;

B. In connection with the issuance of the Bonds, the City has complied in all respects with the Constitution of the State and the laws of the State, including the Act;

C. The City is authorized to issue the Bonds for the purpose of providing funds for the Improvement Project. The City has the power to enter into the transactions contemplated by, and to carry out its obligations under, this Agreement and the Ordinance. The City Council of the City has duly adopted the Ordinance, which is valid and enforceable against the City and which authorizes the execution and delivery of this Agreement and the execution, issuance, sale and delivery of the Bonds. At or prior to Closing, the City: (i) will have full legal right, power and authority to (A) perform its obligations under and comply with the provisions of the Ordinance and the Act, (B) issue, execute and deliver, and perform its obligations under the Bonds, and (C) carry out and consummate the transactions contemplated by and perform its obligations under this Agreement and the documents delivered in connection with the Ordinance and the Act; and (ii) will have the full legal right, power and authority under the Act to execute and deliver this Agreement and to adopt the Ordinance;

D. The Ordinance and this Agreement constitute legal, valid and binding agreements of the City, enforceable in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights. The Bonds, when issued, delivered and paid for, in accordance with the Ordinance and this Agreement, will constitute legal, valid and binding obligations of the City entitled to the benefits of the Ordinance and will be enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws and principles of equity relating to or affecting the enforcement of creditors' rights; and upon the issuance, authentication and delivery of the Bonds as aforesaid, the Ordinance will provide the legally valid and binding pledge of the revenues it purports to create as set forth in the Ordinance. The "Pledged Revenues" consist of the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

E. The proceeds of the Bonds will be deposited in certain funds and accounts created pursuant to the Ordinance and shall be used by the City only (i) for payment of costs of the Improvement Project, (ii) to pay debt service on the Bonds and (iii) for payment of the City's costs of issuance of the Bonds. The distribution and use of the Bond proceeds will be in compliance with the provisions of the Ordinance;

F. The proceeds of the Bonds will be expended within three (3) years of the Closing Date, unless a longer term is approved by Bond Counsel in writing. Upon completion of the Improvement Project, the City agrees to deliver Certificates of Completion to the Purchaser and the Trustee substantially in the forms attached as Exhibit C to this Agreement stating that, to the best of his or her knowledge, the Improvement Project have been completed and accepted by the City, and all costs have been paid;

G. There is no litigation or proceeding pending or, to the knowledge of the undersigned, after due inquiry, threatened, in any way affecting the existence of the City, or seeking to restrain or to enjoin the issuance, sale or delivery of the Bonds, or in any way contesting or affecting the validity or enforceability of the Bonds, the Ordinance or this Agreement, or contesting the powers of the City or its authority with respect to the Bonds, the Ordinance or this Agreement;

H. The issuance, sale and delivery of the Bonds, the execution and delivery of this Agreement and compliance with the obligations on the part of the City contained in this Agreement and in the Bonds do not conflict with or constitute a breach or default under any administrative regulation, judgment, decree, loan agreement, indenture, note, bond, resolution, ordinance, agreement or other instrument to which the City is a party or to which the City, or any of its properties or other assets, is otherwise subject;

I. Statements contained in any certificate of the City provided to the Purchaser pursuant to this Agreement or in connection with the delivery of the Bonds and delivered to the Purchaser shall be deemed representations and warranties by the City to the Purchaser;

J. The City is not in default, and has not been in default, in the payment of principal of, premium, if any, or interest on, any bonds, notes or other obligations which it has issued, assumed or guaranteed as to payment of principal, premium, or interest;

K. Since July 1, 2023, the City has not incurred any material liabilities, direct or contingent, nor has there been any material adverse change in the financial position of the City affecting the Pledged Revenues, whether or not arising from transactions in the ordinary course of business.

At or prior to the Closing Date, except as may be required under the securities law of the State, all approvals, consents and orders of any governmental authority having jurisdiction in the matter which would constitute a condition precedent to any of the actions to be taken by the City with respect to the Bonds prior to the Closing Date will have been obtained and will be in full force and effect;

L. The City agrees to provide continuing disclosure to the Purchaser, as the Purchaser may reasonably require, that shall include, but not be limited to: annual audits, operational data required to update information in any disclosure documents used to assign or securitize debt service on the Bonds by issuance of bonds by the Purchaser pursuant to the Indenture, and notification of any event deemed material by the Purchaser.

M. The City agrees that neither this Agreement nor the Bonds will be amended without the prior written consent of the Purchaser, and, if the Bonds have been pledged under the Indenture, without the prior written consent of the Trustee pursuant to the Indenture.

N. The City or its authorized agents provided the Finance Authority at least 5 days' notice of the intended date of pricing the Bonds with the Finance Authority.

3. Representations and Warranties of the Purchaser. The Purchaser represents and warrants, and agrees with the City, as follows:

A. The Purchaser is authorized to purchase the Bonds.

B. In connection with the purchase of the Bonds, the Purchaser acknowledges that no offering document or prospectus has been prepared with respect to the sale of the Bonds to the Purchaser, and that the Purchaser is buying the Bonds in a private placement by the City to the Purchaser. The Purchaser has reviewed such information as it deems relevant in making its decision to purchase the Bonds.

C. The Purchaser acknowledges that the Bonds will not be listed on any securities exchanges and that no trading market now exists in the Bonds, and none may exist in the future.

D. The Purchaser is purchasing the Bonds for its own account (and not on behalf of another) and has no present intention of reselling the Bonds; however, the Purchaser reserves the right to sell, pledge, transfer, convey, hypothecate, mortgage, or dispose of the Bonds at some future date determined by the Purchaser, but only to persons who have been provided sufficient information with which to make an informed decision to invest in the Bonds and in compliance with the Securities Act of 1933, as amended and as then in effect, the regulations promulgated thereunder and applicable state securities laws and regulations.

E. The Purchaser intends to reimburse the Public Project Revolving Fund (as defined in the New Mexico Finance Authority Act, NMSA 1978, Sections 6-21-1 *et seq.*) for the amount of the Bonds.

F. The Finance Authority received notice of the City's intent to price the Bonds with the Finance Authority at least 5 (five) days prior to the intended day of pricing.

4. Redemption. The Bonds maturing on June 1, 2034 are subject to optional redemption at the option of the City at any time on and after December 15, 2033, in whole or in part, with funds derived from any available and lawful source, and the City shall designate the amount that is to be redeemed, and if less than a whole maturity is to be redeemed, the City shall direct the paying agent/registrar of the Bonds

to call by lot Bonds, or portions thereof with such maturity, for redemption (provided that apportion of a Bond may be redeemed only in an integral multiple of $5,000), at the redemption price of par, plus accrued interest to the date fixed for prepayment or redemption.

5. Reasonably Required Reserve Fund. No deposit of proceeds of the Bonds or other City moneys into the 2023A Debt Service Reserve Fund shall be required on the Closing Date or at any time thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds and the Parity Subordinate Obligations. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023A Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months, an amount equal to the 2023A Minimum Reserve will be held in the 2023A Reserve Fund.

After funding the 2023A Reserve Fund in an amount equal to the 2023A Minimum Reserve, no additional payments need be made into the 2023A Reserve Fund so long as the moneys therein shall equal not less than the 2023A Minimum Reserve. The moneys (if any) in the 2023A Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as provided in the Ordinance, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023A Bonds resulting from failure to deposit into the 2023A Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023A Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2023A Minimum Reserve.

6. Limitations Upon Issuance of Additional Bonds. Before any additional Parity Subordinate Obligations are authorized or actually issued (excluding refunding bonds or refunding obligations which refund Parity Subordinate Obligations but including parity refunding bonds and obligations which refund subordinate obligations) it must be determined that the requirements in Section 21 of the Ordinance have been met.

7. Ongoing Disclosure. The City shall provide notice to the Finance Authority upon the approval of issuance of additional Parity Obligations or Parity Subordinate Obligations as provided in Section 25(B) of the Bond Ordinance and the Pricing Certificate.

8. Conditions of Closing. The City's obligation to sell and the Purchaser's obligations under this Agreement to purchase and pay for the Bonds shall be subject to the following conditions:

A. The City shall have performed its obligations and agreements to be performed under the Ordinance and this Agreement at or before the Closing Date, and the representations and warranties of the City contained in this Agreement shall be accurate as of the date of this Agreement and as of the Closing Date.

B. This Agreement shall have been duly authorized and executed by the City and the Purchaser and shall be in full force and effect.

C. As determined by the Purchaser in its sole discretion, there shall not have been any material adverse change since the date of this Agreement relating to the City, or its operations, or any material adverse change in the law affecting the validity or tax-exempt status of the Bonds.

D. On the Closing Date, the Purchaser shall receive the following, each in a form satisfactory to the Purchaser:

(1) A written opinion of Modrall, Sperling, Roehl, Harris & Sisk, P.A, ("Bond Counsel") dated the Closing Date approving the legality and enforceability of the Bonds and regarding the tax-exempt status of the Bonds, addressed and delivered to the Purchaser;

(2) A written opinion of Sutin, Thayer & Browne A Professional Corporation ("Purchaser's Counsel") that the Bonds may be pledged by the Purchaser as a loan or as securities pursuant to the Indenture as determined by the Purchaser;

(3) A certificate, dated the Closing Date, of an authorized officer of the City to the effect that each of the representations and warranties of the City set forth in this Agreement is true, accurate and complete as of the Closing Date;

(4) A General and No-Litigation Certificate of the City dated the Closing Date of an authorized officer of the City;

(5) An executed Internal Revenue Service Form 8038-G Tax-Exempt Governmental Obligations Return;

(6) Specimen Series 2023A Bond;

(7) An executed Tax Certificate of the City with respect to the Bonds;

(8) A Delivery, Deposit and Cross-Receipt Certificate, in substantially the form attached to this Agreement as Exhibit A or otherwise satisfactory to the Purchaser, providing for the deposit of the Purchase Price as provided in the Ordinance; and

(9) Such additional certificates, opinions or other documents as Bond Counsel, Purchaser, or Purchaser's Counsel may reasonably require to evidence the satisfaction, as of the Closing Date, of the conditions then to be satisfied in connection with the transactions contemplated by the Ordinance and this Agreement.

E. All matters relating to this Agreement, the Bonds, the sale of the Bonds to the Purchaser, the Ordinance and the consummation of the transactions contemplated by this Agreement and the Ordinance shall be mutually satisfactory to and approved by the City and Purchaser.

F. No order, decree or injunction of any court of competent jurisdiction, nor any order, ruling, regulation or administrative proceeding by any governmental body or council, shall have been issued or commenced with the purpose or effect of prohibiting the issuance or sale of the Bonds.

G. As determined by the Purchaser in its sole discretion, there shall not have been any material adverse change since the date of this Agreement relating to the City, or its operations, or any material adverse change in the law affecting the validity or tax-exempt status of the Bonds.

If the City is unable to satisfy the conditions to the obligations of the Purchaser contained in this Agreement, or if the obligations of the Purchaser are terminated for any reason permitted by this Agreement, this Agreement may be terminated and neither the Purchaser nor the City shall have any further obligations under this Agreement. Payment by the Purchaser to the City of the Purchase Price shall be conclusive evidence that all of the conditions set forth in this section have been satisfied or waived by the Purchaser.

9. The Purchaser's Right to Cancel. The Purchaser shall have the right in its sole discretion to cancel its obligations under this Agreement to purchase the Bonds by notifying the City in writing of its election to do so between the date hereof and the Closing Date, if any of the following events occur prior to the Closing:

A. Legislation not yet introduced in the U.S. Congress shall be enacted or actively considered for enactment by the U.S. Congress, or recommended by the President of the United States of America to the U.S. Congress for passage, or favorably reported for passage to either House of the Congress by any committee of such House to which such legislation has been referred for consideration; a decision by a court of the United States of America or the United States Tax Court shall be rendered; or a ruling, regulation (proposed, temporary or final) or an official statement by or on behalf of the Treasury Department of the United States of America, the Internal Revenue Service or other agency or department of the United States of America shall be made or proposed to be made which has the purpose or effect, directly or indirectly, of imposing federal income taxes upon interest on the Bonds;

B. Any other action or event shall have transpired which has the purpose or effect, directly or indirectly, of materially adversely affecting the federal income tax consequences of any of the transactions contemplated herewith or contemplated by the Ordinance and this Agreement and, in the judgment of the Purchaser, reasonably exercised, materially adversely affects the purchase of the Bonds by the Purchaser;

C. Legislation shall be enacted, or actively considered for enactment by the Congress, with an effective date on or prior to the date of Closing, or a decision by a court of the United States of America shall be rendered, or a ruling or regulation by the Securities and Exchange Commission (the "SEC") or other governmental agency having jurisdiction over the subject matter shall be made, the effect of which is that (1) the Bonds are not exempt from the registration, qualification or other requirements of the Securities Act of 1933, as amended and as then in effect, or the Securities Exchange Act of 1934, as amended and then in effect, or (2) the Ordinance is not exempt from the registration, qualification or other requirements of the Trust Indenture Act of 1939, as amended and then in effect;

D. A stop order, ruling or regulation by the SEC shall be issued or made, the effect of which is that the sale of the Bonds, as contemplated herein, is in violation of any provision of the Securities Act of 1933, as amended and as then in effect, the Securities Exchange Act of 1934, as amended and as then in effect, or the Trust Indenture Act of 1939, as amended and as then in effect;

E. There shall exist any fact or there shall occur any event which, in the sole judgment of the Purchaser, either (1) makes untrue or incorrect in any material respect any statement or information provided by the City to the Purchaser in connection with the sale of the Bonds by the City to the Purchaser or (2) is not reflected in statements or information provided by the City to the Purchaser in connection with the sale of the Bonds by the City to the Purchaser but should be reflected therein in order to make the statements and information contained therein not misleading in any material respect;

F. There shall have occurred any outbreak or escalation of hostilities, declaration by the United States of a national emergency or war or other calamity or crisis the effect of which on financial markets is such as to make it, in the sole judgment of the Purchaser, impractical or inadvisable to proceed with the purchase of the Bonds;

G. Trading in the City's outstanding securities shall have been suspended by the SEC or trading in securities generally on the New York Stock Exchange shall have been suspended or limited or minimum prices shall have been established on such Exchange;

H. A banking moratorium shall have been declared either by Federal, New York or State authorities; or

I. Any litigation shall be instituted, pending or threatened to restrain or enjoin the issuance, sale or delivery of the Bonds or in any way contesting or affecting any authority for or the validity of the Bonds, this Agreement, the Ordinance, the existence or powers of the City, or any of the transactions described herein.

10. Representations and Agreements to Survive Delivery. All representations, warranties, covenants and agreements of the City and the Purchaser set forth in this Agreement and any other documents relating to the issuance of the Bonds shall remain operative and in full force and effect, regardless of any investigation made by or on behalf of the City or the Purchaser, and shall survive the delivery of the Bonds to the Purchaser.

11. Payment of Expenses. The Purchaser shall pay the fees, expenses and costs incurred by it, its legal counsel and its financial advisor relating to the preparation, issuance, delivery and sale of the Bonds. The City shall pay the expenses incurred by it, its legal counsel and its financial advisor relating to the preparation, issuance, delivery and sale of the Bonds from the proceeds of the Bonds or other legally available moneys.

12. Parties in Interest. This Agreement is solely for the benefit of the Purchaser and the City and their respective successors and no other person, partnership, association or corporation shall acquire or have any right under or by virtue of this Agreement.

13. Applicable Law; Nonassignability. This Agreement shall be construed in accordance with the laws of the State of New Mexico. This Agreement may not be assigned by the City or the Purchaser.

14. Notices. Any notice or other communication to be given to the Purchaser under this Agreement may be given by mailing or delivering the same in writing to the New Mexico Finance Authority, 207 Shelby Street, Santa Fe, New Mexico 87501, Attention: Chief Executive Officer; and any notice or other communication to be given to the City under this Agreement may be given by delivering the same in writing to the City, 700 North Main Street, Las Cruces, New Mexico, Attention: Treasurer.

15. Entire Agreement. This Agreement, when accepted by the City in writing as heretofore specified, shall constitute the entire agreement among the City and the Purchaser and is made solely for the benefit of the Purchaser and the City, and no other person shall acquire or have any right hereunder or by virtue hereof.

16. Amendments; Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document. This Agreement may not be effectively amended, changed, modified or altered without the written consent of all the parties hereto, and, if the Bonds have been pledged under the Indenture, without the prior written consent of the Trustee pursuant to the Indenture.

Please sign and return a duplicate original of this Agreement to the Purchaser. Upon your signing and delivering this Agreement, it will constitute a binding agreement.

NEW MEXICO FINANCE AUTHORITY

By: ____
Marquita D. Russel, Chief Executive Officer

Accepted and confirmed
as of November __, 2023:

CITY OF LAS CRUCES, NEW MEXICO

By: ______________________________________
Leeann DeMouche, City Financial Services Director

EXHIBIT A

FORM OF DELIVERY, DEPOSIT AND CROSS-RECEIPT CERTIFICATE

$5,580,000
SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX
IMPROVEMENT REVENUE BONDS
SERIES 2023A

STATE OF NEW MEXICO	)	
DOÑA ANA COUNTY	) ss:	DELIVERY, DEPOSIT AND
CITY OF LAS CRUCES	)	CROSS-RECEIPT CERTIFICATE

IT IS HEREBY CERTIFIED by the undersigned, the duly chosen, qualified and acting Mayor of the City of Las Cruces, New Mexico (the "City"):

1. On the date of this Certificate, the City executed and delivered, or caused to be delivered, its Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A in the aggregate principal amount of $5,580,000 (the "Series 2023A Bonds" or the "Bonds") to the New Mexico Finance Authority (the "Finance Authority"), the purchaser of the Bonds, as authorized by the City's Bond Ordinance adopted on November 6, 2023, as supplemented by Pricing Certificate executed on November __, 2023 (collectively, the "Ordinance") relating to the issuance, sale and delivery of the Bonds. Certain amounts relating to the Bonds, are being deposited as set forth below.

2. Such amounts relating to the Bonds will be placed in the funds and accounts created under the Indenture (as defined in the Bond Purchase Agreement), between the Finance Authority and BOKF, NA, as Trustee, and its successors and assigns, and all supplemental indentures thereto and used as set forth below and in the Ordinance:

Series 2023A Bonds:	
Program Account Deposit for Acquisition of Project:	$
Program Account Deposit for Costs of Issuance:	
Debt Service Fund Deposit:	0
TOTAL:	$

3. Moneys deposited to the Program Account will be made available to the City upon submittal of Requisitions to the Finance Authority in the forms attached to the Bond Purchase Agreement as Exhibit B and will be used as set forth in the Ordinance and the Bond Purchase Agreement.

WITNESS my hand this December 15, 2023.

CITY OF LAS CRUCES, NEW MEXICO

By: ______________________________

Ken Miyagishima, Mayor

It is hereby certified by the undersigned, on behalf of the New Mexico Finance Authority, the lawful purchaser of the Bonds, that on this day the Finance Authority received from the City of Las Cruces, New Mexico, its Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, in the aggregate principal amount of $5,580,000.00.

NEW MEXICO FINANCE AUTHORITY

By: ____
Marquita D. Russel, Chief Executive Officer

EXHIBIT B

FORM OF REQUISITION

SERIES 2023A BONDS REQUISITION
(PAYMENT OF PURCHASE PRICE)

RE: $5,580,000 City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A –New Mexico Finance Authority Purchase Transaction

TO: BOKF, NA

c/o New Mexico Finance Authority

PPRF@nmfa.net

LOAN NO.: PPRF- ____ CLOSING DATE: December 15, 2023

You are hereby authorized to disburse from the Program Account – City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, with regard to the above-referenced Bond Purchase Transaction, the following:

REQUISITION NUMBER: ___

NAME AND ADDRESS OF PAYEE: ____

____

AMOUNT OF REQUISITION: $_____________

PURPOSE OF REQUISITION: ____

The requisition of funds is for the purpose stated above and is a proper charge against the Program Account – City of Las Cruces, New Mexico.

All representations contained in the Bond Purchase Agreement and the related closing documents remain true and correct and the City of Las Cruces, New Mexico is not in breach of any of the covenants contained therein.

If this is the final requisition, payment of costs of the Improvement Project is complete or, if not complete, the City of Las Cruces, New Mexico understands its obligation to complete the acquisition of the Improvement Project from other legally available funds.

City of Las Cruces, New Mexico

DATED:______________________________ By: ___________________________________

____

Print Name and Title

EXHIBIT C

CERTIFICATE OF COMPLETION

SERIES 2023A CERTIFICATE OF COMPLETION

RE: $5,580,000 City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A – New Mexico Finance Authority Purchase Transaction

TO: New Mexico Finance Authority
207 Shelby Street
Santa Fe, New Mexico 87501
Attn: Accounting

Susen Ellis
Vice President, Corporate Trust
BOKF, NA
100 Sun Avenue NE, Suite 500
Albuquerque, New Mexico 87109

LOAN NO.: PPRF-6329 CLOSING DATE: December 15, 2023

In accordance with Section 2.F of the Bond Purchase Agreement, the undersigned states, to the best of his or her knowledge, that the acquisition of the Improvement Project has been completed and accepted by the City, and all costs have been paid as of the date of this Certificate. Notwithstanding the foregoing, this certification is given without prejudice to any rights against third parties which exist at the date of this Certificate or which may subsequently come into being.

Capitalized terms used herein, are used as defined or used in the Bond Purchase Agreement.

DATED: ______________________ By:___________________________________
Authorized Officer of City

Title: _________________________________
Print Name and Title

$5,580,000
SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX
IMPROVEMENT REVENUE BONDS
SERIES 2023A

INTERCEPT AGREEMENT

This INTERCEPT AGREEMENT is made and entered into December 15, 2023, by and between the NEW MEXICO FINANCE AUTHORITY (the “Finance Authority”), a public body politic and corporate constituting a governmental instrumentality separate and apart from the State of New Mexico (the “State”) under the laws of the State and the CITY OF LAS CRUCES, NEW MEXICO, a political subdivision duly organized and existing under the laws of the State (the “City”).

W I T N E S S E T H:

WHEREAS, Sections 6-21-1 through 6-21-31, NMSA 1978, as amended, authorized the creation of the Finance Authority within the State to assist in financing the cost of public projects of participating qualified entities, including the City, such as the issuance of the $5,580,000 City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A (the “Bonds”) for the purpose of funding (1) the equipping of fire stations and acquisition of fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2023A (the “2023A Improvement Project” or the “Project”); and

WHEREAS, the City has authorized the Bonds through the adoption by the City Council the City of Ordinance No. 3048 on November 6, 2023 and a Pricing Certificate executed as of November __, 2023 (collectively, the “Ordinance”), and Section 3-31-1 through 3-31-12, NMSA 1978, as amended (the “City Act”); and

WHEREAS, pursuant to Sections 6-21-1 through 6-21-31, NMSA 1978, as amended (the “Act”), the Finance Authority and the City are authorized to enter into agreements to purchase and sell the Bonds and to facilitate the financing of the Project as described in the Bond Purchase Agreement by and between the Finance Authority and the City dated November __, 2023 (the “Bond Purchase Agreement”); and

WHEREAS, the City desires to finance the Project and such financing is permitted under the City Act; and

WHEREAS, the Finance Authority has established its Loan Program (the “Program”) funded by its public project revolving fund (as defined in the Act) for the financing and refinancing of infrastructure and equipment projects upon the execution of the Bond Purchase Agreement and the assignment of bonds to a trustee (the “Trustee”); and

WHEREAS, the Finance Authority has agreed to purchase the Bonds from the City for the purpose of financing the Project for the City, which bond purchase is to be governed by the Bond Purchase Agreement and the Ordinance; and

WHEREAS, the Act confers upon the Finance Authority the authority to purchase the Bonds from the City to finance the Project, and

WHEREAS, the City is authorized to direct that its distribution of the "Pledged Revenues" consist of the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance.

NOW THEREFORE, the parties hereto agree:

Unless otherwise defined in this Intercept Agreement and except where the context by clear implication otherwise requires, capitalized terms used in this Intercept Agreement shall have for all purposes of this Intercept Agreement the meanings assigned thereto in the Bond Purchase Agreement, the Ordinance and the Indenture, as defined in the Bond Purchase Agreement.

Section 1. Authorization to the Finance Authority. The City hereby recognizes that the Finance Authority has purchased the Bonds to finance the Project. Pursuant to this Intercept Agreement, payment of all principal of and interest on the Bonds made by or on behalf of the City shall be remitted by the City to the Trustee. In the event that the City fails to make timely payment of principal and interest, the City agrees that all payments due on the Bonds from the Pledged Revenues shall be paid by the Distributing State Agency to the Finance Authority or its designee, on behalf of the City, from scheduled distributions of the Pledged Revenues in accordance with the Intercept Schedule attached hereto as Exhibit "A" (the "Intercept Schedule").

This Intercept Agreement shall be deemed a written certification, authorization and request by the City to the Distributing State Agency to pay to the Finance Authority, on behalf of the City, sums shown on the Intercept Schedule from distributions of the Pledged Revenues pursuant to Sections 7-1-6.13 and 7-1-6.15, NMSA 1978, as amended, to ensure compliance with the Bond Purchase Agreement and payment of the Bonds. Upon written notice to the Distributing State Agency from the Finance Authority, the amount of the Pledged Revenues to be paid to the Finance Authority shall be increased from the amounts shown on Exhibit "A" to defray any delinquencies in the Finance Authority Debt Service Account or Debt Service Reserve Account, if any, established for the City. Any accumulation of the Pledged Revenues in an amount in excess of the next Bond Payment and the Debt Service Reserve Account requirement shall be redirected by the Finance Authority to the benefit of the City on a timely basis.

To the extent applicable and to the extent that the Pledged Revenues are insufficient to meet the debt service requirements due on the Senior Lien Bonds and other Parity Subordinate Lien Obligations now or hereafter issued or incurred, the amounts intercepted under this Intercept Agreement shall be sufficient to allow partial payment on a pro-rata basis of the debt service due and owing on the Bonds and other Parity Subordinate Lien Obligations after payment of the Senior Lien Bonds. If the City fails to pay the Bond Payments when due, then prior to the commencement of the interception of the Pledged Revenues, City must inform the Finance Authority of any Senior Lien Obligations and Parity Subordinate Lien Obligations then outstanding and any Senior Lien Obligations or Parity Subordinate Lien Obligations issued during the time that the Distributing State Agency is intercepting the Pledged Revenues to ensure that Pledged Revenues are applied in accordance with the lien status of the outstanding obligations payable from the Pledged Revenues.

Section 2. Term; Amendments. This Intercept Agreement will remain in full force and effect from its effective date as herein provided until such time as the Bonds and this Intercept Agreement have been paid in full. Nothing herein shall be deemed in any way to limit or restrict the City from issuing its own obligations, providing its own program or participating in any other program for the financing of public projects which the City may choose to finance. This Intercept Agreement may be amended only by written instrument signed by the parties hereto.

Section 3. Authorization. The execution and performance of the terms of this Intercept Agreement have been authorized and approved by the Ordinance.

Section 4. Severability of Invalid Provisions. If any one or more of the provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provision shall be null and void and shall be deemed separable from the remaining provisions and shall in no way affect the validity of any of the other provisions hereof.

Section 5. Counterparts. This Intercept Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 6. Further Authorization. The City agrees that the Finance Authority shall do all things necessary or convenient to the implementation of the Program to facilitate the purchase of the Bonds from the City pursuant to the terms of the Bond Purchase Agreement.

Section 7. Effective Date. This Intercept Agreement shall take effect on the Closing Date of the Bonds.

Section 8. Initial Intercept Date. As indicated on the Intercept Schedule, the first distribution of the Pledged Revenues that is subject to interception by the Distributing State Agency under the terms of this Intercept Agreement consist of Pledged Revenues due to the City distributed in January 2024.

Section 9. Final Intercept Date. Once the Bonds have been fully paid off and satisfied or earlier as otherwise determined by the Finance Authority, the Finance Authority shall provide written notice to the Distributing State Agency and the City to discontinue the interception of the City's Pledged Revenues.

IN WITNESS WHEREOF, the parties to this Intercept Agreement have caused their names to be affixed hereto by the proper officers thereof as of the date first above written.

NEW MEXICO FINANCE AUTHORITY

By: ____________________________________
Marquita D. Russel, Chief Executive Officer

CITY OF LAS CRUCES, NEW MEXICO

By: ____________________________________
Ken Miyagishima, Mayor

(SEAL)

Attest:

By: ____________________________________
Christine Rivera, City Clerk

Acknowledged:

By: ____________________________________
State Taxation and Revenue Department

Date: ___________________________

EXHIBIT "A"

INTERCEPT SCHEDULE
CITY OF LAS CRUCES, NEW MEXICO\
PPRF-6329

Month	Pledged Revenues	Amount
Monthly, beginning January 2024 through May 20__	The distribution of all of the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section 7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to the Ordinance; and provided further that the amount of revenues pledged pursuant to the Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to the Ordinance.	$0.00**

** In the event the City fails to pay the Bond Payments, the Finance Authority shall prepare and deliver to the City and the State Taxation and Revenue Department a replacement of this Exhibit A. The replacement Exhibit A will be effective immediately upon delivery to the State Taxation and Revenue Department and the City consents in advance to the replacement Exhibit A. The State Taxation and Revenue Department shall thereafter distribute the Pledged Revenues as set forth in the replacement Exhibit A and the Pledged Revenues shall be applied to payment of the Bonds as provided in the Ordinance and this Intercept Agreement.

R

COUNCIL BILL NO. 24-006

ORDINANCE NO. 3048

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

Capitalized terms used in the following preambles have the same meaning as defined in Section 1 of this Bond Ordinance unless the context requires otherwise.

The City Council is informed that:

WHEREAS, the City is a legally and regularly created, established, organized and existing municipal corporation under the general laws of the State of New Mexico and is operating as a home rule City pursuant to Article X, Section 6 of the Constitution of the State and the Charter of the City; and

WHEREAS, pursuant to Section 7-1-6.4 NMSA 1978, the City now receives monthly from the Revenue Division of the New Mexico Taxation and Revenue Department from the statewide gross receipts tax imposed on any person engaging in business in New Mexico, a distribution of the gross receipts tax which is to be in an amount, subject to any increase or decrease made pursuant to Section 7-1-6.15 NMSA 1978, equal to the product of the quotient of 1.225% divided by the tax rate imposed by Section 7-9-4 NMSA 1978, times the net receipts (i.e. the total gross receipts tax less any refunds disbursed in that month) for the month attributable to the gross receipts tax from business locations within the City and other places designated in Section 7-1-6.4 NMSA 1978 (such distributions to the City as further defined herein the ("Pledged Revenues"); and

WHEREAS, Section 3-31-6(C) NMSA 1978, provides as follows:

> C. Any law which authorizes the pledge of any or all of the pledged revenues to the payment of any revenue bonds issued pursuant to Sections 3-31-1 through 3-31-12 NMSA 1978, or which affects the pledged revenues, or any law supplemental thereto or otherwise appertaining thereto, shall not be repealed or amended or otherwise directly or indirectly modified in such a manner as to impair adversely any such outstanding revenue bonds, unless such outstanding revenue bonds have been discharged in full or provision has been fully made therefor; and

WHEREAS, except for the 2014 Bonds, the 2015 Bonds, the 2016 Subordinate Lien Bonds, 2017 Bonds, the 2019 Subordinate Lien Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2020B Subordinate Lien Bonds, the 2022 Subordinate Lien Bonds, and the 2023 Bonds, the Pledged State Shared Gross Receipts Tax Revenues are not pledged to the payment of any bonds or other obligations which are presently outstanding; and

WHEREAS, the City Council has determined and hereby determines that it is in the best interests of the City and its residents that the Series 2023A Bonds be issued with a subordinate lien, but not an exclusive subordinate lien, on the Pledged State Shared Gross Receipts Tax Revenues subordinate to the lien thereon of outstanding Parity Bonds and on parity with the lien thereon of the outstanding Parity Subordinate Obligations; and

WHEREAS, the proposed forms of this Bond Ordinance, the Bond Purchase Agreement and Intercept Agreement have been on deposit with the City Clerk and presented to the City Council; and

WHEREAS, the City Council expects to sell the Series 2023A Bonds in a private placement to the New Mexico Finance Authority (the "Purchaser"), as determined pursuant to the Pricing Certificate supplementing this Bond Ordinance, and to delegate authority to the City Manager or City Financial Services Director (the "Delegate") to execute and deliver the Pricing Certificate to the Purchaser, as authorized by Section 6-14-10.2 NMSA 1978, provided that the final terms of the Bonds set forth in the Pricing Certificate be within the parameters set forth in this Ordinance; and

WHEREAS, the specific principal amounts, interest rates, maturity dates, prices and other final terms and other features of the Bonds, including, without limitation, provisions concerning a Bond Insurance Policy and a Reserve Fund Insurance Policy (if any) will be established in the Pricing Certificate; and

WHEREAS, the City Council has determined that it is in the best interests of the City to authorize the issuance of the Bonds pursuant to this Bond Ordinance.

NOW, THEREFORE, be it ordained by the governing body of the City of Las Cruces:

Section 1. Definitions. As used in this Bond Ordinance, the following terms shall, for all purposes, have the meanings herein specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"Act" means the general laws of the State, including Sections 3-31-1 to 3-31-12 NMSA 1978, as amended, the home rule powers of the City under the Charter and Article X, Section 6 of the Constitution of the State, and enactments of the City Council relating to the Pledged Revenues and the issuance of the Bonds, including this Bond Ordinance.

"Bond Insurance Policy" means the financial guaranty insurance policy, if any, issued by the Insurer insuring the payment when due of the principal of and interest on the Bonds as provided therein.

"Bond Ordinance" means this City Ordinance No. 3048 adopted on November 6, 2023, as supplemented by the Pricing Certificate.

"Bond Purchase Agreement" means the agreement between the City and the Purchaser providing for the sale of the Bonds by the City and the purchase of the Bonds by the Purchaser pursuant to the terms set forth therein and in the Pricing Certificate.

"Bondholder," "holder," "owner" or "Owner" means the registered owner of any Bond as shown on the registration books of the City for the Bonds, from time to time, maintained by the Registrar. Any reference to a majority or a particular percentage or proportion of the Bondholders shall mean the Holders at the particular time of a majority or of the specified percentage or proportion in aggregate principal amount of all Bonds then outstanding.

"Bonds" or "Series 2023A Bonds" or "2023A Bonds" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A authorized by this Bond Ordinance, as supplemented by the Pricing Certificate.

"Business Day" means a day on which commercial banks in the city in which the principal office of the Paying Agent and Registrar is located are open for conduct of substantially all of their business operations.

"Charter" means the home rule charter of the City submitted to Las Cruces City Commission on January 7, 1985, and approved by the voters of the City on March 5, 1985, as amended and supplemented.

"City" means the City of Las Cruces, in the County of Doña Ana and State of New Mexico.

"City Council" means the City Council of the City or any future successor governing body of the City.

"Code" means the Internal Revenue Code of 1986, as amended, including, when appropriate, the statutory predecessor of the Code, and all applicable regulations whether proposed, temporary or final, including regulations issued and proposed pursuant to the statutory predecessor of the Code, and, in addition, all official rulings and judicial determinations applicable to the Bonds, and under the statutory predecessor of the Code and any successor provisions to those sections or regulations.

"Continuing Disclosure Undertaking" means the continuing disclosure agreement with respect to the Bonds to be executed on the day of issuance and delivery of the Bonds to the Purchaser, if required by the Purchaser.

"Depository" means The Depository Trust Company, New York, New York, or such other securities depository as may be designated by an officer of the City.

"Event of Default" means any of the events stated in Section 25 of this Bond Ordinance.

"Expenses" means the reasonable and necessary fees, costs and expenses incurred by the City with respect to the issuance of the Bonds, including, to the extent applicable, the fees, compensation, costs and expenses paid or to be paid to the Paying Agent and Registrar, the Insurer and legal fees, financial advisor fees, expenses and applicable gross receipts taxes, costs of printing and distributing the Preliminary Official Statement and the Official Statement, rating fees and accounting fees and expenses.

"Fiscal Year" means the period commencing on July 1 in each calendar year and ending on the last day of June of the next succeeding calendar year, or any other twelve-month period which any appropriate authority may hereafter establish for the City as its fiscal year.

"Fitch" means Fitch Ratings, Inc., its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"Herein," "hereby," "hereunder," "hereof," "hereinabove" and "hereafter" refer to the entire Bond Ordinance and not solely to the particular section or paragraph of this Bond Ordinance in which such word is used.

"Hold Harmless Distribution" means any distribution to the City made pursuant to Section 7-1-6.46 NMSA 1978, as that distribution relates to the gross receipts tax revenues received pursuant to Section 7-1-6.4 NMSA 1978, which revenues are reduced pursuant to the deductions under Sections 7-9-92 and 7-9-93 NMSA 1978.

"Independent Accountant" means (A) an accountant employed by the State of New Mexico and under supervision of the State Auditor of the State of New Mexico, or (B) any certified public accountant, registered accountant, or firm of such accountants duly licensed to practice and practicing as such under the laws of the State of New Mexico, appointed and paid by the City who (i) is, in fact, independent and not under the domination of the City, (ii) does not have any substantial interest, direct or indirect, with the City, and (iii) is not connected with the

City as an officer or employee of the City, but who may be regularly retained to make annual or similar audits of the books or records of the City.

"Insured Bank" means a bank or savings and loan association insured by an agency of the United States.

"Intercept Agreement" means the Intercept Agreement, if any, dated the Closing Date between the City and the New Mexico Finance Authority providing for the direct payment, if required, by the New Mexico Department of Taxation and Revenue to the New Mexico Finance Authority of Pledged Revenues in amounts sufficient to pay principal and interest and any other amounts due on the Bonds, and any amendments or supplements to the Intercept Agreement.

"Interest Payment Date" means each June 1 and December 1, commencing June 1, 2024 (or such other date specified in the Pricing Certificate).

"Moody's" means Moody's Investor Service, its successors and their assigns, and, if such corporation is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"NMSA 1978" means the New Mexico Statutes Annotated, 1978 Compilation, as amended and supplemented.

"Notice of Sale" means, if the Bonds are sold in a competitive sale, the official notice of sale of the Bonds.

"Official Statement" means the final disclosure document relating to the issuance and sale of the Bonds, if any.

"Outstanding" or "outstanding" when used in reference to bonds means, on any particular date, the aggregate of all Bonds delivered under this Bond Ordinance except:

A. those cancelled at or prior to such date or delivered or acquired by the City at or prior to such date for cancellation;

B. those otherwise deemed to be paid in accordance with Section 28 or Section 31 of this Bond Ordinance;

C. those in lieu of or in exchange or substitution for which other Bonds shall have been delivered, unless proof satisfactory to the City and the Paying Agent is presented that any Bond for which a new Bond was issued or exchanged is held by a bona fide holder or in due course.

"Parity Bonds" or "Parity Obligations" means the 2014 Bonds, the 2015 Bonds, the 2017 Bonds, the 2020 Refunding Bonds, the 2020A Bonds, the 2023 Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a first lien upon the Pledged Revenues.

"Parity Subordinate Obligations" means the 2016 Subordinate Bonds, the 2019 Subordinate Bonds, the 2020B Subordinate Bonds, the 2022 Subordinate Bonds, the Series 2023A Bonds, and any other bonds or other obligations, now outstanding or hereafter issued or incurred, payable from and constituting a lien upon the Pledged Revenues subordinate and junior to the lien thereon of the Parity Bonds and on parity with the Parity Subordinate Obligations, as provided in Section 20 of this Bond Ordinance.

"Paying Agent" means the City Treasurer, as agent for the City for the payment of the Bonds or any other entity at the time appointed Paying Agent by resolution of the City Council.

"Permitted Investments" means, but only to the extent permitted by applicable laws of the State or ordinances of the City, the following:

A. Direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of the Treasury, and CATS and TIGRS) or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

B. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following federal agencies and provided such obligations are backed by the full faith and credit of the United States of America (stripped securities are only permitted if they have been stripped by the agency itself):

1. U.S. Export-Import Bank (Eximbank)

   Direct obligations or fully guaranteed certificates of beneficial ownership.

2. Farmers Home Administration (FmHA)

   Certificates of beneficial ownership

3. Federal Financing Bank

4. Federal Housing Administration Debentures (FHA)

5. General Services Administration

   Participation certificates

6. Government National Mortgage Association (GNMA or "Ginnie Mae")

   GNMA - guaranteed mortgage-backed bonds

   GNMA - guaranteed pass-through obligations

7. U.S. Maritime Administration

Guaranteed Title XI financing

8. U.S. Department of Housing and Urban Development (HUD)

Project Notes

Local Authority Bonds

New Communities Debentures - U.S. government guaranteed debentures

U.S. Public Housing Notes and Bonds - U.S. government guaranteed public housing notes and bonds

C. Bonds, debentures, notes or other evidence of indebtedness issued or guaranteed by any of the following non-full faith and credit U.S. government agencies (stripped securities are only permitted if they have been stripped by the agency itself):

1. Federal Home Loan Bank System

   Senior debt obligations

2. Federal Home Loan Mortgage Corporation (FHLMC or "Freddie Mac")

   Participation Certificates

   Senior debt obligations

3. Federal National Mortgage Association (FNMA or "Fannie Mae")

   Mortgage-backed securities and senior debt obligations

4. Student Loan Marketing Association (SLMA or "Sallie Mae")

   Senior debt obligations

5. Resolution Funding Corp. (REFCORP) obligations

6. Farm Credit System

   Consolidated system wide bonds and notes

D. Money market funds registered under the Federal Investment Company Act of 1940, whose shares are registered under the Federal Securities Act of 1933, and having a rating by S&P of AAAm-G; AAA-m; or AA-m and if rated by Moody's rated Aaa, Aa1 or Aa2.

E. Certificates of deposit secured at all times by collateral described in (A) and/or (B) above. Such certificates must be issued by commercial banks, savings and loan associations or mutual savings banks. The collateral must be held by a third party and the bondholders must have a perfected first security interest in the collateral.

F. Certificates of deposit, savings accounts, deposits accounts or money market deposits which are fully insured by FDIC, including BIF and SAIF.

G. Investment Agreements, including GIC's, Forward Purchase Agreements and Reserve Fund Put Agreements.

H. Commercial paper rated, at the time of purchase, “Prime - 1” by Moody's and “A-1” or better by S&P.

I. Bonds or notes issued by any state or municipality which are rated by Moody's and S&P in one of the two highest rating categories assigned by such agencies.

J. Federal funds or bankers acceptances with a maximum term of one year of any bank which has an unsecured, uninsured and unguaranteed obligation rating of “Prime - 1” or “A3” or better by Moody's and “A-1” or “A” or better by S&P.

K. Repurchase Agreements for 30 days or less must follow the following criteria.

Repurchase agreements provide for the transfer of securities from a dealer bank or securities firm (seller/borrower) to a municipal entity (buyer/lender), and the transfer of cash from a municipal entity to the dealer bank or securities firm with an agreement that the dealer bank or securities firm will repay the cash plus a yield to the City in exchange for the securities at a specified date.

1. Repos must be between the City and a dealer bank or securities firm

   a. Primary dealers on the Federal Reserve reporting dealer list which are rated A or better by S&P and Moody's, or

   b. Banks rated “A” or above by S&P and Moody's.

2. The written repo contract must include the following:

   a. Securities which are acceptable for transfer are:

      (1) Direct U.S. governments, or

      (2) Federal agencies backed by the full faith and credit of the U.S. government (and FNMA & FHLMC)

   b. The term of the repo may be up to 30 days

   c. The collateral must be delivered to the City, trustee (if trustee is not supplying the collateral) or third party acting as agent for the trustee (if the trustee is supplying the collateral) before/simultaneous with payment (perfection by possession of certificated securities).

   d. Valuation of Collateral

(1) The securities must be valued weekly, marked-to-market at current market price plus accrued interest.

(a) The value of collateral must be equal to 104% of the amount of cash transferred by the municipal entity to the dealer bank or security firm under the repo plus accrued interest. If the value of securities held as collateral slips below 104% of the value of the cash transferred by municipality, then additional cash and/or acceptable securities must be transferred. If, however, the securities used as collateral are FNMA or FHLMC, then the value of collateral must equal 105%.

3. Legal opinion which must be delivered to the City:

a. Repo meets guidelines under state law for legal investment of public funds.

L. The State Treasurer's short-term investment fund created pursuant to Section 6-10-10.1, NMSA 1978, and operated, maintained and invested by the State Treasurer.

“Pledged Revenue Fund” means the State Shared Gross Receipts Tax Revenue Fund, continued in Section 16 of this Bond Ordinance.

“Pledged State Shared Gross Receipts Tax Revenues” or “Pledged Revenues” means the revenues from the State gross receipts tax derived pursuant to Section 7-9-4 NMSA 1978, imposed on persons engaging in business in the State, which revenues are remitted to the City monthly by the New Mexico Department of Taxation and Revenue pursuant to Section

7-1-6 and 7-1-6.4 NMSA 1978, and which remittances currently equal one and two hundred twenty-five thousandths percent (1.225%) of the taxable gross receipts reported for the City for the month for which such remittances is made; provided that if a greater amount of such gross receipts tax revenues are hereafter provided to be remitted to the City under applicable law, such additional amounts shall be included as revenues pledged pursuant to this Bond Ordinance; and provided further that the amount of revenues pledged pursuant to this Bond Ordinance shall never be less than the greater of: (i) 1.225% of the taxable gross receipts remitted to the City by the State as set forth above, or (ii) the maximum amount at any time provided hereafter to be remitted to the City under applicable law, and includes the Hold Harmless Distribution to the extent the City receives any Hold Harmless Distribution; and provided further, the City intends that Section 3-31-6(C) NMSA 1978 applies expressly to the amount of revenues pledged pursuant to this Bond Ordinance (the term "Pledged State Shared Gross Receipts Tax Revenues" does not include any local option gross receipts tax income received by the City).

"Preliminary Official Statement" means the initial disclosure document relating to the issuance and sale of the Bonds, if any.

"Pricing Certificate" means one or more certificates executed by the City Manager or City Finance Director, dated on or before the date of delivery of the Bonds, setting forth the following final terms of the Bonds: (i) the interest and principal payment dates; (ii) the principal amounts, denominations and maturity amortization; (iii) the sale prices; (iv) the interest rate or rates; (v) the interest payment periods; (vi) the redemption and tender provisions; (vii) the creation of any capitalized interest fund, including the size and funding of such fund(s); (viii) the amount of underwriting discount, if any; (ix) the amount of the Reserve Requirement, if any, and whether such Reserve Fund shall be funded with proceeds of the Bonds or through the deposit of a Reserve Fund Insurance Policy; and (x) the final terms of agreements, if any, with agents or service providers required for the purchase, sale, issuance and delivery of the Bonds, all subject to the parameters and conditions contained in this Ordinance.

"Purchaser" means the New Mexico Finance Authority or such other purchaser as set forth in the Pricing Certificate.

"Rating Category" means a generic securities rating category, without regard, in the case of a long-term rating category, to any refinement or gradation of such long-term rating category by a numerical modifier or otherwise.

"Registrar" means the City Treasurer, as agent for the City for transfer and exchange of the Bonds or any other entity at the time appointed by resolution of the City Council.

"Reserve Fund Insurance Policy" means any insurance policy, surety bond or letter of credit deposited in or credited to the Reserve Fund, if any, as provided in the Pricing Certificate in lieu of or in partial substitution for cash or allowable investments on deposit in the Reserve Fund.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc., its successors and their assigns, and, if such entity is dissolved or liquidated or no longer performs the functions of a securities rating agency, any other nationally recognized securities rating agency designated by the City.

"State" means the State of New Mexico.

"2014 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2014 issued in an original aggregate principal amount of $10,000,000 and authorized by City Ordinance No. 2718 adopted by the City Council on June 24, 2014.

"2015 Bonds" means the City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2015 issued in an original aggregate principal amount of $19,195,000 and authorized by City Ordinance No. 2739 adopted by the City Council on December 1, 2014 and Resolution No. 15-140 adopted by the City Council on February 3, 2015.

"2016 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2016" authorized in the original aggregate principal amount of $8,585,000 and authorized by City Ordinance No. 2774 adopted by the City Council on February 16, 2016 and Resolution No. 16-18 adopted by the City Council on March 9, 2016.

"2017 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2017" issued in an original aggregate principal amount of $10,570,000 and authorized by City Ordinance No. 2808 adopted by the City Council on May 1, 2017 and Resolution No. 17-187 adopted by the City Council on May 10, 2017.

"2019 Subordinate Bonds" means the "City of Las Cruces, New Mexico Taxable Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2019 authorized in the original aggregate principal amount of $8,870,000 and authorized by City Council Ordinance No. 2894 adopted on August 5, 2019.

"2020 Refunding Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Refunding Revenue Bonds, Series 2020" authorized in the original aggregate principal amount of $15,435,000 and authorized by City Council Ordinance No. 2912 adopted on February 18, 2020.

"2020A Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020A" authorized in the original aggregate principal amount of $7,190,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2020B Subordinate Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2020B" authorized in the original aggregate principal amount of $6,750,000 and authorized by City Council Ordinance No. 2925 adopted on May 18, 2020.

"2022 Subordinate Lien Bonds" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2022" authorized in the original aggregate principal amount of $5,000,000 and authorized by City Council Ordinance No. 3007 adopted on August 15, 2022, as supplemented by the Pricing Certificate executed on August 18, 2022.

"2023 Bonds" means the "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023" authorized in the original aggregate principal amount of $12,000,000 and authorized by City Council Ordinance No. 3024 adopted on February 21, 2023, as supplemented by the Pricing Certificate executed on March 7, 2023.

"2023A Acquisition Fund" means the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Improvement Project Acquisition Fund" established by Section 16 of the Bond Ordinance.

"2023A Debt Service Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Debt Service Fund" established in Section 16 of this Bond Ordinance.

"2023A Improvement Project" means (1) ~~the~~ equipping ~~of~~ fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) ~~paying~~the payment of Expenses related to the issuance of the Series ~~2023~~2023A Bonds.

~~"2023~~"2023A Minimum Reserve" means an amount equal to the least of (i) ten percent of the principal amount of the outstanding Series 2023A Bonds, (ii) the maximum annual debt service on the outstanding Series 2023A Bonds, or (iii) 125% of the average annual debt service on the outstanding Series 2023A Bonds. The Minimum Reserve shall be recalculated every year on or about June 1.

"2023A Reserve Fund" means the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Reserve Fund" established by Section 16 of this Bond Ordinance.

Section 2. Ratification. All action heretofore taken (not inconsistent with the provisions of this Bond Ordinance) by the City Council and the officers of the City, directed toward the Improvement Project, the issuance of the Bonds for the Improvement Project and the sale of the Bonds to the Purchaser be, and the same hereby is, ratified, approved and confirmed.

Section 3. Authorization of the 2023A Improvement Project. The 2023A Improvement Project and the method of financing the 2023A Improvement Project are hereby authorized and ordered at a total cost estimated not to exceed the amount of the Bond proceeds allocated to the Project as set forth in the Pricing Certificate and any investment earnings thereon, excluding any such cost defrayed or to be defrayed by any source other than Bond proceeds.

Section 4. Findings; Declaration. The City Council hereby declares that it has considered all relevant information and data and hereby makes the following findings:

A. The 2023A Improvement Project is needed to meet the needs of the City and its inhabitants.

B. Moneys available for the 2023A Improvement Project from all sources other than the issuance of Revenue Bonds are not sufficient to defray the cost of the 2023A Improvement Project.

C. The Pledged Revenues may lawfully be pledged to secure the payment and redemption of the Bonds.

D. It is economically feasible to defray, in part, the cost of the 2023A Improvement Project by the issuance of the Bonds.

E. The issuance of the Bonds pursuant to the Act, to provide funds to finance the costs of the 2023A Improvement Project is necessary and in the interest of the public health, safety and welfare of the residents of the City.

F. The City is current in the accumulation of all amounts which are required to have been accumulated in the debt service funds and the reserve funds, if any, for the outstanding Parity Bonds and the Parity Subordinate Obligations.

Section 5. Bonds – Authorization, Parameters and Detail.

A. Authorization. This Bond Ordinance has been adopted by the affirmative vote of at least three-fourths of all of the members of the City Council. For the purpose of protecting the public health, conserving the property, and protecting the general welfare and prosperity of the citizens of the City, it is hereby declared necessary that the City, pursuant to the Act, issue one series of its negotiable, fully registered, revenue bonds to be designated the "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A" in an aggregate principal amount not to exceed $5,600,000, and the issuance, sale and delivery of the Bonds is hereby authorized.

B. Parameters Authorized; Details of Bonds. There is hereby authorized and created a series of bonds designated as the City of Las Cruces, New Mexico, Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A. The Series 2023A Bonds shall be issued subject to the following parameters:

(i) The Series 2023A Bonds shall be issued in an aggregate principal amount not to exceed $5,600,000 for the 2023A Improvement Project.

(ii) The net effective interest rate on the Series 2023A Bonds shall not exceed 12% per annum.

(iii) The final maturity of the Series 2023A Bonds shall not be later than fifteen (15) years from the date of issuance.

(iv) The Series 2023A Bonds shall be sold with an underwriting or purchaser's discount not to exceed 1.00%.

(iv) The Series 2023A Bonds shall be payable solely from, and shall constitute a subordinate lien upon the Pledged Revenues, subordinate to the lien thereon of the Parity Obligations and on a parity with the outstanding Parity Subordinate Obligations.

(v) The Series 2023A Bonds shall be sold to the Purchaser pursuant to private placement with the Purchaser.

(vi) The maximum sale price of the Series 2023A Bonds shall be not more than $5,600,000, exclusive of premium payable in connection with the issuance of the Bonds.

(vii) The Series 2023A Bonds shall be in substantially the form set forth in this Ordinance.

~~C. The City Manager or City Financial Services Director,~~ C. The Delegate will set the date to determine the terms and provisions of the Bonds for the purchase of the Bonds by the Finance Authority as provided in this Section ("Pricing Date") upon no less than five (5) business days' prior notice (or such other prior notice as accepted by the Finance Authority) of such Pricing Date to the Finance Authority. The Delegate is hereby authorized pursuant to this Ordinance to approve the final terms of the Bonds as permitted by Section 6-14-10.2 NMSA 1978, and to execute and deliver the Pricing Certificate and the Bond Purchase Agreement. The forms of the Bond Purchase Agreement and Intercept Agreement submitted with the adoption of this Ordinance are hereby approved with such changes as are approved by the Delegate consistent with the parameters outlined in this Ordinance.

D. The Bonds shall be negotiable instruments but shall be issued only as fully registered bonds, in such numbers and denominations as may be requested by the Purchaser, but exchangeable for other fully registered Bonds of any denominations which are multiples of $5,000. The Bonds shall be numbered separately and consecutively, shall be dated the date of their delivery to the Purchaser, shall mature on June 1 of each year and shall bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from their date, payable semi-annually on June 1 and December 1 in each year commencing on June 1, 2024 (or such other date as specified in the Pricing Certificate) until their respective maturities. The Bonds shall bear the rates of interest, maturities and provisions for redemption prior to maturity as shall be established in the Pricing Certificate.

Section 6. Redemption of Bonds.

A. Notice of Redemption. In the event that the Bonds are subject to redemption prior to maturity, as may be established in the Pricing Certificate, notice of redemption shall be given by the Registrar by sending a copy of such notice in the manner required by the Depository or by first-class, postage prepaid mail at least thirty (30) days prior to the redemption date to the registered owner of each Bond, or portion thereof, to be redeemed at the address shown as of the close of business of the Registrar on the fifth day prior to the mailing of notice on the registration books kept by the Registrar. The City shall give notice of optional redemption of the Bonds to the Registrar at least forty-five (45) days prior to the redemption date (unless such deadline is waived by the Registrar). The Registrar's failure to give such notice to the registered owner of any Bond, or any defect therein, shall not affect the validity of the proceedings for the redemption of any Bonds for which proper notice was given. Notices of redemption shall specify the maturity dates and the number or numbers of the Bonds to be redeemed (if less than all are to be redeemed) and if less than the full amount of any Bond is to be redeemed, the amount of such Bond to be redeemed, the date fixed for redemption, and that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount to be redeemed plus accrued interest to the redemption date and that from and after such date interest will cease to accrue on such amount. Notice having been given in the manner hereinbefore provided, the Bond or Bonds so called for redemption shall become due and payable on the redemption date so designated and if an amount of money sufficient to redeem all Bonds called for redemption shall on the redemption date be on deposit with the Paying Agent, the Bonds to be redeemed shall be deemed not outstanding and shall cease to bear interest from and after such redemption date. Upon presentation of the Bonds to be redeemed at the office of the Paying Agent, the Paying Agent will pay the Bond or Bonds so called for redemption with funds deposited with the Paying Agent by the City.

B. Conditional Redemption. If money or Defeasance Obligations (as defined in Section 31) sufficient to pay the optional redemption price of the Bonds to be called for optional redemption are not on deposit with the Paying Agent prior to the giving of notice of optional redemption pursuant to paragraph A of this Section, such notice shall state such Bonds will be redeemed in whole or in part on the optional redemption date in a principal amount equal to that part of the optional redemption price received by the Paying Agent on the applicable optional redemption date. If the full amount of the optional redemption price is not received as set forth in the preceding sentence, the notice shall be effective only for those Bonds for which the optional redemption price is on deposit with the Paying Agent. If all Bonds called for optional redemption cannot be redeemed, the Bonds to be redeemed shall be selected in the manner deemed reasonable and fair by the City and the Registrar shall give notice, in the manner in which the original notice or optional redemption was given, that such money was not received and the information required by paragraph A of this Section. In that event, the Registrar shall promptly return to the Owners thereof the Bonds or certificates which it has received evidencing the part thereof which have not been optionally redeemed.

Section 7. Filing of Manual Signatures. Prior to the execution of any Bond pursuant to Sections 6-9-1 to 6-9-6 NMSA 1978, as amended, the Mayor or Mayor Pro Tem and City

Clerk shall each file with the New Mexico Secretary of State his or her manual signature certified by him or her under oath; provided that filing shall not be necessary for any officer where any previous filing may have legal application to the Bonds.

Section 8. Execution and Authentication of Bonds.

A. Execution. The Bonds shall be signed with the engraved, imprinted, stamped or otherwise reproduced facsimile of the signature, or the manual signature, of the Mayor or Mayor Pro Tem and shall be attested with the facsimile or manual signature of the City Clerk. There shall be affixed to each Bond the printed, engraved, stamped or otherwise placed facsimile of, or imprint of, the City's corporate seal. The Bonds shall be authenticated by the manual signature of an authorized officer of the Registrar. The Bonds when authenticated and bearing the manual or facsimile signatures of the officers in office at the time of signing thereof shall be valid and binding special obligations of the City, notwithstanding that before delivery thereof and payment therefor, any or all of the persons whose signatures appear thereon shall have ceased to fill their respective offices. The Mayor or Mayor Pro Tem and City Clerk, at the time of the execution of the Bonds and the signature certificate, each may adopt as and for his or her own facsimile signature, the facsimile signature of his or her predecessor in office if such facsimile signature appears upon any of the Bonds or certificates pertaining to the Bonds.

B. Authentication. No Bond shall be valid or obligatory for any purpose unless the certificate of authentication has been duly executed by the Registrar. The Registrar's certificate of authentication shall be deemed to have been fully executed if manually signed and inscribed by an authorized officer of the Registrar, but it shall not be necessary that the same officer sign the certificate of authentication on all of the Bonds issued hereunder.

Section 9. Negotiability. The Bonds shall be fully negotiable and shall have all the qualities of negotiable paper and the Bondholders shall possess all rights enjoyed by the holders of negotiable instruments under the provisions of the Uniform Commercial Code. Except as set forth herein, the Bonds outstanding shall in all respects be equally and ratably secured, without preference, priority or distinction on account of the date or dates or the actual time or times of the issuance or maturity of the Bonds.

Section 10. Payment and Presentation of Bonds for Payment. Principal and interest on the Bonds shall be payable in lawful money of the United States of America, without deduction for exchange or collection charges. Principal shall be payable in immediately available funds at maturity or redemption thereof upon presentation and surrender of such Bond at the principal office of the Paying Agent or at the designated office of any successor Paying Agent. Upon any partial prior redemption of any Bond, the registered owner, in its discretion, may request the Registrar to authenticate a new Bond or to make a notation on the Bond indicating the date and amount of prepayment, except in the case of final maturity, in which case the Bond must be presented to the Paying Agent prior to payment. Interest on the Bonds shall be payable by check or draft mailed to the registered owner thereof (or in such other manner as may be agreed upon by the Paying Agent and the registered owner), as shown on the registration books maintained by the Registrar at the address appearing therein on the 15th day of the calendar month next preceding the Interest Payment Date (the “Record Date”). Any interest which is not timely paid or provided for shall cease to be payable to the owner thereof (or of one or more predecessor Bonds) as of the Record Date, but shall be payable to the owner thereof (or of one or more predecessor Bonds) at the close of business on a special record date for the payment of that overdue interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to Bond owners not less than ten (10) days prior thereto. If any Bond presented for payment remains unpaid at maturity or redemption, it shall continue to bear interest at the rate or rates designated in, and applicable to, such Bond from time to time.

If any Bond is not presented for payment at maturity or redemption when funds available therefor have been deposited with the Paying Agent, it shall cease bearing interest on and from the date of maturity or redemption.

Section 11. Registration, Transfer, Exchange and Ownership of Bonds.

A. Registration, Transfer and Exchange. The City shall cause books for registration, transfer, and exchange of the Bonds as provided herein to be kept at the principal office of the Registrar. Upon surrender for transfer or exchange of any fully registered Bond at the principal office of the Registrar duly endorsed by the registered owner or his attorney duly authorized in writing, or accompanied by a written instrument or instruments of transfer or exchange in form satisfactory to the Registrar and duly executed, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or registered owner, as appropriate, a new Bond or Bonds in authorized denominations, in fully registered form of the same aggregate principal amount, maturity and interest rate.

B. Limitations. The Registrar shall not be required to transfer or exchange any Bond (i) during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption as herein provided, or (ii) after the mailing to registered owners of notice calling such Bonds or portion thereof for redemption as herein provided. The Registrar shall close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

C. Owner of the Bonds. The person in whose name any Bond is registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of either the principal of or interest on any such Bond shall be made only to or upon the order of the registered owner thereof or his legal representative as stated herein, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums so paid.

D. Lost Bonds. If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar shall, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If any such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may request the Paying Agent to pay such bond in lieu of replacement.

E. Additional Bonds. Executed but unauthenticated Bonds are hereby authorized to be delivered to the Registrar in such quantities as may be convenient to be held in custody by the Registrar pending delivery as herein provided.

F. Charges. For each new Bond issued in connection with a transfer or exchange, the Registrar may make a charge to the owner of the Bond requesting such exchange or transfer sufficient to reimburse the Registrar for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

G. Successor Registrar or Paying Agent. If the Registrar or Paying Agent initially appointed hereunder shall resign or is prohibited by law from continuing as Registrar or Paying Agent, or if the City shall reasonably determine that the Registrar or Paying Agent has become incapable of fulfilling its duties hereunder, the City may, upon notice mailed to each registered owner of Bonds at the address last shown on the registration books, appoint a successor Registrar or Paying Agent, or both. Every such successor Registrar or Paying Agent shall be a bank or trust company located in and in good standing in the United States and having shareholders' equity (e.g., capital stock, surplus and undivided profits), however denominated, not less than $50,000,000. It shall not be required that the same institution serve as both Registrar and Paying Agent hereunder, but the City shall have the right to have the same institution serve as both Registrar and Paying Agent hereunder.

H. Book Entry. The Bonds may be issued or registered, in whole or in part, in book-entry form from time to time with no physical distribution of bond certificates made to the public, with a Depository acting as securities depository for the Bonds. A single certificate for each maturity date of the Bonds issued in book-entry form will be delivered to the Depository and immobilized in its custody. The book-entry system will evidence ownership of the Bonds in authorized denominations, with transfer of ownership effected on the books of the Depository and its participants ("Participants"). As a condition to delivery of the Bonds in book-entry form, the Purchaser will, immediately after acceptance of delivery thereof, deposit, or cause to be deposited, the Bond certificates with the Depository, registered in the name of the Depository or its nominee. Principal, premium, if any, and interest will be paid to the Depository or its nominee as the registered owner of the Bonds. The transfer of principal, premium, if any, and interest payments to Participants will be the responsibility of the Depository; the transfer of principal, premium, if any, and interest payments to the beneficial owners of the Bonds (the "Beneficial Owners") will be the responsibility of Participants and other nominees of Beneficial Owners maintaining a relationship with Participants (the "Indirect Participants"). The City will not be responsible or liable for maintaining, supervising or reviewing the records maintained by the Depository, Participants or Indirect Participants.

If (i) the Bonds are not eligible for the services of the Depository, (ii) the Depository determines to discontinue providing its services with respect to the Bonds or (iii) the City determines that a continuation of the system of book-entry transfers through the Depository ceases to be beneficial to the City or the Beneficial Owners, the City will either identify another

Depository or certificates for the Bonds will be delivered to the Beneficial Owners or their nominees, and the Beneficial Owners or their nominees, upon authentication of Bonds and registration of those Bonds in the Beneficial Owners' or nominees' names, will become the owners of the Bonds for all purposes. In that event, the City shall mail an appropriate notice to the Depository for notification to Participants, Indirect Participants and Beneficial Owners of the substitute Depository or the issuance of bond certificates to Beneficial Owners or their nominees, as applicable.

Officers of the City are authorized to sign agreements with the Depository relating to the matters set forth in this Section.

Notwithstanding any other provision of this Bond Ordinance, so long as all of the Bonds are registered in the name of the Depository or its nominee, all payments of principal, premium, if any, and interest on the Bonds, and all notices with respect to the Bonds, shall be made and given by the Paying Agent, Registrar or the City to the Depository as provided in the Bond Ordinance and by the Depository to its Participants or Indirect Participants and notices to the Beneficial Owners of the Bonds in the manner provided in an agreement or letter of the City to the Depository.

Section 12. Special Limited Obligations. All of the Bonds and all payments of principal, premium, if any, and interest thereon whether at maturity or on a redemption date, together with any interest accruing thereon, shall be special limited obligations of the City and shall be payable and collectible solely from the Pledged Revenues, which revenues are so pledged and are payable as set forth in Section 17 of this Bond Ordinance. The owner or owners of the Bonds may not look to any general or other fund for the payment of the principal of or interest on such obligations, except the designated special funds pledged therefor. The Bonds shall not constitute an indebtedness or a debt of the City within the meaning of any constitutional, charter or statutory provision or limitation, nor shall they be considered or held to be general obligations of the City, and each of the Bonds shall recite that it is payable and collectible solely out of the Pledged Revenues, pledged as set forth in this Bond Ordinance, and that the holders thereof may not look to any general or other municipal fund for the payment of the principal of and interest on the Bonds. Nothing herein shall prevent the City from applying other funds of the City legally available therefor to the payment of the Bonds, in its sole discretion.

Section 13. Form of Bonds. The forms, terms and provisions of the Bonds shall be substantially in the form set forth below, with such changes therein as are not inconsistent with the Bond Ordinance.

(Form of Bond)

UNITED STATES OF AMERICA

STATE OF NEW MEXICO COUNTY OF DOÑA ANA

CITY OF LAS CRUCES, NEW MEXICO

SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX

IMPROVEMENT REVENUE BONDS,

SERIES 2023A

Bond No. _______ $_________

INTEREST RATE	MATURITY DATE	DATE OF BOND	CUSIP
% per annum	June 1, _____	_________ , 2023	_____

REGISTERED OWNER: ________________________________

PRINCIPAL AMOUNT: ________________________________

The City of Las Cruces (the "City"), in the County of Doña Ana and State of New Mexico, a municipal corporation duly organized and existing under the Constitution and laws of the State of New Mexico, for value received, hereby promises to pay, solely from the special funds available for the purpose as hereinafter set forth, to the registered owner named above or registered assigns, on the Maturity Date specified above, upon presentation and surrender hereof at the principal office of the City Treasurer, Las Cruces, New Mexico, as paying agent, or any successor paying agent (the "Paying Agent"), the Principal Amount stated above, in lawful money of the Unites States of America, and to pay from such sources interest on the unpaid principal amount at the Interest Rate on June 1, 2024 and on June 1 and December 1 of each year (each an "Interest Payment Date") thereafter to its maturity, or until redeemed if called for redemption prior to maturity. This bond will bear interest from the most recent date to which interest has been paid or provided for or, if no interest has been paid or provided for, from its date. Interest on this bond is payable by check mailed to the registered owner hereof (or by such other arrangement as may be mutually agreed to by the Paying Agent and the registered owner) as shown on the registration books for this issue maintained by the City Treasurer, Las Cruces, New Mexico, as registrar, or any successor registrar (the "Registrar") at the address appearing therein at the close of business on the fifteenth day of the calendar month next preceding the Interest Payment Date (the "Record Date"). Any interest which is not timely paid or duly provided for shall cease to be payable to the owner hereof as of the Record Date but shall be payable to the owner hereof at the close of business on a special record date to be fixed by the Paying Agent for the payment of interest. The special record date shall be fixed by the Paying Agent whenever moneys become available for payment of the overdue interest, and notice of the special record date shall be given to owners of Bonds (defined below) as then shown on the Registrar's registration books not less than ten (10) days prior to the special record date. If, upon presentation at maturity or redemption, payment of this bond is not made as herein provided, interest hereon shall continue at the Interest Rate until the principal hereof is paid in full. The principal, premium, if any, and interest on this bond are payable in lawful money of the United States of America, without deduction for the services of the Paying Agent or the Registrar.

This bond is one of a duly authorized series of fully registered bonds of the City in the aggregate principal amount of $___________ issued in denominations of $5,000 or integral multiples thereof, designated as the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A (the "Series 2023A Bonds") issued under and pursuant to City Ordinance No. ____, as supplemented by a Pricing Certificate dated _________________ , 2023 (as supplemented, the "Bond Ordinance").

The Series 2023A Bonds maturing on and after June 1, ____, are subject to prior redemption at the City's option in one or more units of principal of $5,000 on and after June 1,

____ in whole or in part at any time, in such order of maturities as the City may determine (and by lot if less than all of the Series 2023A Bonds of such maturity is called, such selection by lot to be made by the Registrar in such manner considered appropriate and fair), for the principal amount of each $5,000 unit of principal so redeemed plus accrued interest to the redemption date.

Redemption shall be made upon prior notice mailed to each registered owner of each Series 2023A Bond selected for redemption as shown on the registration books kept by the Registrar in the manner and upon the conditions provided in the Bond Ordinance.

Notice of redemption of this bond will be given by providing at least thirty (30) days prior written notice in the manner required by the depository for the Bonds or by first-class postage prepaid mail to the owner hereof at the address shown on the registration books as of the fifth day prior to the mailing of notice as provided in the Bond Ordinance. Notices of redemption will specify the number or numbers and maturity date of the Series 2023A Bonds to be redeemed (if less than all are to be redeemed), the date fixed for redemption, the amount of such Bond to be redeemed (if less than the full amount of any Bond is to be redeemed), and shall further state that on such redemption date there will become and be due and payable upon each Bond to be redeemed at the office of the Paying Agent the principal amount thereof plus accrued interest to the redemption date and that from and after such date, the redemption amount having been deposited and notice having been given, interest will cease to accrue. Upon any partial prior redemption of this bond, the registered owner, in its discretion, may request the Registrar to authenticate a new bond or to make an appropriate notation on this bond indicating the date and amount of prepayment, except in the case of final maturity, in which case this bond must be presented to the Paying Agent prior to payment.

Books for the registration and transfer of the Bonds shall be kept by the Registrar. Upon the surrender for transfer or exchange of a Bond at the principal office of the Registrar, duly endorsed or accompanied by an assignment duly executed by the registered owner or his attorney duly authorized in writing, the Registrar shall authenticate and deliver, not more than three (3) business days after receipt of the Bond or Bonds to be transferred, in the name of the transferee or owner a new Bond or Bonds in fully registered form of the same aggregate principal amount, maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. Exchanges and transfers of Bonds shall be without charge to the owner or any transferee, but the Registrar may require the payment by the owner of any Bond of any tax or other similar governmental charge required to be paid with respect to such exchange or transfer. The Registrar shall not be required (i) to transfer or exchange any Bond during the period of fifteen (15) days next preceding the mailing of notice calling any Bonds for redemption, or (ii) to transfer or exchange any Bond or part thereof called for redemption. The Registrar will close books for change of registered owners' addresses on each Record Date; transfers will be permitted within the period from each Record Date to each Interest Payment Date, but such transfers shall not include a transfer of accrued interest payable.

The person in whose name any Bond is registered on the registration books kept by the Registrar shall be deemed and regarded as the absolute owner thereof for the purpose of making payment thereof and for all other purposes except as may otherwise be provided with respect to payment of interest in the Bond Ordinance; and payment of or on account of either principal or interest on any Bond shall be made only to or upon the written order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to discharge the liability upon such Bond to the extent of the sum or sums so paid.

If any Bond shall be lost, stolen, destroyed or mutilated, the Registrar will, upon receipt of such Bond, if mutilated, and such evidence, information or indemnity relating thereto as the

Registrar may reasonably require, if lost, stolen or destroyed, authenticate and deliver a replacement Bond or Bonds of a like aggregate principal amount and of the same maturity and interest rate, bearing a number or numbers not contemporaneously outstanding. If such lost, stolen, destroyed or mutilated Bond shall have matured or have been called for redemption, the Registrar may direct the Paying Agent to pay such Bond in lieu of replacement.

This Bond does not constitute an indebtedness of the City within the meaning of any constitutional or statutory provision or limitation, shall not be considered or held to be a general obligation of the City, and is payable and collectible solely out of the revenues derived from the revenues from the Pledged Revenues (as such term is defined in the Bond Ordinance) and the bondholders may not look to any other general or other municipal fund for the payment of the interest and principal of this bond. The lien of the Series 2023A Bonds on the Pledged Revenues is an irrevocable and subordinate lien, but not necessarily an exclusive subordinate lien, on the Pledged Revenues. Upon satisfaction of the conditions set forth in the Bond Ordinance, additional bonds may be issued and made payable from the Pledged Revenues having a lien thereon either on parity with or senior to the lien on the Pledged Revenues of the Series 2023A Bonds Amounts and securities held in the 2023A Debt Service Fund and 2023A Reserve Fund (if any), as such terms are defined in the Bond Ordinance, have been exclusively pledged for payment of the principal of, premium, if any, and interest on the Series 2023A Bonds.

The Series 2023A Bonds are issued to provide funds to defray in part the costs of (1) equipping fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) the payment of Expenses related to the issuance of the Series 2023A Bonds.

The City covenants and agrees with the owner of this Bond and with each and every person who may become the owner hereof that it will keep and perform all of the covenants of the Bond Ordinance.

This Bond is subject to the condition, and every owner hereof by accepting the same agrees with the obligor and every subsequent owner hereof, that the principal of and interest on this bond shall be paid, and this bond is transferable, free from and without regard to any equities, set-offs or crossclaims between the obligor and the original or any other owner hereof.

It is hereby certified that all acts and conditions necessary to be done or performed by the City or to have happened precedent to and in the issuance of the Bonds to make them legal, valid and binding special obligations of the City have been performed and have happened as required by law, and that the Bonds do not exceed or violate any constitutional or statutory limitation of or pertaining to the City.

This Bond shall not be valid or obligatory for any purpose until the Registrar shall have manually signed the Certificate of Authentication.

IN WITNESS WHEREOF, the City of Las Cruces, New Mexico has caused this bond to be signed and executed on the City's behalf with the facsimile or manual signature of the Mayor or Mayor Pro Tem and the facsimile or manual signature of the City Clerk and has caused the corporate seal of the City or a facsimile thereof to be affixed hereon, all as of the Date of Bond.

CITY OF LAS CRUCES, NEW MEXICO

By____________________________________

Mayor

By____________________________________

City Clerk

(SEAL)

(Form of Registrar's Certificate of Authentication)

Certificate of Authentication

This is one of the Bonds described in the Bond Ordinance, and this bond has been registered on the registration books kept by the undersigned as Registrar for the Bonds.

Date of Authentication:

City Treasurer of the City of Las Cruces,
New Mexico, as Registrar

By_______________________________________

Authorized Officer

(End of Form of Registrar's Certificate of Authentication)

(Form of Assignment)

For value received, _______________________________ hereby sells, assigns and transfer unto _______________________________________ the within bond and hereby irrevocably constitutes and appoints ______________________________________ attorney, to transfer the same on the books of the Registrar, with full power of substitution in the premises.

____________________________________ ____________________________________

Social Security or Tax Identification No. of Assignee____________________________________

Dated: _________________________

Signature Guarantee:

____

NOTE: The assignor's signature to this Assignment must correspond with the name as written on the face of the within bond in every particular, without alteration or enlargement or any change whatsoever.

(End of Form of Assignment)

(End of Form of Bond)

Section 14. Period of 2023A Improvement Project's Usefulness. It is hereby determined and recited that the period of usefulness of the 2023A Improvement Project financed with the proceeds of the Series 2023A Bonds will not expire prior to the final maturity date of the Series 2023A Bonds.

Section 15. Use of Bond Proceeds and Other Funds; Completion of 2023A Improvement Project. Except as herein otherwise specifically provided, the proceeds derived from the sale of the Bonds, shall be used and paid solely for the valid costs of the 2023A Improvement Project.

A. Expenses. An amount necessary, together with other legally available funds of the City, shall be used to pay Expenses.

B. Acquisition Fund. Proceeds derived from the sale of the Series 2023A Bonds in an amount to be specified in the Pricing Certificate shall be deposited promptly upon the receipt thereof in the 2023A Acquisition Fund to be held by the trustee for the Purchaser. Until the completion of the 2023A Improvement Project, the money in the 2023A Acquisition Fund shall be used and paid out solely for the purpose of the 2023A Improvement Project in compliance with applicable law.

C. Reserve Fund. No deposit of proceeds of the Bonds, Pledged State Shared Gross Receipts Tax Revenues or other City moneys into the 2023A Reserve Fund shall be required on the date of issuance of the Bonds or at any time thereafter, except in the circumstances and on the conditions described in paragraph B of Section 17 of this Bond Ordinance.

D. 2023A Improvement Project Completion. As soon as practicable after completion of the 2023A Improvement Project, and in any event not more than 60 days after completion of the 2023A Improvement Project, any proceeds remaining unspent (other than any amount retained by the City for any 2023A Improvement Project costs not then due and payable) shall be transferred and deposited in the 2023A Debt Service Fund and used by the City to pay principal and interest on the Series 2023A Bonds as same become due.

E. Purchaser Not Responsible. The Purchaser of the Bonds shall in no manner be responsible for the application or disposal by the City or by its officers of the funds derived from the sale thereof or of any other funds herein designated.

F. Bond Insurance Policy and/or Reserve Fund Insurance Policy. A Bond Insurance Policy and/or Reserve Fund Insurance Policy may be obtained in connection with the issuance of each of the Series 2023A Bonds, as may be provided in the Pricing Certificate. The covenants of the City and other provisions required by the issuer of the Bond Insurance Policy and/or Reserve Fund Insurance Policy or otherwise necessary or advisable in connection with the Bond Insurance Policy and/or Reserve Fund Insurance Policy shall be included in the Pricing Certificate.

Section 16. Funds and Accounts. The City hereby creates and continues the following special and separate funds and accounts:

A. 2023A Acquisition Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series

2023A, Improvement Project Acquisition Fund" to be maintained by the City or by the trustee for the Purchaser.

B. Pledged Revenue Fund. The "City of Las Cruces, New Mexico State Shared Gross Receipts Tax Revenue Fund" (the "State Shared Gross Receipts Tax Revenue Fund") to be maintained by the City, into which the City shall deposit the Pledged State Shared Gross Receipts Tax Revenues.

C. 2023A Debt Service Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Debt Service Fund" (the "2023A Debt Service Fund") to be maintained by the City or by the trustee for the Purchaser.

D. 2023A Reserve Fund. The "City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, Reserve Fund" (the "2023A Reserve Fund") to be maintained by the City or by the trustee for the Purchaser.

Section 17. Deposit of Pledged Revenues and Flow of Funds. So long as any of the outstanding obligations payable from the Pledged Revenues shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues.

A. Payment of Parity Obligations. As a first lien on amounts on deposit in the Pledged Revenue Fund, the City shall pay the of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations payable from the Pledged Revenues as required by the ordinances authorizing the issuance of the Parity Obligations. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Obligations, then the available funds in the Pledged Revenue Fund will be used, first, on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Obligations, for the payment of principal of and interest on all series of outstanding Parity Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Obligations.

B. Payment of Parity Subordinate Obligations. Subsequent to the payments required by the outstanding Parity Obligations, any balance remaining in the Pledged Revenue Fund, after making the payments hereinabove provided, shall be used by the City for the payment of interest on and the principal of the Series 2023A Bonds and all other Outstanding Parity Subordinate Obligations or other obligations, if any, having a lien on any of the Pledged Revenues subordinate to the lien thereon of the Parity Obligations hereafter authorized, issued and payable from the Pledged Revenues, as the same become due. So long as any of the Series 2023A Bonds shall remain outstanding, either as to principal or interest or both, the following payments shall be made monthly from the Pledged Revenues on a parity with the payments required by the outstanding Parity Subordinate Obligations:

(i) 2023A Debt Service Fund Payments. The following amounts shall be withdrawn from the State Shared Gross Receipts Tax Revenue Fund (and on parity with other outstanding Parity Subordinate Obligations), and shall be concurrently credited to the 2023A Debt Service Fund (unless the City determines that such amounts shall be withdrawn from such funds in some other order):

(aa) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023A Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of interest on the Series 2023A Bonds, and monthly thereafter, commencing on each Interest Payment Date, one-sixth (1/6) of the amount necessary to pay the next maturing installment of interest on the Series 2023A Bonds then outstanding.

(bb) Monthly, commencing on the first day of the month immediately succeeding the delivery of the Series 2023A Bonds, an amount in equal monthly installments necessary, together with any other moneys therein and available therefor, to pay the next maturing installment of principal of the outstanding Series 2023A Bonds and monthly thereafter, commencing on each principal payment date, one-twelfth (1/12) of the amount necessary to pay the next maturing installment of principal on the Series 2023A Bonds then outstanding.

(ii) Credit. In making the deposits required to be made into the 2023A Debt Service Fund, if there are any amounts then on deposit in the 2023A Debt Service Fund available for the purpose for which such deposit is to be made, the amount of the deposit to be made pursuant to paragraph (aa) above shall be reduced by the amount available in such fund for such purpose.

(iii) Transfer of Money out of 2023A Debt Service Fund. Each payment of principal and interest becoming due on the Series 2023A Bonds shall be transferred from the 2023A Debt Service Fund to the Paying Agent on or before two Business Days prior to the due date of such payment.

(iv) 2023A Reserve Fund and Reserve Fund Insurance Policy. No deposit shall be required in the 2023A Reserve Fund upon the issuance of the Series 2023A

Bonds or any time thereafter so long as the Pledged State Shared Gross Receipts Tax Revenues in each Fiscal Year equal or exceed 200% of the maximum annual principal and interest coming due in any subsequent Fiscal Year on all outstanding Parity Bonds and the Parity Subordinate Obligations. If the Pledged State Shared Gross Receipts Tax Revenues in any Fiscal Year are insufficient to meet the test set forth in the preceding sentence, the City shall begin making substantially equal monthly deposits in the 2023A Reserve Fund from the first legally available Pledged State Shared Gross Receipts Tax Revenues so that after 24 months, an amount equal to the 2023A Minimum Reserve will be held in the 2023A Reserve Fund.

After funding the 2023A Reserve Fund in an amount equal to the 2023A Minimum Reserve, no additional payments need be made into the 2023A Reserve Fund so long as the moneys therein shall equal not less than the 2023A Minimum Reserve. The moneys (if any) in the 2023A Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in paragraph (F) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023A Bonds resulting from failure to deposit into the 2023A Debt Service Fund sufficient funds to pay the principal and interest as the same accrue. In the event that the funding of the 2023A Reserve Fund is required, the City may satisfy the requirement by depositing a Reserve Fund Insurance Policy with coverage in the amount of the 2023A Minimum Reserve.

~~After funding the 2023A Reserve Fund in an amount equal to the 2023A Minimum Reserve, no additional payments need be made into the 2023A Reserve Fund so long as the moneys therein shall equal not less than the 2023A Minimum Reserve. The moneys (if any) in the 2023A Reserve Fund shall be accumulated and maintained as a continuing reserve to be used, except as hereinafter provided in subparagraph B(v) of this Section 17, only to prevent deficiencies in the payment of the principal of and interest on the Series 2023A Bonds~~

~~resulting from failure to deposit into the 2023A Debt Service Fund sufficient funds to pay the principal and interest as the same accrue.~~

(v) Defraying Delinquencies in the 2023A Debt Service Fund and 2023A Reserve Fund. If, on any Interest Payment Date, the amount on deposit in the 2023A Debt Service Fund is insufficient to pay principal of and interest on the Series 2023A Bonds then due, then an amount shall be paid into the 2023A Debt Service Fund on such date from the 2023A Reserve Fund (if moneys are then on deposit in the 2023A Reserve Fund) equal to the amount of the insufficiency. The money deposited in the 2023A Debt Service Fund from the 2023A Reserve Fund, if any, shall be replaced in the Reserve Fund in 24 substantially equal monthly deposits commencing on the first day of the first month immediately succeeding the draw on the 2023A Reserve Fund. Such accumulation shall be made from the Pledged Revenues second to the payments required by subparagraph I(i)(aa)(1) and (2) of this Section 17. If, in any month, the City shall, for any reason, fail to pay into the 2023A Reserve Fund the full amount required, the difference between the amount paid and the amount so stipulated shall be paid therein from the first Pledged Revenues thereafter received and not required to be otherwise applied. The moneys in the 2023A Reserve Fund shall be used solely and only for the purpose of paying any deficiencies in the payment of the principal of and the interest on the Series 2023A Bonds; provided, however, that any moneys at any time in excess of the 2023A Minimum Reserve in the 2023A Reserve Fund may be withdrawn therefrom and applied to any other lawful purpose. Cash accumulated in the 2023A Reserve Fund shall not be invested in a manner which could cause the Series 2023A Bonds to become arbitrage bonds within the meaning of the Code. Any investments held in the 2023A Reserve Fund shall be valued annually, on or about June 1, at their current fair market value and, if the amount then on deposit in the 2023A Reserve Fund exceeds the 2023A Minimum Reserve, all amounts in excess of the 2023A Minimum Reserve shall be transferred to the 2023A Debt Service Fund and used to pay principal of and interest on the Series 2023A Bonds.

(vi) Payment of Parity Subordinate Obligations. Concurrently with and on the same priority as the payment of the Pledged Revenues required by subparagraphs B(i), (iv) and (v) of this Section, any amounts on deposit in the Pledged Revenue Fund shall be used by the City for the payment of principal of, interest on and debt service reserve fund deposits relating to outstanding Parity Subordinate Obligations payable from the Pledged Revenues, as the same become due. If funds on deposit in the Pledged Revenue Funds are not sufficient to pay when due the required payments of principal of, interest on and debt service reserve fund deposits relating to the Series 2023A Bonds and any other outstanding Parity Subordinate Obligations, then the available funds in the Pledged Revenue Fund will be used, first (after payment of the Parity Obligations), on a pro rata basis, based on the amount of principal and interest then due with respect to each series of outstanding Parity Subordinate Obligations, for the payment of principal of and interest on all series of outstanding Parity Subordinate Obligations and, second, to the extent of remaining available funds in the Pledged Revenue Fund on a pro rata basis, based on the amount of debt service reserve fund deposits then required with respect to each series of outstanding Parity Subordinate Obligations, for the required debt service reserve fund deposits for all series of outstanding Parity Subordinate Obligations.

(vii) Termination Upon Deposits to Maturity. No payment shall be made into the 2023A Debt Service Fund or the 2023A Reserve Fund (if required to be funded) if the amounts in such funds total a sum at least equal to the entire aggregate amount due as to principal, premium, if any, and interest, on the Series 2023A Bonds to their respective maturities or applicable redemption dates, in which case moneys in the 2023A Debt Service Fund and the 2023A Reserve Fund in an amount at least equal to such principal and interest requirements shall be used solely to pay such obligations as the same become due, and any moneys in excess thereof in the 2023A Debt Service Fund and the 2023A Reserve Fund may be used as provided below.

(viii) Surplus Revenues. After making all the payments hereinabove required to be made by this Section, the remaining Pledged Revenues, if any, may be applied to any other lawful purpose, as the City may from time to time determine.

Section 18. General Administration of Funds. The funds designated in Section 16 shall be administered and invested as follows:

A. Places and Times of Deposits. The funds shall be separately maintained as a trust fund or funds for the purposes established and shall be invested by the City in Permitted Investments or deposited in one or more bank accounts in an Insured Bank or Banks. Each fund or account shall be continuously secured to the extent required by law and shall be irrevocable and not withdrawable by anyone for any purpose other than the designated purpose. Payments shall be made into the proper fund or account on the first day of the month except when the first day shall not be a Business Day, then payment shall be made on the next succeeding Business Day. No later than two Business Days prior to each Interest Payment Date, moneys sufficient to pay interest and principal then due on the Bonds shall be transferred to the Paying Agent. Nothing in this Bond Ordinance shall prevent the City from establishing one or more bank accounts in an Insured Bank or Banks for all the funds required by this Bond Ordinance or shall prevent the combination of such funds and accounts with any other bank account or accounts or investments for other funds and accounts of the City.

B. Investment of Moneys. Moneys in the 2023A Reserve Fund shall be invested in accordance with paragraph C of this Section 18, and moneys in any other fund or account not immediately needed may be invested in any investment permitted by the laws of the

State or by the Charter. The obligations so purchased as an investment of moneys in any fund or account shall be deemed to be part of such fund or account, and the interest accruing thereon and any profit realized therefrom shall be credited to such fund or account, and any loss resulting from such investment shall be charged to such fund or account. The City Treasurer shall present for redemption or sale on the prevailing market any obligations so purchased as an investment of moneys in the fund or account whenever it shall be necessary to do so in order to provide moneys to meet any payment or transfer from such fund.

C. Reserve Fund. Moneys, if any, in the 2023A Reserve Fund may be invested only in Permitted Investments with an average aggregate weighted term to maturity not greater than five years. The City shall annually on or about June 1 of each year, commencing on the first June 1 succeeding funding of the 2023A Reserve Fund, value the 2023A Reserve Fund on the basis of the current fair market value of deposits and investments credited to each of the 2023A Reserve Fund. If, upon any valuation, the value of the 2023A Reserve Fund exceeds the 2023A Minimum Reserve, the excess amount shall be withdrawn and deposited into the 2023A Debt Service Fund; if the value is less than the applicable requirement, the City shall replenish such amounts from the first Pledged Revenues thereafter received not required to be otherwise applied or other monies legally available therefor.

At such time as the Series 2023A Bonds are paid in full or are deemed to be paid in full, the amount on deposit in the 2023A Reserve Fund may be used to pay the final installments of principal and interest on the Series 2023A Bonds and otherwise may be withdrawn and transferred to the City to be used for any lawful purpose, provided that, if such amounts are used for a purpose other than payment of the Series 2023A Bonds, there shall be delivered an opinion of nationally recognized bond counsel that the purpose for which such funds are to be used is a lawful purpose for which such proceeds may be used under the laws of the State of New Mexico and that such use shall not result in the inclusion of interest on any Series 2023A Bonds in gross income of the recipient thereof for federal income tax purposes.

If moneys have been withdrawn from the 2023A Reserve Fund and deposited into the 2023A Debt Service Fund to prevent a default on the Series 2023A Bonds, then the City will pay, from Pledged Revenues or other monies legally available therefor, the full amount so withdrawn or so much as shall be required to restore the 2023A Reserve Fund to the 2023A Minimum Reserve. Such repayment shall be made as required by Section 17 of this Bond Ordinance.

Section 19. Lien on Pledged Revenues. The Pledged Revenues and the amounts and securities on deposit in 2023A Debt Service Fund and the 2023A Reserve Fund, if any, and the proceeds thereof, are hereby authorized to be pledged to, and are hereby pledged, and the City grants a security interest therein for, the payment of the principal of, premium, if any, and interest on the Series 2023A Bonds, subject to the uses thereof permitted by, and the priorities set forth in, this Bond Ordinance. The Series 2023A Bonds constitute an irrevocable and subordinate lien, but not an exclusive subordinate lien on the Pledged Revenues, subordinate to the lien thereon of the outstanding Parity Obligations and additional Parity Obligations, if any, hereafter authorized to be issued and payable from Pledged Revenues, and on parity with the lien thereon of the outstanding Parity Subordinate Obligations and additional Parity Subordinate Obligations, if any, hereafter authorized to be issued and payable from the Pledged Revenues.

Section 20. Additional Obligations Payable from Pledged Revenues.

A. Parity Obligations. This Bond Ordinance shall not prevent the issuance of additional Parity Bonds payable from and constituting a lien upon the Pledged Revenues on parity with the lien of the Parity Obligations in accordance with the ordinances authorizing the issuance of the outstanding Parity Obligations.

B. Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2023A Bonds.

C. Superior Obligations Prohibited. The City shall not issue any obligation having a lien on any of the Pledged Revenues pledged by this Bond Ordinance which is prior and superior to the Parity Obligations.

Section 21. Additional Parity Subordinate Obligations Payable from Pledged Revenues.

A. Parity Subordinate Obligation Test. This Bond Ordinance shall not prevent the issuance of additional Parity Subordinate Obligations payable from and constituting a subordinate lien upon the Pledged Revenues on parity with the lien of the Series 2023A Bonds. Before any additional Parity Subordinate Obligations are actually issued, it must be determined that:

(1) The City is then current in the accumulation of all amounts which are then required to be on deposit in 2023A Debt Service Fund and 2023A Reserve Fund, in accordance with Section 17 of this Bond Ordinance; and

(2) The Pledged State Shared Gross Receipts Tax Revenues (not including any Hold Harmless Distribution) received by the City in the Fiscal Year immediately preceding the date of issuance of the proposed additional Parity Subordinate Lien Bonds shall have been sufficient to pay an amount representing at least 150% of the combined maximum annual principal and interest coming due in any subsequent Fiscal Year on (1) the outstanding Parity Obligations, (2) outstanding Parity Subordinate Obligations, and (3) the Parity Subordinate Obligations proposed to be issued.

For purposes of the test set forth in clause (2) above, if on the date of issuance of the additional Parity Subordinate Obligations, (a) any amount of the reserve fund requirement for the additional Parity Subordinate Obligations is immediately deposited in or credited to the reserve fund for the additional Parity Subordinate Obligations or, (b) any amount of the reserve fund requirement for any issue of outstanding Parity Subordinate Obligations is then on deposit in or credited to the reserve fund for any issue of outstanding Parity Subordinate Obligations, then the amounts on deposit in or credited to the respective reserve funds shall be deducted from the principal and interest coming due in the final Fiscal Year for the additional Parity Subordinate Obligations or any issue of outstanding Parity Subordinate Obligations for which such reserve fund was created.

B. Certification or Opinion Regarding Pledged Revenues. A written certificate or opinion by an Independent Accountant or the City Treasurer or City Financial Services Director, that the Pledged Revenues (not including any Hold Harmless Distribution) are sufficient to pay the required amounts under the test in paragraph A of this Section, shall conclusively determine the right of the City to issue additional Parity Subordinate Obligations. The Independent Accountant, City Treasurer or City Financial Services Director may utilize the results of any annual audit to the extent it covers the applicable period.

C. Super Subordinate Obligations Permitted. Nothing in this Bond Ordinance shall prevent the City from issuing bonds or other obligations payable from Pledged Revenues pledged by this Bond Ordinance and having a lien on any of the Pledged Revenues subordinate to the lien of the Series 2023A Bonds.

Section 22. Refunding Bonds. The provisions of Section 20 and Section 21 of this Bond Ordinance are subject to the following exceptions:

A. Privilege of Issuing Refunding Obligations. If at any time the City shall find it desirable to refund any outstanding Parity Obligations, or any part thereof, such obligations may be refunded, but only in accordance with the ordinances authorizing the issuance of such Parity Obligations.

B. Limitation Upon Issuance of Parity Subordinate Refunding Obligations. No refunding obligations shall be issued with a lien on the Pledged Revenues on parity with the lien of the Series 2023A Bonds, unless:

(1) The lien on the Pledged Revenues of the outstanding obligations so refunded is on parity with the lien on the Pledged Revenues of the Series 2023A Bonds; or

(2) The refunding obligations are issued in compliance Section 21 of this Bond Ordinance.

C. Refunding Part of an Issue. The refunding bonds or other refunding obligations issued shall enjoy complete equality of lien with the portion of any bonds or other obligations of the same issue which is not refunded, if any; and the holder or holders of such refunding bonds or other refunding obligations shall be subrogated to all of the rights and privileges enjoyed by the owner or owners of the same issue refunded thereby. If only a part of any issue or issues is refunded, then there may be no refunding without the consent of the holders of the unrefunded portion of such obligations, unless:

(1) The refunding obligations do not increase the aggregate principal and interest requirements for any Fiscal Year commencing prior to the last maturity date of such unrefunded obligations; or

(2) The lien of the refunding obligations is subordinate to the lien of any obligations not refunded; or

(3) The refunding bonds or other refunding obligations are issued in compliance with Section 20 (in the case of Parity Refunding Obligations) or Section 21 (in the case of Parity Subordinate Refunding Obligations) of this Bond Ordinance.

D. Limitation Upon Issuance of Any Refunding Obligations. Any refunding obligations payable from Pledged Revenues shall be issued with such details as the City Council may provide, subject to the inclusion of any such rights and privileges designated in paragraph B of this Section but without impairing any contractual obligation imposed by any proceedings authorizing any unrefunded portion of any issue or issues, including the Series 2023A Bonds.

Section 23. Equality of Parity Subordinate Obligations. The Parity Subordinate Obligations from time to time outstanding shall not be entitled to any priority one over the other in the application of the Pledged Revenues, regardless of the time or times of their issuance or the date incurred, it being the intention of the City Council that, except as set forth herein, there shall be no priority among Parity Subordinate Obligations regardless of whether they are actually issued and delivered or incurred at different times.

Section 24. Protective Covenants. The City hereby covenants and agrees with each and every holder of the Bonds issued hereunder:

A. Use of Bond Proceeds. The City will proceed without delay to apply the proceeds of the Bonds as set forth in Section 15 of this Bond Ordinance.

B. Payment of Bonds Herein Authorized. The City will promptly pay the principal of and the interest on every Series 2023A Bond at the place, on the date and in the manner specified herein and in the Bonds according to the true intent and meaning hereof.

C. City's Existence. The City will maintain its corporate identity and existence so long as any of the Bonds remain outstanding, unless another political subdivision by operation of law succeeds to the liabilities and rights of the City, without adversely affecting to any substantial degree the privileges and rights of any owner of the Bonds.

D. Extension of Interest Payments. In order to prevent any accumulation of claims for interest after maturity, the City will not directly or indirectly extend or assent to the extension of time for the payment of any claim for interest on any of the Bonds, and the City will not directly or indirectly be a party to or approve any arrangements for any such extension.

E. Records. So long as any of the Bonds remain outstanding, proper books of record and account will be kept by the City, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the Pledged Revenues.

F. Audits and Budgets. The City will, within two hundred and seventy (270) days following the close of each Fiscal Year, cause an audit of its books and accounts relating to the Pledged Revenues to be commenced by an Independent Accountant showing the receipts and disbursements in connection with such revenues.

G. Other Liens. Other than as described and identified by this Bond Ordinance, there are no liens or encumbrances of any nature whatsoever on or against the Pledged Revenues.

H. Impairment of Contract. The City agrees that any law, ordinance or resolution of the City that in any manner affects the Pledged Revenues or the Bonds shall not be repealed or otherwise directly or indirectly modified, in such a manner as to impair adversely any Bonds outstanding, unless such Bonds have been discharged in full or provision has been fully made therefor or unless the required consents of the holders of the then outstanding Bonds are obtained pursuant to Section 30 of this Bond Ordinance.

I. Debt Service Fund and Reserve Fund. The 2023A Debt Service Fund and the 2023A Reserve Fund shall be used solely and only, and those funds are hereby pledged, for the purposes set forth in this Bond Ordinance.

J. Surety Bonds. Each municipal official and employee being responsible for receiving Pledged Revenues shall be bonded at all times, which bond shall be conditioned upon the proper application of such funds.

K. Performing Duties. The City will faithfully and punctually perform all duties with respect to the Bonds required by the Constitution and laws of the State of New Mexico and the ordinances and resolutions of the City relating to the Bonds.

L. Tax Covenants. The City covenants that it will restrict the use of the proceeds of the Bonds in such manner and to such extent, if any, as may be necessary so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. The Mayor, Mayor Pro Tem and other officers of the City having responsibility for the issuance of the Bonds shall give an appropriate certificate of the City, for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the City regarding the amount and use of all the proceeds of the Bonds, the facts, circumstances and estimates on which they are based, other facts and circumstances relevant to the tax treatment of interest on the Bonds, and making related covenants.

The City covenants that it (a) will take or cause to be taken such actions which may be required of it for the interest on the Bonds to be and remain excluded from gross income for federal income tax purposes, and (b) will not take or permit to be taken any actions which would adversely affect that exclusion, and that it or persons acting for it, will, among other acts of compliance, (i) apply the proceeds of the Bonds to the governmental purpose of the borrowing, (ii) restrict the yield on investment property, (iii) make timely and adequate rebate payments, yield reduction payments or payments of alternative amounts in lieu of rebate to the federal government, if required, (iv) maintain books and records and make calculations and reports, and (v) refrain from certain uses of proceeds, all in such manner and to the extent necessary to assure such exclusion of that interest under the Code. The Mayor, Mayor Pro Tem and other appropriate officers are hereby authorized and directed to take any and all actions, make calculations and rebate payments, and make or give reports and certifications, if any, as may be required or appropriate to assure such exclusion of that interest.

In furtherance of the covenants set forth above, the City hereby establishes a fund separate from any other funds established and maintained hereunder designated as the Rebate Fund (the “Rebate Fund”). Money and investments in the Rebate Fund shall not be used for the payment of the Bonds, and amounts credited to the Rebate Fund shall be free and clear under any pledge under this Bond Ordinance. Money in the Rebate Fund shall be invested in a manner provided in Section 18 for investment of money, and all amounts on deposit in the Rebate Fund shall be held by the City, or a designated trustee, in trust, to the extent required to pay rebatable arbitrage to the United States of America. The City shall unconditionally be entitled to accept and rely upon the recommendation, advice, calculation and opinion of an accounting firm or other person or firm with knowledge of or experience in advising with respect to the provisions of the Code relating to rebatable arbitrage. The City shall remit all rebate installments and the final rebate payment to the United States of America as required by the provisions of the Code. Any moneys remaining in the Rebate Fund after redemption and payment of all the Bonds and payment and satisfaction of any rebatable arbitrage shall be withdrawn and remitted to the City.

Section 25. Preliminary Official Statement and Continuing Disclosure Undertaking.

A. Preliminary Official Statement. If required by the Purchaser, the preparation of the Preliminary Official Statement is hereby requested and approved for use distribution and use in connection with the sale of the Bonds; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Preliminary Official Statement is not required.

B. Continuing Disclosure Undertaking~~.~~; Disclosures to Finance Authority. If required by the Purchaser, the officers of the City are authorized to sign such documents and to take such actions in the future with respect to the City's continuing disclosure obligations as are necessary or desirable to comply with the Continuing Disclosure Undertaking and the requirements of Rule 15c2-12 promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as amended; provided, that the foregoing shall not be applicable in the event that the Bonds are purchased pursuant to a private placement for which the Continuing Disclosure Undertaking is not required. Notwithstanding any other provisions of this Bond Ordinance, failure of the City to comply with the Continuing Disclosure Undertaking shall not be considered an "event of default" under Section 26 hereof, and holders and beneficial owners of Bonds shall be entitled to exercise only such rights with respect thereto as are provided in the Continuing Disclosure Undertaking.

If the Finance Authority is the purchaser of the Bonds, for so long as the Finance Authority is the holder of the Bonds, the City shall notify the Finance Authority of the approval by the City of the issuance of any additional Parity Obligations or Parity Subordinate Obligations upon the City's approval of the issuance of such additional Parity Obligations or Parity Subordinate Obligations as set forth in the Pricing Certificate.

Section 26. Events of Default. Each of the following events is hereby declared an "event of default":

A. Nonpayment of Principal. Failure to pay the principal of any of the Bonds when the same becomes due and payable, either at maturity, or by proceedings for redemption, or otherwise.

B. Nonpayment of Interest. Failure to pay any installment of interest when the same becomes due and payable.

C. Incapable of Performing. If the City shall for any reason be rendered incapable of fulfilling its obligations hereunder.

D. Default of any Provision. Default by the City in the due and punctual performance of its covenants or conditions, agreements and provisions contained in the Bonds or in this Bond Ordinance on its part to be performed (other than a default set forth in subparagraphs A and B of this Section), and the continuance of such default for thirty (30) days after written notice specifying such default and requiring the same to be remedied has been given to the City by the holders of twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding.

E. Bankruptcy. The City (i) files a petition or application seeking reorganization or arrangement of debt under Federal Bankruptcy law, or other debtor relief under the laws of any jurisdiction, or (ii) is the subject of such petition or application which the City does not contest or is not dismissed or discharged within sixty (60) days.

Section 27. Remedies Upon Default. Upon the happening and continuance of any of the events of default as provided in Section 26 of this Bond Ordinance, then and in every case, the holder or holders of not less than twenty-five percent (25%) in aggregate principal amount of the Bonds then outstanding, including, but not limited to, a trustee or trustees therefor, may proceed against the City, the City Council and its agents, officers and employees, but only in their official capacities, to protect and enforce the rights of any holder of Bonds under this Bond Ordinance by mandamus or other suit, action or special proceedings in equity or at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award relating to the execution of any power herein granted for the enforcement of any legal or equitable remedy as such holder or holders may deem most effectual to protect and enforce the rights provided above, or to enjoin any act or thing which may be unlawful or in violation of any right of any Bondholder, or to require the City Council to act as if it were the trustee of an express trust, or any combination of such remedies. All such proceedings at law or in equity shall be instituted, had and maintained for the equal benefit of all holders of the Bonds then outstanding. The failure of any Bondholder so to proceed shall not relieve the City or any of its officers, agents or employees of any responsibility for failure to perform, in their official capacities, any duty. Each right or privilege of such holder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any right or privilege by or on behalf of any holder shall not be deemed a waiver of any other right or privilege.

Section 28. Duties Upon Default. Upon the happening of any of the events of default provided in Section 26 of this Bond Ordinance, the City, in addition, will do and perform all proper acts on behalf of and for the owners of the Bonds to protect and preserve the security created for the payment of the Bonds and to insure the payment of the principal of and interest on the Bonds promptly as the same become due. All proceeds derived therefrom, so long as any of the Bonds, either as to principal or interest, are outstanding and unpaid, shall be applied as set forth in Section 17 of this Bond Ordinance. In the event the City fails or refuses to proceed as provided in this Section, the holder or holders of not less than twenty-five percent

(25%) in aggregate principal amount of the Bonds then outstanding, after demand in writing, may proceed to protect and enforce the rights of the owners of the Bonds as hereinabove provided.

Section 29. Bonds Not Presented When Due. If any Bonds shall not be duly presented for payment when due at maturity or on the redemption date thereof, and if moneys sufficient to pay such Bonds are on deposit with the Paying Agent for the benefit of the owners of such Bonds, all liability of the City to such owners for the payments of such Bonds shall be completely discharged, such Bonds shall not be deemed to be outstanding and it shall be the duty of the Paying Agent to segregate and to hold such moneys in trust, without liability for interest thereon, for the benefit of the owners of such Bonds as may be provided in any agreement hereafter entered into between the Paying Agent and an officer of the City.

Section 30. Delegated Powers; Authority to Make Budget Adjustments. The officers of the City are hereby authorized and directed to take all action necessary or appropriate to effectuate the provisions of this Bond Ordinance, including, without limiting the generality of the foregoing, the publication of the title and general summary of the Bond Ordinance set out in Section 36 (with such changes, additions and deletions as they may determine), the printing of the Bonds, the preparation, printing, execution and distribution of the Preliminary Official Statement and final Official Statement, and the execution of the Continuing Disclosure Undertaking and of such documents or certificates as may be required by the Purchaser or bond counsel. The officers of the City are hereby authorized and directed to take all action necessary to make the budget adjustments needed to reflect the Bond proceeds.

Section 31. Amendment of Bond Ordinance. This Bond Ordinance may be amended without the consent of the holder of any Bond to cure any ambiguity or to cure, correct or supplement any defect or inconsistent provision contained herein. Prior to the date of the initial delivery of the Bonds to the Purchaser, the provisions of this Bond Ordinance may be amended with the written consent of the Purchaser, with respect to any changes which are not inconsistent with the substantive provisions of this Bond Ordinance. In addition, this Bond Ordinance may be amended without receipt by the City of any additional consideration, but with the written consent of the holders of seventy-five percent (75%) of the Bonds then outstanding (not including Bonds which may be held for the account of the City); but no ordinance adopted without the written consent of the holders of all outstanding Bonds shall have the effect of permitting:

A. An extension of the maturity of any Bond; or

B. A reduction of the principal amount or interest rate of any Bond; or

C. The creation of a lien upon the Pledged Revenues ranking prior to the lien or pledge created by this Bond Ordinance; or

D. A reduction of the principal amount of Bonds required for consent to such amendatory ordinance; or

E. The establishment of priorities as between Bonds issued and outstanding under the provisions of this Bond Ordinance; or

F. The modification of or otherwise affecting the rights of the holders of less than all the outstanding Bonds.

Section 32. Defeasance. When all principal and interest in connection with the Bonds hereby authorized have been duly paid, the pledge and lien on the Pledged Revenues for the payment of the Bonds shall thereby be discharged and the Bonds shall no longer be deemed to be outstanding within the meaning of this Bond Ordinance. Payment shall be deemed made with respect to any Bond or Bonds when the City has placed in escrow with a commercial bank exercising trust powers, an amount sufficient (including the known minimum yield from Defeasance Obligations, as defined below) to meet all requirements of principal and interest as the same become due to their final maturities or upon designated redemption dates. Any Defeasance Obligations shall become due when needed in accordance with a schedule agreed upon between the City and such bank at the time of the creation of the escrow. Defeasance Obligations within the meaning of this Section shall include only (1) cash, (2) U.S. Treasury Certificates, Notes and Bonds (including State and Local Government Series – "SLGs"), and (3) obligations the principal of and interest on which are unconditionally guaranteed by the United States of America.

Section 33. Bond Ordinance Irrepealable. After any of the Bonds are issued, this Bond Ordinance shall be and remain irrepealable until the Bonds and the interest thereon shall be fully paid, canceled and discharged, as herein provided, or there has been defeasance of the Bonds as herein provided.

Section 34. Severability Clause. If any Section, paragraph, clause or provision of this Bond Ordinance shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such Section, paragraph, clause or provision shall not affect any of the remaining provisions of this Bond Ordinance.

Section 35. Repealer Clause. All bylaws, orders, resolutions and ordinances, or parts thereof, inconsistent herewith are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any bylaw, order, resolution or ordinance, or part thereof, heretofore repealed.

Section 36. Effective Date. Upon due adoption of this Bond Ordinance, it shall be recorded in the book of ordinances of the City kept for that purpose, authenticated by the signatures of the Mayor or Mayor Pro Tem and City Clerk, and the title and general summary of the subject matter contained in this Bond Ordinance (set out in Section 37 below) shall be published in a newspaper which maintains an office and is of general circulation in the City and this Bond Ordinance shall be in full force and effect in accordance with law.

Section 37. General Summary for Publication. Pursuant to the general laws of the State, the title and a general summary of the subject matter contained in this Bond Ordinance shall be published in substantially the following form:

(Form of Summary of Ordinance for Publication)

City of Las Cruces, New Mexico

Notice of Adoption of Ordinance

Notice is hereby given of the title and of a general summary of the subject matter contained in an ordinance duly adopted and approved by the City Council of the City of Las Cruces, New Mexico, on November 6, 2023, relating to the authorization and issuance of the City's Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A. Complete copies of the Ordinance are available for public inspection during the normal and regular business hours of the City Clerk, Las Cruces City Hall, 700 North Main Street Las Cruces, New Mexico.

The title of the Ordinance is:

AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO SUBORDINATE LIEN STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023A IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED $5,600,000 FOR EQUIPPING FIRE STATIONS AND ACQUIRING FIRE TRUCKS AND FIRE EQUIPMENT FOR THE CITY FIRE DEPARTMENT AND PAYING THE COSTS OF ISSUANCE OF THE BONDS; DELEGATING AUTHORITY TO

THE CITY MANAGER AND CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE BONDS TO THE PURCHASER.

A general summary of the Ordinance is:

The Ordinance authorizes the issuance and sale of the City of Las Cruces, New Mexico Subordinate Lien State Shared Gross Receipts Tax Improvement Revenue Bonds, Series 2023A, in an aggregate principal amount not to exceed $5,600,000 for (1) equipping fire stations and acquiring fire trucks (including, but not limited to, fire engines and other fire and emergency vehicles) and fire equipment for the City Fire Department and (2) ~~paying~~the payment of Expenses related to the issuance of the Series 2023A Bonds; provides that the Bonds will be payable and collectible from the revenues derived from the 1.225% pledged state shared gross receipts tax distributed to the City; provides that the maturity dates, interest rates, redemption provisions and other details of each series of the Bonds will be as established in the Pricing Certificate, and delegate authority to the City Manager or Financial Services Director to execute and deliver the Pricing Certificate; provides a form of the Bonds; approves preparation, execution and delivery of certain documents relating to the Bonds; makes covenants for the benefit of owners of the Bonds; ratifies action previously taken in connection with the Bonds; and repeals all action in conflict with the Ordinance.

This notice constitutes compliance with § 6-14-6 N.M.S.A. 1978.

(End of Form of Summary for Publication)

DONE AND APPROVED this 6th day of November, 2023.

APPROVED:

____
Ken Miyagishima, Mayor

ATTEST:

____
Christine Rivera, City Clerk

Moved by: ______________________

Seconded by: ____________________

VOTE:

Mayor Miyagishima:	______
Councilor Gandara:	______
Councilor Abeyta:	______
Councilor Graham:	______
Councilor Bencomo:	______
Councilor Corran:	______
Councilor Flores:	______

APPROVED AS TO FORM

____
Linda A. Samples, City Attorney

STATE OF NEW MEXICO)
COUNTY OF DOÑA ANA) ss.
CITY OF LAS CRUCES)

I, Christine Rivera, the duly acting and qualified City Clerk of the City of Las Cruces, New Mexico (the "Governmental Unit"), do hereby certify:

1. The foregoing pages are a true, perfect, and complete copy of the record of the proceedings of the City Council (the "Governing Body"), constituting the governing body of the City had and taken at a duly called regular meeting held at the Municipal Offices, 700 North Main Street, Las Cruces, New Mexico, on November 6, 2023, at the hour of 1:00 p.m., insofar as the same relate to the issuance and delivery of the Bonds, a copy of each of which is set forth in the official records of the proceedings of the Governing Body kept in my office. None of the action taken has been rescinded, repealed, or modified.

2. Such proceedings were duly had and taken as therein shown, the meeting therein was duly held, and the persons therein named were present at such meeting, as therein shown.

3. Notice of such meeting was given in compliance with the permitted methods of giving notice of regular meetings of the Governing Body as required by the City's open meetings standards presently in effect.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of November, 2023.

CITY OF LAS CRUCES, NEW MEXICO

____

Christine Rivera, City Clerk

3049; Council Bill 24-007

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ N/A		
1st Reading:	November 6, 2023	**Adopted:**	November 20, 2023
Drafter:	Vince Banegas	**Department:**	Community Development
Program:	Community Planning	**Line of Business:**	Community Planning
Title:	**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.**		

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 UR (Urban Ranch) to EE (Equestrian Estate and Agriculture) for property approximately 1.63 acres in size and located at 7332 Shannon Road. The existing UR zone represents a non-conforming zoning district designation that became defunct upon adoption of the 2001 Las Cruces Zoning Code, as amended. In order to fully develop the property, a zone change to an appropriate zoning designation is required. Due to the surrounding area and the development vision proposed by the property owner, the EE zoning district is an appropriate designation.

The EE district designation allows for the development of one-acre residential lots that maintain a semi-rural atmosphere and allow the keeping of large and small animals. Homes must be either site-built or manufactured homes. This development style is consistent with what the defunct UR zone allowed and is also consistent with many of the EE zoned properties in the immediate vicinity.

The subject property was given conditional approval of a building permit to allow the construction of a site-built home. The condition stipulates that an appropriate zone change be approved to remove the defunct UR zone.

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 encouraging the development of vacant/underutilized property, promoting building form and scale that complements surrounding neighborhoods, and providing a diverse range of housing options to accommodate residents at all stages in life. Furthermore, the property is within the Suburban Place Type, which encourages the development of low to moderate-density residential land uses consistent with the subject place type.

On July 25, 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 of Fact
ATTACHMENT "A" - Approved 07.25.23 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 7332 Shannon Road will be rezoned from UR (Urban Ranch) to EE (Equestrian Estates and Agriculture).
2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current non-conforming zoning designation of UR (Urban Ranch) will remain, requiring the property owner to seek an alternative zoning designation prior to development.
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 3049; COUNCIL BILL 24-007

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.

The City Council is informed that:

WHEREAS, Mr. John Major, property owner, has submitted a request for a zone change from UR (Urban Ranch) to EE (Equestrian Estates and Agriculture); and

WHEREAS, the subject property is approximately 1.63 acres in size, under development, and has a defunct zoning district in need of change to fulfill the proposed development potential; and

WHEREAS, the proposed EE (Equestrian Estates and Agriculture) 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 July 25, 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 EE (Equestrian Estates and Agriculture).

(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 necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

____

ATTEST:

____

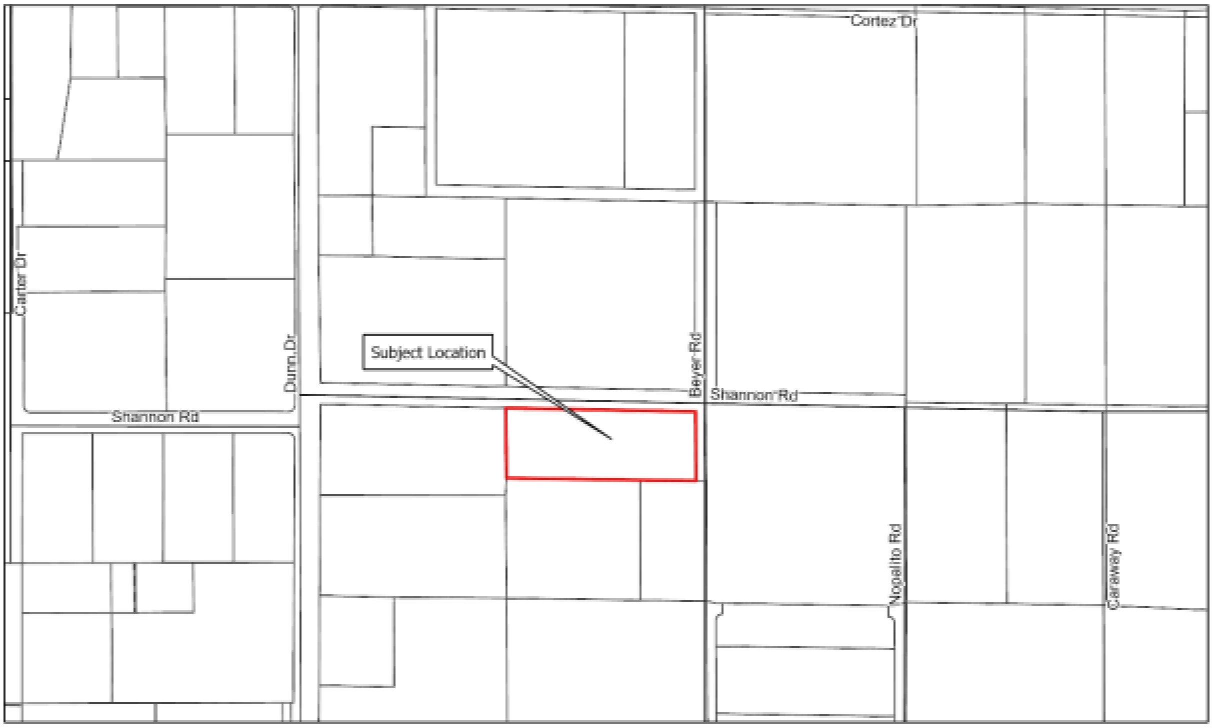
Moved by:

Seconded by:

AYES

NAYS

EXHIBIT "A" – Vicinity Map



Note: Subject property is outlined in red.

EXHIBIT "B" – Findings

FINDINGS

1. The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
2. Prior to development, an appropriate zoning district designation needs to be established pursuant to code. The proposed EE district designation is the most appropriate zoning district given the surrounding area and the applicant's development proposal.
3. The subject property falls within the Suburban place type. This place type is characterized by low to moderate density residential land uses intermixed with areas of commercial development. This place type is consistent with what the proposed EE zone seeks to provide.
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).
5. The surrounding area is developed as large lot single-family development consistent with the EE zoning district. Several parcels adjacent to the subject property are already zoned EE.

CITY OF LAS CRUCES

PLANNING AND ZONING COMMISSION
FOR THE
CITY OF LAS CRUCES
City Council Chambers
July 25, 2023 at 6:00 p.m.

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Vanessa Vega, Secretary
Connor Murray, Member
Vanessa Porter, Member
James Bennett, Member
Enrico Smith, Member

BOARD MEMBERS ABSENT:

Joaquin Acosta, Member

STAFF PRESENT:

Larry Nichols, Director Community Development Department
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Vincent Banegas, Interim Planner
John Castillo, Planner
Christina Abeyta-Corella, Planner
Jocelyn Garrison, City Attorney
Adrian Guzman, Communications
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Welcome to July 25th Planning and Zoning Commission for the City of Las Cruces. We will go ahead and call this meeting to order. I was informed a minute ago that we have a bit of a time - the City hall security, they leave at 9:00 p.m. tonight, so hopefully we can get through everything in the next three hours.

2. CONFLICT OF INTEREST

Kaiser: Is there any conflict of interest from anyone on the Commission tonight? All right. Seeing none.

3. APPROVAL OF MINUTES – April 25, 2023

Kaiser: We will go to the approval of last month's meeting minutes from June 27th.

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

Smith: I second.

Kaiser: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: I'll abstain. I wasn't here.

Baum: Board Member Porter.

Porter: Yes.

Baum: Thank you. Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Thank you.

Kaiser: All right. We have no postponements tonight.

4. ACCEPTANCE OF THE AGENDA

Kaiser: So we'll go ahead and get a motion to approve tonight's agenda.

Bennett: I make a motion to approve the agenda.

Vega: Second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Porter.

Porter: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

5. PUBLIC PARTICIPATION

Kaiser: Okay, moving on to public participation. Is there anybody in the audience tonight who wishes to speak on an item that is not for an agenda item? Yes, please come up. Please state your name for the record. And I will give you three minutes after I swear you in.

Pearson: My name is George Pearson. I'm disappointed that these P&Z meetings are not being broadcast on the City's TV channel or YouTube. Since this committee is recommending committee to City Council, I'd like to recommend that you take action at a future P&Z meeting to send a message to City Council asking that they broadcast these meetings and so that they're available on YouTube. This meeting has, besides City Council, this committee has the most direct impact on the citizens and I think it's important that these meetings be publicly available. Thank you.

Kaiser: Thank you very much. And I would just like to say for the record that this committee has asked that very question to staff as to why this meeting was no longer being televised. So I would just continue to pose that question and see if we can't come to some sort of resolution

Ochoa: Chairman Kaiser. Staff will speak with the PIO office on that matter again and see what we can do, sir.

Kaiser: Thank you. All right, anybody else that wishes to speak on an item that's not on tonight's agenda. Okay. Seeing none,

6. CONSENT AGENDA

7. OLD BUSINESS

7.1 Case # 23ZO0500072: A zone change request from UR (Urban Ranch from the 1981 Zoning Code) to EE (Equestrian Estates) for property that is 1.65 acres in size and located 7332 Shannon Road. Submitted by Ryan Major, property owner. Council District 6.

Kaiser: We will go ahead and move on to old business, and item 7.1, which is a zone change request from urban ranch to equestrian estates. And I will turn it over to staff for presentation.

Banegas: Mr Chairman, Members of the Commission. Vincent Banegas, Interim Planner, presenting tonight's case regarding property located at 7332 Shannon Drive. This should be relatively quick and easy. It involves a conversion zone, zone change or rezoning of property from a defunct and UR zone which was urban ranch under the '81 code to the current equestrian estates version under the 2001 Code. It's Case 23ZO0500072.

Current conditions are as follows. Address again 7332 Shannon Drive. It's plus or minus 1.65 acres of land. Again, under a defunct UR zone designation. The UR zone back in the day allowed for one acre minimum lot size and the keeping of small and large animals in the semi-rural atmosphere. When the 2001 Zoning Code came into fruition, prior to its adoption, there was always an attempt to try and get property owners to come to the City and bring their soon to be defunct zone into compliance with the 2001 proposed zoning regime. The City staff also undertook significant efforts to go seek out these properties and then bring them into compliance once the 2001 Code was adopted. Obviously, there were some shortcomings associated with those efforts and we didn't catch all properties that needed to be rezoned.

The current property sits within what Elevate Las Cruces considers to be a suburban neighborhood place type. It's where you see low to moderate density residential uses with some areas of commercial zoning and land use. The property is currently vacant. And as shown on the attached map here, you have Beyer Road on the east side of the property, you got Shannon Road directly north of the subject property which is outlined in red, and further to the west you have Dunn Drive. You can see that the surrounding property, some of the larger tracts or parcels are EE zoning currently, with exception to this one REM which is residential estates mobile. So by converting this property which is UR presently to EE we will be following right in line with what was intended pursuant to the 2001 Zoning Code.

This is an aerial of the same property, again outlined in red showing the vacant parcel amongst other several developed parcels. A lot of single-family development that's shown and reflected on this aerial. The purpose for the rezoning at this point in time is to facilitate the construction of a proposed single-family site built home. In order to carry that out, the applicant had to submit for a zone change and has done so obviously. And they have also sought to start the construction of their home, in that this proposal falls again right in line with what the 2001 Code calls out as EE zoning and it's very much aligned with the UR zoning designation of old, staff allowed the permit to proceed.

So this is a site plan of the property showing what they are proposing to do on site, and that's again construction of single-family home, access to be off of Shannon Road. A couple of photos showing the property again, this is looking southeast. This is looking southwest, Shannon Road is right in front of us here, Beyer off to the left here. When staff took a look at the proposal and analyzed it there were no health, safety, or welfare related issues that were of concern. The district that is proposed is definitely compatible to not only what the use will be but what the neighborhood is. It falls within that suburban place type in which there's a lot of consistency with the character that's defined in the comprehensive plan. And the neighborhood itself as shown on those maps is made up of large lots, majority of which are zoned EE in the immediate area.

This case was noticed pursuant to code and as of this point in time staff had not received any comment, pro or con, to the proposal. It was scheduled to be heard on a previous agenda, in fact last month we had to pull it. But even during that period of time there's been no input provided. So staff's recommendation is to approve the case based on the findings as outlined on this slide, and the next. Again, the property is nonconforming, so we have a need to bring it into compliance. And certainly prior to development, the property needs to be rezoned to something that is compatible to the surrounding area, the EE zone being that designation. The suburban neighborhood place type, again characterized by what is intended in terms of development of the property and the area around it. And there are several goals, policies, and actions from the comprehensive plan that support the request, as well as the purpose and intent of the 2001 Las Cruces Zoning Code as amended, and the municipal code. So the surrounding area again, large lot, lot of consistency. And your options this evening, is to vote "yes" and approve the proposal as presented, you can vote "no" and deny, if you deny it then please provide findings of fact contrary to those presented in this presentation or in the packet, you can vote "yes" with conditions, or vote to table. We do have Mr. Major in attendance this evening. He is the applicant for the proposal. And he could either come up and say a few words or just stand for questions if you have any of him. So at this point in time, staff stands for questions. Thank you.

Kaiser: All right. Thank you. Any questions from Commission? All right. Seeing none. I'll go to the public. Is there anybody here tonight who wishes to speak on this item? All right. Seeing none. We'll come back. And looking for a motion to approve.

Bennett: I make a motion to approve 7.1.

Vega: I second.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendations.

Baum: Board Member Vega.

Vega: Yes, based on staff recommendation and meets Elevate Las Cruces.

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 neighborhood character, Elevate Las Cruces, and the purpose and intent of the code.

Baum: Board Member Murray.

Murray: Yes, based on staff recommendation, the need to bring it up to compliance with current code.

Baum: Chair Kaiser.

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

Baum: Motion passes.

8. NEW BUSINESS

8.1 Case #23CS0500012: A request to approve a preliminary plat known as Sierra Del Sol Subdivision. The subject property is located 350 feet south of the intersection of Lewis Street and Spruce Avenue. The proposed subdivision encompasses 4.48 ± acres, is zoned R-1a (Single-Family Medium Density). The subdivision proposes 18 single-family residential lots, 0.75± acres for multi-family, and a privately owned and maintained park/open space/multi-use trail. Submitted by Souder Miller and Associates, representative. Council District 3.

Kaiser: Okay, moving on to new business. Next item is 8.1, a request to approve a preliminary plat known as Sierra Del Sol subdivision. Staff please take it away.

Castillo: Good evening Commission. John Castillo for the record. Today we have the Sierra Del Sol subdivision preliminary plat. The current conditions of the property is that it's currently zoned R-1a. It's a vacant undeveloped parcel of land that is approximately 350 feet from the corner of Spruce Avenue and Lewis Street. It is approximately 4.48 acres in size and is surrounded by single-family residential developments, and it's adjacent to Sierra Middle School. As we can see from the zoning map here, the property as highlighted. The aerial map shows the vacant property. A little bit of history behind this, it was a part of the school at one point. Through some land swapping and the City took ownership of that property. And we decided to maintain a street for the school. These are some street views of the property. So the proposal is for 18 single-family residential lots, a 0.75 acre lot for multifamily residential developments, three tracts of land that will be privately maintained that will be used for a park and open space drainage, and the development of a multiuse trail that's going to connect the existing neighborhood, the proposed neighborhood, to the school. This will be done through the back portion right along here. It also is going to have two tracts of land that will be dedicated to the City for drainage purposes. The development will also follow the Sierra Blueprint as well as the Infill Development Process for all future multifamily housing development.

As we can see here, here's the cover sheet of the proposed preliminary plat. This is the ultimate design for the subdivision. All City relevant staff reviewed the application and had no comments regarding the proposed establishment. Notice was sent to all surrounding properties within 500 feet. Staff did receive two phone calls regarding this one. One of them was about general questions and how it would impact their property. The other one was from a neighboring property down the street from them who was opposed to the development and was also informing us that there was not proper notification. Staff recommends approval based on the finding followings. The proposed preliminary plat known as Tierra Del Sol complies with the requirements and standards of the City of Las Cruces subdivision, based upon review by City relevant staff, the preliminary plat complies with all requirements of the 2001 Zoning Code as amended. And then on July 12, 2023, the DRC reviews and recommended approval of the preliminary plat, it meets the intent and purpose of Elevate Las Cruces's comprehensive plan because it is located within a suburban neighborhood. And it's also adjacent to an active transportation route and bus route. The development review committee, or DRC, on July 12, 2023, conducted a meeting. After some discussion the DRC recommended approval of the proposed preliminary plat. Your options today are to vote "yes" to approve, vote "no" to deny, vote to amend, or vote to table. I also have a representative of City staff here as well, as well as the representative for Tierra Del Sol.

Kaiser: All right, thank you. Any questions? Commissioner Bennett.

Bennett: I already approved this at one point. We did this once, right and so it there's some changes. Is there a reason why we are changing the whole plan that was approved previously?

Kaiser: I will have to defer that question to Adam Ochoa.

Bennett: Thanks.

Nichols: Mr. Chair. If I may, please. John, you mentioned that there was in the notice that there was one complaint or one in opposition saying there was not sufficient notice. But would you clarify if notice was properly given.

Castillo: Mr. Chair, Commission, Director Nichols. Yes, notification was sent out to all properties within 500 feet. We also posted the notification in the Sun News, as well as placing the notification on the property as well. The neighbor in question, she did live outside of the 500 foot buffer. We did explain to her about the other forms of notification as well as being on the City's website. She did respond to those in a manner to where she does not review those other agencies that we use.

Nichols: Thank you.

Ochoa: Chairman Kaiser, Commissioner Bennett. What you saw before is what was called a blueprint for this property. It was kind of like a master plan, if you will, for this property is what it was. It's how, and the reason I know this is because I'm the one what wrote it. That's the reason why I'm very aware of it. And yes, it was kind of a way for staff to kind of guide the development of this property for the way it's being developed now. And it's following actually that blueprint, which is another condition, a possible finding as well that it does meet what's called the Sierra Blueprint, as well. So that's essentially what you've seen In the past. It did change slightly, but it's still essentially single-family residential homes with a street going through it, and some areas saved for a trail, kind of community gardens and multifamily as well.

Bennett: Okay. Cool. Thank you.

Ochoa: Yes, sir.

Kaiser: All right. Any other questions from the Commission? Just a couple of questions. Was this entire subdivision affordable housing units or is it just a component of that?

Castillo: No, it's going to be a lot of the affordable housing, as well as the missing middle.

Kaiser: Okay, so the affordable housing, it's not the entirety of the project, there's some market rate in there.

Castillo: No, it'll all be affordable housing. The developer is going to be Tierra Del Sol.

Kaiser: Okay. Understood. Thank you. Do we have, and maybe this is in the Sierra Blueprint, and I apologize, I'm not familiar with that. That's probably before my time. The apartment or the multifamily component, how many units are we expecting there?

Ochoa: Chairman Kaiser. They would have to essentially any type of development they do for multifamily on that property, they'd have to come before you again, through an infill development process proposal, through an IDP, because the property is zoned R-1a, so they will have to come before you and actually show you what density, how many units, height, and so on and so forth like that, sir.

Kaiser: Okay, thank you. And then I think my final question, if you can go back to the aerial image. Yes, that one. So the proposed trail is going to run along the western edge of the property. And I see that it connects to not Webster but the intersecting street there, how would that trail design actually facilitate getting access to the middle school?

Castillo: Mr. Chair, Commission. I have Paul Pompeo, with Souder Miller and Associates, and he'll be able to discuss the design aspect of it.

Pompeo: Good evening Mr. Chairman, Commissioners. Paul Pompeo, with Souder Miller and Associates.

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?

Pompeo: Yes, I do.

Kaiser: All right. Please.

Pompeo: Yes, as staff has pointed out there's a remnant street, and half the right-of-way got vacated by the school, and so we're going to place that trail between the fencing of the school, on our property, that's going to exit out into this portion of the parking lot in the school property. The reason that is, is because the entrance into the school is by gates in this area down here, and so that was the logical place to direct that trail into.

Kaiser: Okay, that, yes, that's great. I just wanted to make sure that we weren't just pushing them out to Spruce Avenue and they're on their own. So thank you. That's it for me. We'll go ahead and open it to public comment.

Pompeo: I'm sorry, Mr. Chairman. I have a short presentation and then I can stand for questions.

Kaiser: Please go ahead.

Pompeo: Thank you, Mr. Chairman. Once again, Paul Pompeo with Souder Miller and Associates. I have a brief presentation so as not to duplicate what staff had presented, and then I'd be happy to answer any questions the Commission might have. Once again we can see that this project is located directly east of Sierra Middle School in the area shown here in yellow. We are planning on 18 single-family residential lots in this area. We have a park area here, stormwater management containment area here, and then of course this is the future multifamily, which once again is not zoned for that now and will be subject to a future application for that property. As you can see also on the plat that the trail that's coming off the end of the existing City of Las Cruces right-of-way is located here, and entering into the walkway that's along the fence here for the parking lot is at Sierra Middle School. We'll design that trail pursuant to the City design standards and that does provide that, I guess there's a lot of students that walk out of this street down here. So that's why I wanted to make sure that pathway was contiguous but not necessarily taking them through the subdivision.

As you can see, it's a cul-de-sac layout, as you can see here. So no through streets for this application. Also, Mr. Chairman of note, one of the delays in this project was because of the topography of this, wastewater had to exit out of the cul-de-sac head here. And we have secured this easement with the Las Cruces Public Schools to get that line in. So that's also part of this project. With that, that concludes my presentation Mr. Chairman, and I'd be happy to stand for any questions you might have.

Kaiser: There's one additional question on this. With a pedestrian topic, can you go back to your site plan there? Will there be pedestrian access out of that cul-de-sac into the parking lot or are they going to be required to come around and use the trail?

Pompeo: They would be required to use the trail only because these lots and this end of the street sit about for three to four feet above the parking lot grade. So they would be required to - there'll be full sidewalks in this subdivision meeting City standards, but they would be required to walk around.

Kaiser: Okay. Thank you. Any questions from the Commission? All right. Thank you very much.

Pompeo: Thank you, Mr. Chairman.

Kaiser: We will go ahead and now open it to public comment. Is there anybody in the audience tonight who wishes to speak on this agenda item? I see one. Please come forward and state your name for the record.

Lozano: My name is Chad Lozano.

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?

Lozano: Yes.

Kaiser: All right, I'll give you three minutes. Please go ahead.

Lozano: Okay, I won't be long. I actually live in the neighborhood. You know, I got the notification about this, I just wanted to come and you know show support for it. But I saw there's going to be a park. So hopefully you know it's a good looking park, because I most likely will be using it with my dog or something like that. So I just want to make sure it's not just going to be a flat thing that is going to be ugly in the neighborhood. So that's really all I had. I'm sure the people that bike in there will be sad, but there's other places to bike around in the dirt area. So you know I see it more as a positive thing for the neighborhood. So thank you.

Kaiser: Thank you. Anybody else who wishes to speak on this item? All right. Seeing none. I will come back to the Commission. Any final questions? Thoughts? Looking for a motion to approve.

Vega: Make a motion to approve item 8.1.

Murray: I second.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendation. And also it meets exactly what we're attempting to do with Elevate Las Cruces, creating new housing within established neighborhoods. I'm really hoping that as this development goes forward that there will truly be affordable housing, especially with their proximity to a middle school to allow for short commutes of walking for the students. So I think it's important that we continue to help the City bring back you know true neighborhoods where we can, there's walkability and bikeability.

Baum: Board Member Vega.

Vega: I vote yes based on site visit and staff recommendation.

Baum: Board Member Porter.

Porter: I vote yes based on staff recommendations and Elevate Las Cruces. I think this is a great idea and hope it's approved, further meeting.

Baum: Board Member Bennett.

Bennett: I vote to approve based on staff recommendation, this means to Elevate Las Cruces and the MPO Thoroughfare Plan.

Baum: Board Member Murray.

Murray: I vote yes to approve based on in line with Elevate Las Cruces and staff presentation.

Baum: Chair Kaiser.

Kaiser: Yes based on staff recommendation, consistency with Elevate Las Cruces, and the great need that we have for affordable housing in this community.

Baum: Motion passes.

8.2 **Case 23VO0500089:** A variance request to deviate 15 feet from the required 25-foot front yard setback for a carport addition to a home located at 1308 Delano Drive. The property is approximately 0.17 + acres in size and zoned R-1a (Single-Family Medium Density Residential). Submitted by Manuel Morales, property owner. Council District 3.

Kaiser: Okay, moving on to item 8.2, a variance request to deviate 15 feet from the required 25 foot front yard setback for a carport at 1308 Delano Drive.

Abeyta-Corella: Hello, Board and Commission. Christina for the record. Today we will be looking at 1308 Delano Drive. This is a request for a variance for a carport. Currently the property is located on the west side of the intersection of Delano Drive and Sandigale Drive. It is approximately 0.17 acres and it is zoned R-1a with single-family medium density. It is a single-family residence.

Here we have the aerial photo of where it is located. On this side you can see that this is primarily residential. On this side we do have commercial. Again, on the zoning map you can see the residential component of it and the commercial component of that. The code requirements based off of what the current zoning is, the car carport is not allowed. It does have to maintain a 25 foot setback that is not going to be met. The applicant is seeking to construct a carport addition to the existing dwelling in the front yard of the subject property. The variance would allow the addition of the carport to be constructed in the front yard with a 10 foot setback. So that would be a 15 foot deviation.

Here is the site plan showing where the carport is going to be and the way that they'd like to construct it and showing that 10 foot setback for that. This is the type of structure that is being proposed to be placed on that property in the front yard. The applicant's justification is they have medical reasons. There is need for mobility assistance at times. The protected area of the carport provides help and supports the applicant's safety. Staffs analysis is there are no health, safety, or welfare issues identified. The request for the 15 foot variance to the minimum required 25 foot setback does not meet the criteria for the decisions outlined by the 2001 Zoning Code. So staff is recommending denial. The findings, a carport is required to meet a 25 foot front yard setback, and all residential zoning. The request for the 20 foot variance to the minimum required carport front yard does not meet the criteria for that decision. In addition too, there is an existing garage at this address. I'm not sure why it has it like this, but staff did receive public notification. On that we did receive five calls on here, we had only identified three at the timeframe. We received five calls in support of. We received one e-mail in support of. We received one e-mail opposing. And before we had an additional e-mail opposing. So it's totally 10 in support and two in opposition. If the Commission does do an approval, we ask that conditions be applied to this, that the sides can never be enclosed, it must be attached to the home, and it must meet design standards. With that being said, you have the options to vote "yes" to approve, "no" to deny, you can vote "yes" with conditions, or vote to table.

Kaiser: All right. Thank you very much. Any questions from Commission?

Smith: I have one question. The building that, the structure that they showed is a prefab carport, is there a way that a smaller structure could be used that would meet the criteria for the City or is it's maybe not possible.

Abeyta-Corella: Commissioner. It would not meet because the setback is 25 feet and the house, the existing garage is built to that 25 foot setback.

Smith: Okay, I needed clarification. That's what I thought. Thank you.

Abeyta-Corella: You're welcome.

Kaiser: Any other questions? All right. Do we have the applicant here who wished …? Okay. And before you begin, please state your name for the record.

M. Morales: Mannie Morales, owner of this property.

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?

M. Morales: I do.

Kaiser: Okay. Please go ahead sir.

M. Morales: Okay, I have a correction. She said 20 foot, I asked for a 15 foot carport. Okay. And it's on record because I haven't missed three other rounds because of the 20 foot that I wanted. But I found a place that out of state Coast to Coast that'll build me a 15 footer. And it meets the criteria for that safety triangle, whatever that is. So from the other three rounds that I had, I decided to change it to a 15 and see if that would satisfy the City and my neighbor. Yes.

Okay, I've been a resident of Las Cruces since 1961, 62 years ago. And for somebody else to come in from out of state and try to tell me what to do with my property is, to me this ridiculous. Anyway. And I came here for a better quality of life in a bigger City. I retired from the state. I was a surveyor for the State of New Mexico. And when we were building the bypass, I decided to build my home there close to I-25. I liked that residential area. So I had my house built in 1972 by Eddie Binns. And I also help everybody that comes in, if they want to be registered to vote in our district, and I do everything possible to help them. And I know most of my neighbors, most of them. Yes. So our house is our biggest investment. And it's valued at, right now at 10 times what I paid for it in 1972. And I will never move out of there except to the columbarium at Immaculate Heart of Mary. And that's with the upgrades that I did and improvements. And I'm very proud to be a citizen of Las Cruces.

I have been a safety watchdog helping hand for our neighbors, especially when we have new neighbors that come in. I give them all the information that I can about the City, about the trash collection, water, whatever. And I also had the streetlights, I was very instrumental in having streetlights put in our streets, Delano and Hillrise. And I also had a friend of mine, Dan Soriano was a City engineer, I had had him do a traffic study and put some common devices which we call speed humps, not bumps. And I was very instrumental in that for the safety of our neighborhood. Okay. Okay, those speed humps, we had them from Telshor to Hillrise, Delano to Missouri. Very steep grade on Hillrise, then curves on to Delano and very fast drivers, especially the people that don't live there. And they run out of control going into the 1304 Delano which was Dr. Rudy's house, I worked for him and I fixed those. I fixed fencing. I put guardrail posts with concrete behind and that saved, I think that saved a couple of lives from them not going into the tree. And so I still involved with that house. I advise them not to park in the street, because of those fast drivers. And the last one incident was November 2022. They went into the yard; they went over the guardrail posts and all that and then into the driveway and damaged the vehicle and got away like some of them have done.

I had the City do a traffic study. To this date I haven't heard anything. So like I said I warned all the renters not to park in the street. And on 06/28/23 I delivered this copy to our Councilor counselor, Becki Graham. Hopefully we can get that resolved and the street paved and all that stuff. Okay. Do I have a time limit? No. Okay. I would not be here today, again, it I had placed a carport like all around the City. Before I went years ago, after I found out that there was a no, no with this regulation, I had over 100 carports list. Most of them were up to the sidewalk. And when I went to the City, they told me to take it to the code officer. He assigned a young man to check into those. He only did the two in my neighborhood. And another one, he said the list was too long. So anyway.

There was a list of over 100. And because the City did not have good records, that's why they sent me over to the codes. So then, my next best ammunition to get a carport without any negative comment would be the carport at 2800 Claude Dove that was installed in May 2016 with a front six foot wrought iron fence, which is a no, no. I know a lot of the codes. So anyway. They did have him remove it or move it to the back yard. There's no way to move it to the backyard, it won't do any good. So he removed it. I'm sorry that I did that to that person. And the other one was on 2708 Crestview. And that was installed in October 2016. I was always keeping records. And he went before the board after I did and they allowed him to keep it. He didn't have a permit. And the reason that he had were that like everybody else did not know the City regulations, unless you get all that posting and all that stuff in front of your yard. And he was not told where he bought it. And it cost a lot of money. So they did allow him. That was my ammunition also. I mean why should he keep it; he didn't have a permit.

I've gone through this so many times. And really for the reason I opened the garage, again was for my wife's benefit because of her illness. But I do need a carport from for my other vehicles. And it will be a 15 footer not a 20 footer. I must. One more listing. At the City Council meeting which I had, after the board meeting, they allowed Mr. Blickem, which was a renter or something, and Eddie Binns, the builder of our house, developer, and he happened to show up, but he spoke negative against the carports. But I know that at the beginning of that residential area by Missouri there's about eight houses that have carports that were built not with the houses, but later. So you know. And so since the letter sent out for my meeting said, stated no public input will be taken at this hearing except those that testified at the March 28, 2017 board hearing. There was Camacho, Mel Sales, and my good neighbor Mr. Mullins. So I lost round two again. I would say that the office personnel to inform the chairman before the meeting about who can speak and who cannot speak you know that would have saved me some time too. So the mayor had me redo another meeting because of that, because those people were allowed to talk in that City Council meeting, which they weren't allowed and it was all negative. So I had a reprieve and the same results.

Then in November, that reprieve, Camacho said that the carport garage will removed at 2708 Crestview. Okay. It was not removed. The one that was removed was on Claude Dove. I wanted to make a correction but my mayor said he didn't allow me to speak. And I have a picture to show that I had from the City, I had a picture of that carport, garage, because it's enclosed. But I was not allowed to speak. And so I lost round three. So here we are with round four. And since 20 foot length carport was no, no, I found Coast to Coast contractor, they will build and install a shorter one, 15 foot length and the roof color close to the house color. Should be okay. Should be okay about the clear sight triangle unless they come up with something else.

But already said this, it's the start of the subdivision from Missouri north, some carports were built with the house and some later. I have a list for the builder, developer, because he was against the carports. Okay. I guess seniority doesn't count that I've been here forever. I'm the longest and probably the oldest resident in that area and I'll do whatever I can for everybody, most everybody now. As far as, on my life. Like I said, I'll be at 84 years and three weeks. I'm bad diabetic. I take shots. Arthritis from my hips, knees when I went out, when I was a surveyor. And I take injections on my knees every six months because I don't want replacements. Our summers are very hard on me, as you can see because I worked forever in the sun and I can't take the sun anymore. So it would sure help for the rest of my life, my life and my wife's to get a carport that'll serve its purpose to protect the vehicles and myself and ours. I do my chores in the morning, if possible and in the shade. My wife, like I said, has medical issues and doing therapy for respiratory hypertension, and that's our reason that I opened the garage again for her vehicle, at least for hers. God bless the USA, land of the free. Thank you.

Kaiser: Thank you very much. And thank you for your contributions to the community and neighborhood. Are there any questions from the Commission? Commissioner Smith.

Smith: Yes. And also echo Commissioner Kaiser's comment about your dedication to your community and to your neighborhood. You know, you stated that your requesting for, you know for medical reasons, and you did state you know for a skin condition and shade. But outside of that you know as far as protecting your vehicles from the sun, you know are there any other medical reasons that it would, that you need to have this size of a carport, maybe possibly just a shade to cover your vehicle would suffice. But this is your fourth round.

M. Morales: Yes.

Smith: And I mean, you're very determined to try to get this carport built. But you know we need to have a reason to issue this type of variance. I mean 15 feet is a lot for a variance. So once again you know are there any really medical reasons that you would have to have this the size of a carport?

M. Morales: Well, like I say I can't be out in the sun. And I we would rather have 15 degrees less heat temperature when we get our vehicles you know especially my wife with her respiratory problems. I would say that would really, at least I changed it from a 20 footer to a 15 because they came up with that, it was, one of the Commissioners said 20 feet is 80% of your driveway. We can't have that. So this is the reason I changed it to a 15 foot see what would come out of that one. And there's no problem according to the City stuff that I got the last time with the safety triangles or whatever. That's my point.

Smith: All right. Thank you, sir.

M. Morales: You're welcome.

Kaiser: All right, we'll go to public comment. Is there anybody in the audience who wishes to speak on this item tonight? Please raise your hand. Yes, sir, please come down. Please state your name for the record so I can swear you in.

Camacho: Good afternoon. My name is Sebastien Camacho and I live at 1306 Delano Drive, which is adjacent to Mr. Morales's home.

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?

Camacho: Thank you for asking that question. I definitely do.

Kaiser: Okay. I'll give you three minutes.

Camacho: Three minutes. Okay. Can I see something before we start the three minutes?

Kaiser: Go ahead. Your time's going.

Camcho: Okay. So I know you guys been talking about the notification and stuff. And I have been to the Commission. This would be my second time. And I've been with the City Council three times. And, of course, I'll just read my script. But I just want to let you know that I've never gotten the notification. The only reason I found out about this, because I did look at it online. And I know there's different things. But for some reason, the notifications don't come to my mail, whether it's registered or not. But I do know that my utility bills from the City and my property taxes do come to my home. It's just it's just very unusual that this doesn't come to my house.

But anyway, let me begin. I'm not really prepared because of the short notice. I actually thought I was going to come to the City Council. So my apologies for not being as prepared. Again, this because of the notification. But good afternoon. And I just put it down as the members of the board, but the Commissioners. My name is Sebastian Camacho and I live at 1306 Delano Drive. I am here to express my concern and opposition for approval of this item. I would like to first inform the board if the board does not already know that this item has been before the board on three previous times, with the board denying the request on all three occasions. I am here not as a bad neighbor, but out of concern for my safety, the safety of my family, and those that visit me and park in my driveway. You know, I scripted this discussion to facilitate my position so please bear with me. You do have some slides. And if you don't mind, just look at them because what I'm going to be saying it's going to be referred to them, if you'd mind just looking at it them, because I think they were, I think you have them but I can.

Kaiser: We have them.

Camacho: Yes. Yes. I think they're like, the way I have them, and I think they're backwards. But I'm not going to kind of just go through it, if you don't mind just looking at it real briefly. So I'll be talking about item number two, or exhibit number two, shows that Mr. Morales has a temporary mini, well actually, as you can see the exhibit number two provided, I enumerate the areas that I would want to touch, as honest, to which I'm asking the Board to deny this request again. And item two on the exhibit showed that Mr. Morales has a temporary mini carport in his driveway already. I call your attention to the date of the Google image 08/22. On item two on the exhibit, I believe that Mr. Morales is already in violation of this ordinance even though the board rejected his variance request prior to the date. I would ask that the board to ask Mr. Morales why he believes that this board was in error and thus puts up this temporary carport against the ordinance of the board's direction. I would also like to point out that this is an eyesore and devalues the neighborhood. Now I would call attention to number two, which is one of the, as you can see Mr. Morales has a garage door. But I believe that he uses his garage to move, to make it into a living space. As you can see his cars are outside of the driveway instead of inside the garage.

Kaiser: Just one second. I think our timer got messed up. So why don't you go ahead and put two minutes on and we'll start the timer from there.

Camacho: All right. Thank you. I think you appreciate that. Just let me know when you're ready.

Kaiser: One second, sorry. It did beep, so I just want to, for fairness I want to give you the *(inaudible)*. So please go ahead.

Camacho: All right, I would like, I would ask that the board to direct Mr. Morales to remove the curb stops that are there. And I put A, B, C so he can park his vehicles in the garage and I think that's just a barrier for him not to be able to do that, but he does have those curb stops. Now let's discuss the details as to why I believe that approval of the variance would impact my safety even more it already is. If I can point out to, and then A, B, and C, some of those dates in the afternoon he's parking is his truck. He's kind of like in the, and where the walkway, he's just parking it and I think, I mean you'll probably figure out why. So one of those things is going to even give him more of a difficulty in seeing. So I know that he has the right to park in the driveway, but if you allow a carport it would have an added obstacle of columns that must now take into account. And it does not park in his driveway then he parks in the street, that makes my sight distance worse. All this would become a nonissue if he opened his garage and parked inside. Even if he parks his truck as close as to the house possible, I still have sight distance issues due to Mr. Morales, also having tall bushes in the parkway as shown in the exhibit as the number two, as previously shown.

I need to look past the vehicle and the bushes to maneuver out of my driveway. I didn't cause for a carport only make visibility much worse. Also has the City, Mr. Morales is in violation of the clear sight triangle with these bushes. Now I would like to bring your attention to the second exhibit. I think I'm just; I mean would point out that the neighbor *(inaudible)* pushes. But let me just finish up. In closing the last time I spoke against this Mr.

Malloy spoke of personal issues about me that had no relation to the variance request/ I asked the board not to allow Mr. Morales to speak of any of my personal life in a public forum. I would also like to thank the board in advance for recognizing that the ordinance are in place for the safety of the public and ask that you deny the variance request for a fourth time. Please send a message to Mr. Morales that when it comes to safety, especially when safety is already compromised, as in this situation, that the squeaky wheel does not get the grease. I would also like to ask the board to send the clear message that carports will not be approved. You know.

Kaiser: Thank you. And that's time. I think our beeper is on silent, which is not useful. So thank you very much.

Camacho: I can stand for any questions. Stand for any questions if you have any.

Kaiser: All right. Thank you very much. Is there anybody else in the audience who wishes to speak on this item agenda? Please raise your hand just so I can get a quick headcount. We got … this gentleman, please come forward. State your name for the record.

Blickem: Ryan Blickem.

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?

Blickem: I do.

Kaiser: I'll give you three minutes.

Blickem: All right, I'll keep it simple and sweet. I'm here just to vehemently oppose this application as it does not elevate Las Cruces neighborhoods. Me personally, this is my fourth go around here in front of the Commission and the City Council. It's gotten to the point like Mr. Camacho said, the squeaky wheel gets the grease and I'm disappointed that I have to yet again stand in front of the council and waste my time. And I had yet to hear any sort of proper justification as to Mr. Morales's application. Also, as Mr. Camacho alluded to, he currently has a temporary structure erected as a carport that doesn't meet any sort of, that doesn't adhere to any current codes. Also, I didn't see any sort of proper site plan or design submittal with the application. And I'm trying to think of what else I've got here, and just general line of sight issues that will be presented by this carport being installed. So that's all I've got. I'll keep it simple and short. And I appreciate the Commission's time.

Kaiser: Great. Thank you very much.

Blickem: Thank you.

Kaiser: Is there anybody else who wishes to speak tonight? With all due respect, sir, you've already had your opportunity tonight. So I'm going to come back to the Commission. Are there any additional comments or questions? Sorry, okay, yes, ma'am, please come forward. Please state your name for the record.

B. Morales: My name is Barbara Morales.

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. Morales: Yes, I do.

Kaiser: I'll give three minutes. Please go ahead.

B. Morales: Okay. First of all, I want to say that his family, the neighbors family do not live there. He said it was for their safety. They don't live there. They only go there for a little while to get the mail I guess, put out the trash. Whatever they do, I don't know. But the point is, if it's for their safety, again they don't live there. And the second thing I want to say is the thing that he was talking about is just temporary, it for a yard sale that we want to do. It's not forever. It's not a permanent. Thank you.

Kes Thank you. Okay, coming back to the Commission, any questions?

Vega: Thanks, Commissioner. Just a quick clarifying question for staff on our options on how to vote once we get to that point. Thanks.

Abeyta-Corella: So again, the options are vote "yes" to approve, "no" to deny, vote "yes" with conditions, or vote to table. And if it's approved with conditions, these were the conditions that staff recommended, is it can never be enclosed, must be attached to the home, and must meet design standards.

Ochoa: I'm sorry Mr. Chair. Point of clarity. Adam Ochoa again for the record with Community Development. So your options again, is one to vote "yes." If you do vote, "yes," that's against what staff is recommending, so you'd have to provide new findings of facts in order to approve the proposed variance as is or add conditions as well. If you vote "yes," as well, it approve with conditions, you place those conditions and still state your new findings of fact as well, just to clarify for you.

Kaiser: Thank you. Was that, clarify? Okay. Any other … Commissioner Smith.

Smith: I just have a quick question regarding Ms. Morales's comment that they don't live there. I want to ask Mr. Blickem if he lives in the neighborhood. Okay. And Mr. Camacho, do you live in a neighborhood? Okay. I just wanted to confirm you are both residents.

Kaiser: All right. So looking for …

Nichols: Mr. Chair. May I - point of order.

Kaiser: Please.

Nichols: We'll need the two individuals to come to the podium to state the question that Commissioner Smith had. Not to speak from the audience.

Kaiser: I believe the question for both these gentleman is are you residents of the neighborhood? And before you answer that, can you please just state your name for the record, and then you may give your answer.

Blickem: Yes. My name is Ryan Blickem. I live at 1301 Delano. And yes, I do live there.

Camacho: Yes, my name is Sebastian Camacho. And I am in the homeowner of 1306 Delano. And I do live there and I do pay my taxes. I do travel, so maybe that's why I'm not there. That's just my job, I have to travel. But I'm here today, right. And if I didn't live here, then where would I be?

Kaiser: Thank you. Okay, so looking for a motion, just a reminder that the motion needs to be in the affirmative, so it'd be a motion to approve.

Vega: Make a motion to approve item 8.2.

Bennett: I'll second.

Baum: Board Member Smith.

Smith: No.

Baum: Board Member Vega.

Kaiser: On, based on based on.

Smith: Based on staff recommendation. My apologies.

Baum: Board Member Vega.

Vega: I just want to thank everyone from the community for coming today and sharing their feedback. And unfortunately, I will have to vote no based on staff recommendation and due to the potential for any sort of.

Baum: Board Member Porter.

Porter: I vote no based on staff recommendations.

Baum: Board Member Bennett.

Bennett: I vote no based on staff recommendation.

Baum: Board Member Murray.

Murray: I vote no based on staff recommendation.

Baum: Chair Kaiser.

Nichols: Mr. Chair. If I can interrupt, please. The City attorney has asked to have a little clarification on the manner in which we're voting on this, what yes would mean and what no would, a denial would mean.

Garrison: Just to clarify based on some of your comments. If you're voting yes to approve based on staff recommendation, the recommendation was to deny the request. And so if you would like to deny the request, you're voting yes to approve. And if you're voting no then you would need to state the specific findings.

Kaiser: Yes, the motion was to approve the item, so a no vote would be to deny.

Garrison: I just wanted to make sure just based on some of the comments that that's what your intent was.

Baum: And Chair Kaiser.

Kaiser: Vote no based on staff recommendation.

Baum: The vote was denied

8.3 **Case # 23VO0500090:** A variance request to deviate 14 feet from the required 25-foot front yard setback for a carport addition to a home located at 1016 Cedardale Drive. The property is approximately 0.23 + acres in size and zoned R-1a (Single- Family Medium Density Residential). Submitted by Celia Tahuahua, property owner. Council District 1.

Kaiser: Okay, moving on to item 8.3. This is a variance request to deviate 14 feet from the required 25 foot yard setback for a carport addition at 1016 Cedardale Drive.

Abeyta-Corella: I am going to be presenting on 1016 Cedardale. They are requesting a variance request for a carport. This one is about 239 feet west of the intersection of Elks Drive and is on Cedardale. It is approximately 0.23 acres. It is zoned R-1a and is a single-family residence.

Here we have the aerial you can see Elks Drive and Cedardale. This is the location where the carport was constructed. Here in the zoning map you can see that the entire area is actually R-1a. This one, like the other, does not comply with the Chapter 38 of the 2001 Zoning Code. The required setback is a 25 foot setback. The proposal is to obtain permission to retain an unpermitted carport. The variance would allow the carport to be in the front yard with an 11 foot setback. Here is the site plan that was drawn up, here is the carport and there is 11 feet here. Here are pictures that I went out and got from the location. So this is what the carport looks like. You can see here, the footage, this looks like it's going to have to meet the 11 feet based off of what was asked for on that variance.

The applicant's justification is to protect the vehicle from extreme heat and to watch their grandchild play. Analysis, there are no health, safety, or welfare issues identified by staff. The request is for a 14 foot variance to the minimum required 25 foot setback for the carport to be installed or for it to remain installed. Staff's recommendation is denial as it does not align with the 2001 Zoning Code. The findings, a carport is required to meet the 25 foot front yard setback in all zoning districts that are zoned R-1a. The request for the 14 foot variance to the minimum required front setback does not meet that criteria. There is an existing garage at that address.

Public notice, we did get one inquiry and then in your packet you will see that we did get one e-mail in support of. Conditions if approved, can never be enclosed, must be attached to the home, must meet design standards, and the front structure must be meet the proposed setbacks of the 11 feet in the front and then it has to maintain the five foot setback requirement. Your options today for voting would be "yes" to approve, if approved it would need, I forgot the word, support to say why you're doing the approval for, vote "no" to deny, vote "yes" with conditions, and vote to table. Those would be the options today.

Kaiser: All right. Thank you very much. Coming to the Commission, are there any questions? Seeing none. Was the applicant - did you wish to make a statement? Please state your name for the record.

Tahuahua: Carlos Tahuahua.

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?

Tahuahua: Yes, I do.

Kaiser: Okay, go ahead.

Tahuahua: Good afternoon. First of all, house was built in 1963 which I don't know what type of cars they drove back then but our two vehicles will not fit in our double car garage. It has two garage doors. In the past we've made the attempt to put at least one car in there with very little space between the garage door and the back of the vehicle. And not allowing us to actually walk in front of the vehicle to close our garage door. Looking at all the other carports that are in the neighborhood, I thought it was okay based on what I've seen. Even one right down the street from us at Devendale and Cedardale, which is probably closer to the roadway than ours is, but yet that one still stands. We purchased the house in 2003 and we've never really been able to put our cars in the garage. As you know, the way the summers are, the way the winters are, we want to protect our property. We want to protect our vehicles. I strive to keep a clean front yard, there's no weeds, there's no trash, unlike other houses down the street from us that you know for years now there's trash in front of their house. But yet, I build a carport to protect my property and I'm here to present it today.

Kaiser: Thank you very much. Any questions for the applicant? All right, seeing none. I'll go ahead and open up to public comment. Is there anybody in the audience here who wishes to speak tonight? Please raise your hand for a moment so I can get a headcount. So let's see one, two, three, four, five, six folks. So we'll go ahead and give everybody two minutes to speak. We're going to start on this side. So I'll go the - raise your hands once again. Sorry, I don't have a photographic memory here. We're going to start in the third row, the gentleman with the blue, nope, sorry, row, yep him right there. Yes, you, come on down. Price is Right. There we go.

Dolly: Evening. My name is Mark Dolly.

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

Dolly: I do.

Kaiser: All right, two minutes. Go ahead.

Dolly: 1014 Cedardale. Bought it in '92. I'm Charlie's next door neighbor. I am the closest property to that structure we're talking about; I have zero problems with it. It's beautiful. I will attest to his statement about trying to park their cars in the garage. Years ago, Charlie paid a lot of money to have a tree removed that was between our properties. And the tree had pushed his driveway pad up to the point where he couldn't pull his truck into his garage. So he had a lot of work done to get that driveway back down. So he really tried to use that existing garage for his automobiles. And he's right, he's right. I got a carport next to his, a part of the house, and I was going to close it in when I bought the house but I realized I couldn't park two cars in there and open the doors and do anything in the car in the garage. So I did not close that carport in. I have no problems with his carport. It's beautiful. It actually provides a little bit of early morning shade to a suffering tree of mine in the front yard. Charlie and Sally are impeccable neighbors. Excellent citizens. And I would hope you would vote in his favor.

Kaiser: Thank you very much.

Dolly: Thanks.

Kaiser: All right, then then we'll go to the gentleman that was in the aisle, yes, please. State your name.

Parker: Timothy G. Parker.

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?

Parker: Yes.

Kaiser: Please go ahead.

Parker: Okay, I've lived in that 1013 Cedardale, across and one house down. I've lived in that house since 1965, when the neighborhood was new, since I was a little kid. People do have - I've been trying to count I think about six different people have lived in that house. And I don't recall any of them being able to get a car in there on a regular basis. It's just tight. It's one of those that's divided. And it's not a good garage at all. Also, I kind of as a person I think rules should make sense. They should do something proper. And in this case your rules of the setback don't serve any purpose. The carport is not unsafe. It's not unsightly. It's fine. In this case, I think you should make a difference because, you know make a variance because it makes sense. I think the laws should make sense once in a while. And you guys have the right and the ability to make things make sense. So I would ask you to go ahead and do the right thing so this makes sense. The carport is fine, it looks good. It's sturdy. I think you allow him to keep it. Thank you.

Kaiser: Thank you very much. All right, now we'll go to the gentleman in the black shirt. Please state your name for the record.

Davis: My name is Robert Davis. I live at 1015 Cedardale. I live directly across from Mr. Tahuahua.

Kaiser: Do you swear or affirm the testimony you're about to give is the truth and nothing but the truth under penalty of law?

Davis: I do.

Kaiser: Okay. Go ahead.

Davis: I mean, pretty much when the whole carport was built, I think pretty much everybody around the neighborhood was actually really pleased with the way it looked. And this is even pretty much like you've guys have seen pictures. This is not even a finished product yet too. I mean there's definitely plans for paint that you know that they do plan. So it really will serve a beautiful purpose. And I know I keep hearing about this Elevate Las Cruces thing and this is actually the first time I've heard about this. I've lived here for 13 years. But I know that whole thing is Elevate Las Cruces, Elevate Las Cruces, but really, as a homeowner you have I mean, you have to really deviate from that and understand is that we have property that we need to protect as well. And the way that their house is facing you do get that hot sun directly, I mean directly right at their front door to where it very much does. I've lived there for six years directly across the street, look out my window, it's not an eyesore. And we've had actually our carport which was attached to the house, actually enclosed about two years ago and made into a garage. It's costly. And even so some of these other garages or so, they say it's a double car garage, you can't fit two cars in there, you can barely fit one. And I mean we have scraped the back of our cars before just based on the garage door just because they're not built the way garages are built today. Ours are built in '65. So I mean, we kind of run into the same problems. I have a beautiful, brand new truck that I cannot fit in my garage. And you know, so I think Charlie had done a smart thing by making something outside that he can actually use for multiple different vehicles.

Kaiser: Thank you. All right, please state your name for the record/

Little: Karen Little.

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?

Little: Yes, I do.

Kaiser: Okay. Go ahead.

Little: So I live at 1018 Cedardale on the other side of Charlie. And he has been a wonderful neighbor and his yard is immaculate. I also, my house was built in '65 and have a very small garage. I have very small cars so I can actually get mine in there. But it is tight. And looking at what he's done, you know it's not a problem. And if I look at that compared to some of the other stuff that's going on in our neighborhood that codes doesn't do anything about, we have flatbeds in people's yards, we have cars in people's yards. We have a neighbor who has a pile of concrete, a torn up tree and rocks. Nothing gets done about that. But yet his yard is really nice looking. And so I'd like to support him and say that I think that it needs to stay. Thank you.

Kaiser: Thank you. All right. Do we have one other person on this side? Yes, please come on down. Please state your name for the record.

Hutto: Bertha Hutto.

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?

Hutto: Yes.

Kaiser: Please go ahead.

Hutto: Okay, I've lived on Cedardale since 1968. And he put the carport, it's very nice. It doesn't detract from anything; in fact it adds to the neighborhood and I hope you will let him keep it. Thank you.

Kaiser: All right. Thank you. Okay, before I go to this side of the room, last call. All right. Moving over, please come on down. And go ahead and just state your name for the record and you may begin.

Camacho: My name is Sebastian Camacho. So unfortunately, you know I just really believe that the ordinance are in place to follow. And allowing exceptions or whatever that's just going to open it up for others to do the same. I know I'm part of this community. I know Avondale, I know how the Glendales and yes, I know that community well. So I just think that approving it would just deviate from what we just heard previously. I mean if we're going to not follow the variance, then we're just going to have a handful of people coming in to get the setback approved because we got one approved, got another one, not everybody's going to have this carports, which to me is not a good look for Las Cruces. We want Las Cruces to be beautiful. We know and I don't want to like say but there's some neighborhoods in the Telshor area and the Hillrise area, uptown towards the Organ Mountains, you don't see those carports. You don't see those people asking for a carport. You don't see those people. And I mean, I'm sorry that I'm kind of like going against the people who want to do this. You know, I just going to caution people, you know, *(inaudible)* in Las Cruces and across New Mexico is high, having your cars outside it's just another variable to look at, to have your car stolen or vandalized. So that's all I have to say, I mean. Thank you.

Kaiser: Thank you. All right, coming back to the, or I guess, for I do that. Anybody else on this side? Last call. Okay. Coming back to the Commission. Any questions? Commissioner Smith.

Smith: I just have two comments to make. First of all, I mean, I respect, you know, the need for shade and protecting your vehicle. I've lived here for 25 years. I have a home that was built in 1948. There was no garage. I would love to have a shade over my two vehicles that sit in my driveway. But because of when my home was built, there was just no way I could ever, ever get a variance to build a shade for my cars.

And secondly, you know, we talked about the homes, they're built in '64, '65. I'm a senior citizen. I remember what cars look like back in 1964. And they were wide. And they were low. And so the homes that were built in 1964 and '65, I'm sure they were made for one vehicle, because back then most people just had one vehicle. So they're not two car garages. And, you know we know how vehicles look today and trucks are six feet tall. And you know there's just no way you could even attempt to get them in a garage. So I'm sympathetic to the need you know for shade and be able to protect your vehicles. But you know, we still have to follow you know the ordinance. And like the gentleman said, Mr. Camacho, once you open a door for one, you open up for all. So thank you.

Kaiser: All right. Any other questions? I've just one clarifying question for staff. Just going back, we heard some comments from the public tonight just about existing carports in the neighborhood. Any sense or any numbers on what that might be? Are there, are there not? How many?

Abeyta-Corella: Commissioner. When I went out to do the site check, there were additional carports that were in the front yard within that area.

Kaiser: Okay.

Abeyta-Corella: So his is not the only one.

Bennett: Did they, had they gotten variances or?

Abeyta-Corella: I didn't research the information. I just identified that there were, I counted five that had carports in the front that did not meet the required setback. I don't know if codes has gone out and talk to them. We did get an influx of people coming in to get variances related to carports. But I did not identify which ones were in that vicinity.

Kaiser: Understood. I'll just speak for myself. I think that information would actually be helpful in this case. I mean not that we're trying to you know call people out if they didn't follow the rules. But I mean, if we've already got something established in the neighborhood, then maybe that changes the dynamic, I don't know. But that would have been useful information at least from my decision making.

The other point I just want to make briefly is you know there are rules for these things. And you can't just go out and build a structure like this without you know at least talking to the City first. And so you know it's unfortunate that we're in this position, but I think a lot of this could have been avoided, you know had the applicant come forward ahead of time to seek out permission. I think there could have been a more sensible solution, as opposed to just this yes, no. In this particular case, you spent money you potentially might had to rip it out. So that's just something I want to throw out there as well.

Ochoa: Mr. Chair. Point of clarity. To answer your previous question, that area, staff has had history, either people going for variances, code enforcement actually taking them to court. Wo waiting for court dates and so forth like that for that. Additionally, staff does have the ability to provide what's called administrative variances or flex development standards. If they're a couple of feet away or inside, three feet inside, we could potentially approve that administratively. So there may be multiple aspects of the house, some of those carports are out there either variances, still in the process of going through code enforcement, or possible administrative variances, sir.

Kaiser: Okay, thank you. Yes, I just think having that information as part of this staff report would have been helpful. Because, I mean, if we've got six of these that are exactly the same that have been approved at some level in the past, I mean that changes the perspective a little bit versus you know another situation where we had one single house in the entire neighborhood seeking this relief, that does make a difference.

Bennett: And if we do denied today, he can appeal to City Council. Correct.

Ochoa: Mr. Chair, Commissioner Bennett. That is correct. He can appeal to City Council. That is his right.

Bennett: Cool. Thank you very much. I know that we're kind of quasi judges and so we're kind of confined with what the City provides us. So I know that City Council has a little bit more leeway as to what they can do on ruling. So just so you're aware. So if it doesn't go your way, you can appeal and I would recommend doing that.

Kaiser: Okay. Any final questions, comments? All right. Again, looking for a motion in the affirmative.

Bennett: I make a motion to approve 8.3.

Smith: I second.

Baum: Board Member Smith.

Smith: No based on staff recommendation.

Baum: Board Member Vega.

Vega: I vote yes, to approve but with the conditions outlined by staff.

Kaiser: Fortunately, the motion didn't have the conditions. So it would be just approve without the conditions.

Vega: Then I vote yes to approve.

Baum: Board Member Porter.

Porter: I vote no based on staff findings.

Baum: Board Member Bennett.

Bennett: I vote no based on staff recommendation.

Baum: Board Member Murray.

Murray: I vote no based on staff recommendation for denial.

Baum: Chair Kaiser.

Kaiser: No, based on staff recommendation.

Baum: Motion fails.

8.4 **Case # 22ZO1000083:** A request to approve a Special Use Permit (SUP) to allow a cannabis dispensary (retailer) less than the required 300-foot buffer distance from another cannabis dispensary. The subject property is located at 600 S. Solano, zoned C-2 (Commercial Medium Intensity), and encompasses 0.259 ± acres. Submitted by Queen Bees Collective LLC, representative. Council District 3.

Kaiser: Okay, moving to item 8.4, a request to approve a Special Use Permit to allow a cannabis dispensary less than the required 300 foot buffer distance from another cannabis dispensary.

Castillo: Good evening Commission.

Kaiser: John, do you mind just moving the microphone a little bit closer? It's a little quiet. Thank you.

Castillo: No problem. So I have a request for a Special Use Permit to allow a cannabis retail establishment within the 300 foot buffer required distance located at 600 South Solano. The current conditions of the property is it's currently zoned C-2 which is our commercial medium intensity. It is a well-developed commercial shopping center that has continually been in use with various businesses going in and out of it. It's located on the corner of Solano drive and Kansas Avenue. It's approximately 0.25 acres in size and as being along Solano it is surrounded by retail office. And then there are some single-family uses following behind that. As you can see from the zoning map being along Solano, a mixed use corridor. It is primarily a commercially zoned area.

From the aerial map highlighted here, the subject property is going to be this more particular spot here that we're talking about in the corner near Kansas and Solano. These are going to be some street views of the business. As we can see right here it is located near the corner once again. The other cannabis establishment is going to be in this shopping center to the right of it. So the proposal is for a cannabis retail store. The distance between the new cannabis retail store and the closest one that is in existence is approximately 188 feet, or it's an approximate 188 foot deviation. There is about 112 feet between the two businesses. The code does require a minimum 300 foot buffer between cannabis retailers or cannabis micro businesses. We do differ from that to apply for a Special Use Permit. So all other buffer distances are met. So the distance between single-family zoning districts and schools and daycares will also follow all City of Las Cruces and State of New Mexico regulations governing cannabis and all its related retail activity.

So here's the map showing the 112 foot distance between the two cannabis establishments. At this time, all relevant City staff reviewed the application and had no comments regarding the proposed establishment. And notice was sent to all surrounding properties within 500 feet. Staff did receive an in person comment regarding the concern of the number of cannabis dispensaries that are located within the City. Also, he did point out that there was a daycare. Staff looked further into that, it is outside the 300 foot distance, so it is still in compliance with meeting the 300 foot required buffer for the daycares.

Today staff's recommendation is based on the following findings. Staff does recommend to provide a conditional approval. The business will need to contact a design professional such as an architect or engineer to perform a code analysis to look at life, safety, firewalls, and ingress and egress for the compliance with the City of Las Cruces Municipal Code. Based on those findings, the subject property meets the distance separation requirements from any school, nursery, daycare, and single-family residential district. The subject parcel as it exists is surrounded by commercial office uses. The subject parcel is compatible with several other non-residential properties with frontage along Solano Drive. The site is designed to attract vehicular business primarily from Solano Drive. And it does meet the intent and requirements of Section 38-2 of the 2001 Zoning Code. As stipulated before it's going to meet all of the zoning code requirements and requirements of the State of New Mexico. It's also located along a mixed use corridor, as outlined in Elevate Las Cruces's future development map. Today your options are to vote "yes" to approve, vote "no" to deny, or vote to amend, or vote to table.

Kaiser: All right. Thank you very much. Any questions from the Commission? All right, I will go ahead and turn to public comment. Is there anybody in the audience who wishes to speak on this item? Please raise your hand.

Castillo: Mr. Chair, Commission. I also do have the applicant available as well if you have questions for them.

Kaiser: Okay. Thank you. So I think one hand. Yes, please come on down. And go ahead and state your name for the record.

Pearson: George Pearson.

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?

Pearson: I do.

Kaiser: Go ahead.

Pearson: So City Council recently considered eliminating the 300 foot buffer between cannabis and chose not to. So City Council is already pretty well directed how this Commission should respond. The applicant then of course, could appeal and the correct place I think for this to be decided is at City Council. Thank you.

Kaiser: Thank you. Anybody else from the audience? Yes, please, come forward. State your name for the record.

Eresco: My name is Zep Eresco.

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

Eresco: Yes.

Kaiser: Please begin.

Eresco: I met Astrid about a year ago and I've been a medical patient of cannabis for about six years now. For us cannabis patients we would prefer quality over quantity. And ever since hanging out with Astrid from a personal scale, I have seen her be an amazing business owner, an amazing mother. And I would ultimately consider her the cannabis queen. She's very knowledgeable in what she does. And if anybody deserves to have an open dispensary here in town, I really strongly believe it should be her. You know, we have bars that we all like to go to despite there being many multiple bars, you know, we all have our preference and I think that the cannabis community here really enjoys Astrid and her knowledge. And I think that I would appreciate having an opportunity to decide where and who I purchased my medicine from. And if anyone is more deserving, it should be her. Thank you.

Kaiser: Thank you. Okay, last call. All right, coming back to the Commission. Any additional questions? Commissioner Smith.

Smith: Only one quick question for staff. I know, I forget which meeting it was, but we voted on the, a variance on cannabis businesses on Lohman. Do you remember what the variance distance was on that one?

Castillo: Mr. Chair, Commissioner Smith. The variance was about 79 feet or 78 feet, it was literally across the street.

Ochoa: And just a point of clarity about what was stated before, because I was at the trenches trying to get rid of the SUP or that 300 foot buffer requirements and before City Council. They did vote to deny that amendment and keep the 300 foot. But on top of that, it still also keeps the Special Use Permit process, which is in your all's purview to have final approval on. Just to get clarity for you all.

Kaiser: Great. Thank you. On that point, I'm also a little unclear of what Council's, what their goal is here, because they did have two opportunities to over or to eliminate this requirement. They did not take either of those opportunities to do so. Yet at the same time this body has I think in, except for not even a handful of situations,. has unanimously approved these Special Use Permits. So on the one hand you know we're approving them which de facto means there is no buffer, and yet Council is saying no, we want the buffer. So I guess if staff has any direction what Council prefers there, I'd be interested to know what that answer is.

Ochoa: Mr. Chairman. From what I got from speaking to them, they wanted to keep the 300 foot buffer to still keep that in in place and to have people try to find somewhere that's at least 300 feet away from another retailer, micro cannabis, whatever it is. That being said, they didn't want that to be the first step. Second step would be if you cannot, you find a location that is within the 300 feet, you have the ability to utilize the Special Use Permitting processes and then give you all the power that you have per code to review each item on a case by case scenario and see how it is. As a Special Use Permit section reads in the code, make sure that it doesn't negatively affect the neighborhood, the surrounding area, or just the City as a whole. So giving you back your power essentially with the Special Use Permitting process, sir.

Kaiser: Thank you for that explanation. I appreciate it.

Nichols: Mr. Chairman, if I may. One of the items that has brought about several of these Special Use Permits regarding buffering or distancing is we have about 132 applications for cannabis businesses currently on record. Sixty-two have been issued. We have 62 retail and dispensary and pharmacy cannabis businesses now. There has not been a single one that has built a facility from ground up. They have found vacant buildings, vacant commercial buildings. And what happens a lot of times with those vacant buildings, commercial buildings, they are very close to residential neighborhoods because they were built several years ago, or they are very close to other vacant commercial buildings. And so this is the reasoning behind the Special Use Permits coming before the Commission. I believe the City Council was, one of their primary concerns on the vote that they made to maintain the ordinance that we have is that their main concern was residential, you know, the residential buffering and school daycare. I think that's why they maintained; they voted not to amend. I guess I just wanted to point out that the reason behind why we're getting so many, I think there have been about 12 or 14 now. It's because the facilities they're moving to are existing structures.

Kaiser: Thank you very much. All right. Any final questions? All right, seeing none. Looking for a motion.

Bennett: I make a motion to approve 8.4 with conditions stipulated in the packet.

Murray: I second.

Baum: Board Member Smith.

Smith: Yes, based on staff recommendation.

Baum: Board Member Vega.

Vega: Yes, based on staff recommendation and Elevate Las Cruces.

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.

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.

8.5 **Case # 23ZO5000069:** A request to approve an Infill Development Process (IDP) proposal for three parcels within the Alameda Depot Overlay (ADO): 106 S. Miranda Street, zoned R-2, encompasses 1.85 + acres, requesting additional office, commercial, and light industrial lot land uses in addition to the existing permitted ADO-3 land uses; 630 W. Organ Avenue, zoned R-2, encompasses 0.32 + acres, request to keep the existing parking lot; 710 W. Organ Avenue, zoned R-3, encompasses 0.32 + acres, request to keep the existing parking lot. Submitted by 828 Productions, property owner. Council District 4.

Kaiser: Okay, our final item this evening 8.5, a request to approve an infill development process proposal for three parcels within the Alamea Depot Overlay District.

Abeyta-Corella: Today, we're going to be discussing three different parcels of property, 106 Miranda, 630 West Organ, and 710 West Organ. It is an infill development request. What they're looking to do is utilize a vacant building that has been vacant for approximately five years, to use it in a different land use per se. They also want to keep both of the parking lots that were existing for the previous church. With that I'd like to say the discussion tonight is only for the three properties listed below. There have not been any other formal submittals by the applicant. Other concerns have been brought forth and I like to make sure that we stay on direction of just talking about the three parcels and what has been proposed currently.

Here's an aerial map. This is the old church that is going to be repurposed. This is one of the parking lots which is literally the parking for the church. In addition to, they want to use this parcel of property and this parcel of property as parking, which was previously used as parking for the church. Here is the zoning map. And the reason that the two parking lots do not align with code is because they are zoned in the Alameda Depot Overlay 3. Next to it you will see that there is Alameda Depot 6 which encompasses another parking lot area, and a lot of commercial in this area.

Here we have ADO-2 a, which does allow some commercial use and then the rest of it is zoned residential, which would be the ADO-3. Section 38-48, the infill development does allow us to present this being that the property is an underdeveloped and underutilized parcel of property. The ADO-3 is a residential core with opportunities for live/work, and it does allow for office commercial light industrial land uses, but here they're asking for light industrial uses that are not necessarily aligned with R-2, but would be permitted related to the ADO-3 land uses. The soundstage for the proposal is going to be approximately 7,820 square feet, and they are going to use 22,394 square feet for office space. They have provided a couple of floor plans to pretty much give us an idea of what the setup would be within the church.

Analysis, all reviewing staff recommended approval of the case within the findings that the proposed land use would not impact health, safety, or welfare, and would encourage economic development in the City's core. The Historic Preservation Committee has reviewed and endorsed the redevelopment due to the age of the original structure and the applicant's acknowledgement that the façade is to remain unchanged.

Findings for approval the existing commercial building is located within the ADO and has been vacant for more than a year. The IDP facilitates mixed use development that will promote partnership with educational institutions, coordinate efforts to recruit businesses and industries, and generate employment growth enriching opportunities for the community. The request meets the intent of Elevate Las Cruces, fulfills the City's infill policy plan, and meets the purpose of Las Cruces municipal code 2-382. Public notice input, we did send out notification to the 500 feet surrounding the area. Staff received five inquiries related to the infill. So they just wanted to know what was going on. Twenty-four calls opposing the proposal. Four calls in support of. We got a petition in support of that we received today, which is in your binders. We did get an additional e-mail in support. And we got another call in favor of. With that you do have the opportunity to vote "yes" to approve the infill development, "no" to deny the infill development, "yes" with conditions, or vote to table.

Kaiser: Thank you. Any questions from the Commission? I have a couple. I guess right off the bat, the 24 calls in opposition. Do you have any additional insight into that?

Abeyta-Corella: The biggest concern is the trucks that are using Miranda side of the property, and the parking directly in front of the church. Let me just go back so I can show you. So the concerns are the big trucks that are utilizing Miranda right here next to the residential corridor. And the big trucks that are being parked within this parking lot. Those were the largest concerns. I did get one call in reference to light pollution. But a majority of them were related to the vehicles.

Kaiser: And these truck traffic vehicle traffic is specifically related to this use that's before us?

Abeyta-Corella: Yes.

Kaiser: Okay.

Smith: I have a comment and follow up question. My daughter used to live in a house right across the street from the church, so I know on Miranda how narrow it is because many of the residents park on the street. And is there any way during this whole construction phase if this is approved that they can basically direct the trucks to use Melendres and force back. Because that's where majority of the parking is for that building. Is that a possibility? That would help alleviate some of the issues that residents have about the use of the large trucks on Miranda.

Abeyta-Corella: Chairperson, Commission. That is something that I have discussed with the applicant. And I do have them here where they can elaborate further as to how they would like to mitigate the traffic in the future. So that is something that they are open to.

Kaiser: So just to clarify, t this would be sustained truck traffic. So what I mean, or is it construction traffic. Just trying to understand, we say big trucks, are we talking semitrucks here. I'm just not sure what exactly we're talking about.

Abeyta-Corella: Chairperson. It would be big box vehicles. It's not necessarily semis, and it's to get some of their equipment related to the industry in and out of the location.

Kaiser: Okay, thank you. I've got a couple of other questions specifically related to parking. What are the parking requirements per code for a facility like this?

Abeyta-Corella: Chair. It would be 1.5 parking stalls per square footage that's being used for office space.

Kaiser: And so how many would that equate to?

Ochoa: I'm sorry, for clarity. Chairman Kaiser. It's one parking stall for every 350 square feet of office space. The auditorium, that's depending upon the number of seats in the actual auditorium. I believe it's one parking slot is required for every five seats in the auditorium.

Kaiser: Okay, so under this proposal that equal, how many parking spaces would they be required to have?

Ochoa: Commissioner Kaiser. Do you have the square footage? No. We do not have the, pardon me, we do not have the square footage. But when we did work with the church previously, the church was required to be essentially the same amount of parking spaces as well, per its size and per the uses that they're using it. And that's why they had that overflow parking across the street. Thank you very much. So 22,000, let's do a little bit of math.

Murray: If I can add input. Twenty-two-thousand divided by 350 would be roughly 62 parking spots. Auditorium does not show seat, so I can't contest to how many there would be.

Ochoa: All right. Thank you for that, sir.

Kaiser: I like that we have someone fast with math on the Commissions. This is great. Okay, so 62 parking spots. And do we have a site plan that tells us how many parking spots they have? Looks like a lot more than 62.

Ochoa: Yes, sir. Chairman Kaiser. It looks like they have a pretty good amount of parking on the actual property itself as well as their overflow parking on the other sides. When we're looking at this previously, I believe was a school, Larry that was potentially looking into going into this property. School requires even more parking just because it's occupancy type. And they were easily going to meet the minimum number of parking stalls required because of the overflow parking as well.

Kaiser: Okay. My overall concern I think is just the amount of parking that we're more being presented here for this infill development adjacent to downtown in a historic overlay district. It seems to me that it would have been nice to know whether or not the two additional parking lots would actually be required either under the requirements of the code. Because if they didn't need them, honestly, I think they shouldn't even be part of this application. Because wouldn't the, if we were to approve this as is tonight, we're essentially sort of entrenching two additional parking lots in this neighborhood which is prime redevelopment area of the City. Is that what we would be doing essentially is basically saying that those parking lots are going to be there for however long?

Ochoa: Chairman Kaiser. The infill development process proposal is requesting that for the current business itself. In the future, if they decide to sell, then they could essentially develop that for the multifamily zoning that it's zoned os they can develop multifamily. So it doesn't set this in concrete, just allows it for this proposal right now. In the future if they do not want a proposal and they want to redevelop that for multifamily, they'd have the ability by right by the zoning code to do that, sir.

Kaiser: Okay, so future applicant comes in different use, if they wanted to have those additional parking spaces, they would have to go through the same IDP process for the parking lots.

Ochoa: Commissioner Kaiser. No, sir. If they were following the code on those current properties, which is zoning designation, those properties which are R-3 and R-2, they can develop that for multifamily, single-family homes that are subdivided because they're allowed that by right. So they will not have to come before you for any type of infill proposal. They may, let's say if they want to increase their density on the property or possibly allow for smaller lots on the property, then you could potentially see it again before you as an infill development process.

Kaiser: Yes, I understand that. I guess let me rephrase my question. So by us approving those two parking lots, we're saying that the parking lot use is allowed under the current zoning, which it currently is not, correct. So if a new applicant came forward, they can argue, well it's already an allowed use based on our decision here, they would have to come before this body to request that use for their future project.

Ochoa: Chairman Kaiser. So those parking lots are being requested with this in the field proposal. You're correct. If they wanted something else, or to keep them again, or to change them up somehow, then they would have to come before you for another infill development. Yes, sir.

Kaiser: Thank you. Continuing on with parking lots, would they be required to come into compliance with current parking lot design standards as far as landscaping and all those things?

Ochoa: Chairman Kaiser. Yes, they would have to follow all current standards when it comes to number of parking stalls, number of accessible parking stalls. All that will be triggered if they do any type of building improvements and so forth on the property, sir.

Kaiser: Okay, so even interior improvements would trigger them to come into compliance with those parking lots?

Ochoa: Chairman Kaiser. Depends on the scope of work. We do have a 2015 International Existing Building Code, which we will look at the occupancy, the changes of the inside the building, and so forth like that, then that what would tell us the level of alteration that's going on, and it's the potential that they'd have to come into compliance. Yes, sir.

Kaiser: Okay. I guess just one final thought on that point. I think if parking is truly necessary, they deem it as we have to have these extra lots as part of our business to be operational. You know, I would like to see some evidence of that first of all, but at a minimum I would like to see you know regardless of what kind of improvements they make to the interior part of the building, I'd like to see as part of this application, if they're going to you know basically retain two additional parking lots in a primary development area, I'd like to at least see them come into compliance with the design standards, you know adding additional landscaping which I'm sure would be required based on the three lots that I'm looking at. So that would be something that I would want to add as a condition here. You know again I think, honestly, they could do without those other two parking lots. I think we could just deal with the church lot; it seems like they have plenty of parking there. And let's see if we can actually do something better than a parking lot in our downtown.

Ochoa: Chairman Kaiser. The applicant is here and they could possibly speak to some of your concerns, sir.

Kaiser: Thank you. Before we go to you, any final thoughts or questions from Commission? Okay. All right, sir, please come forward. If you want to respond to anything I just said, or if you have your own presentation we can certainly do that as well. And please state your name for the record.,

Sepp: Yes, sir. Commission, Commissioner. My name is Jonathon Sepp.

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?

Sepp: I do.

Kaiser: Okay. Go ahead

Sepp: To touch base on the parking comments that you made, based off our code summary that we ran off of our proposed land uses, it would require us to have a total of 163 spaces. And with the two parking lots that are part of the infill development process proposal, the parking lot that is adjacent to the building, and then the two parking lots across the street that are not a part of this infill development proposal, that would be a total of about 217. So the numbers really do lend itself well to us needing to be able to be allowed to park in those lots that are part of this plan. As it states right now, in the ADO-3, we are not allowed to use those for parking.

And to touch base on the vehicle traffic on Miranda, our plan is not at all to use that for truck or vehicle routing traffic. In our proposal, we actually included our ideal pathway that would run along Mesilla Street up Organ and then down the street to the south of 106 Miranda. And so my boss, Todd Lundbohm could not be here today. He had to attend to some personal matters out of state. But if I could have three minutes for him to give a little present note talk on his behalf.

Kaiser: Yes, please go ahead.

Sepp: Absolutely. So this is a statement from Todd Lundbohm. "Good evening, Commissioners. Please accept my apologies for not being able to attend in person. I'm deeply appreciative to City staff like Christina Abeyta-Corella for their time and attention to this infill development process. And thank you Commissioners for reviewing our application. I hope this Commission, the Alameda Depot neighborhood, and the Las Cruces community continues to believe in this vision as much as I do. When I rolled into town for the first time to attend a table reading for a film I was producing here in Las Cruces, I quickly fell in love with everything about Las Cruces. This wonderful experience continued as I began developing my initiatives here. It was easy to see the magic of downtown Las Cruces and buildings like this vacant church shouted at me to be revitalized. Having the opportunity and ability to revive something as architecturally stunning as this church and utilize it's space to bring together artists of all kinds is humbling. This ecosystem of incredible opportunities we are growing for creatives in Las Cruces is firmly rooted in the idea that we support and enhance the community in every way. Our efforts surrounding 106 South Miranda Street are just the beginning of our infrastructure and job creation commitment to Las Cruces and southern New Mexico. I am beyond grateful to have been so graciously welcomed by this community and will continue my promise to be a thoughtful champion for the growth of the film and media industry in Las Cruces, as well as a good neighbor to any community members we interact with. We look forward to our continued partnership with the City of Las Cruces, engagement with the community, and endeavor to create a pathway for filmmakers and artists to prosper in southern New Mexico. Thank you, Todd Lundbohm, CEO of 828 Productions."

Kaiser: Thank you. Any additional comments or?

Sepp: Yes, sorry.

Kaiser: Go ahead.

Sepp: And some additional comments for myself. Again, Chair, Commissioners and City staff. It is a pleasure to be here with you today. We are very excited to have made it to this point with you all. To start off, Todd Lundbohm founded 828 Productions to help artists tell their stories across genres, big or small. Since 2021, he has set his sights on Las Cruces for the home base of this commitment. Like myself and many of my colleagues, which quite a few of them are here with us today, we have made our own commitments to living and thriving in Las Cruces. Given the opportunities provided by 828 Productions, we're able to do just that.

I think it is important to note in fiscal year 2023, more than $12 million was spent in Las Cruces through film and digital media productions, and $794 million throughout the entire state. Las Cruces makes up only 1.5% of the total market share that the industry has in this state. Here at 828 Productions we see this as an opportunity that will allow our business to blossom in a burgeoning creative economy that is on the horizon here in Las Cruces. The infill development proposal will allow us to kickstart these opportunities. With our approved land uses for 106 South Miranda, 828 Productions will be able to expand and scale our many ventures to provide services to the film industry and create jobs for the residents of Las Cruces.

Our infill development plan aims to complement the existing neighborhood in many ways. We plan to preserve the building's historical structure by maintaining the brick architecture that makes up the east side of the facility. Neighbors can look forward to a vibrant community of artists interacting with those neighbors, interacting within their neighborhood. Those taking a walk to downtown or Pioneer Women's Park, will be in creative company. These strolls will likely encounter the next Steven Spielberg or even the current Steven Spielberg. Additionally, we aim to be compatible with the neighborhood character. Our journey into relationship building with the Alameda Depot neighborhood began this past Saturday with a neighborhood mixer hosted by our staff. We had the opportunity to engage with supporters and those in opposition of our IDP. During this mixture, we received 31 neighborhood signatures in support of our proposal in front of you. Our conversations and participation within this tight knit community will not end there. We have made a commitment to this neighborhood to be transparent, friendly, and make best efforts to be accommodating. With that, I'm happy to continue to take more questions. Thank you.

Kaiser: Thank you very much. Commissioner Vega.

Vega: Thank you Chair. So I attended the mixer. Mixer, so it was kind of early to be a mixer, but it was like 8:30 on Saturday morning, and it was great to see so much of the community come out and you know ask questions, can get real answers. I think one of the questions that came up was around, what's your vision? Like what do you see your well-being in our community, right. Sadly, it turned into a really sad day later that day, with a really bad accident on our street that took someone's life. That has nothing to do with this. But to see our community come together with so much passion that morning, and then something so tragic, it kind of just speaks to how much we care about each other and how much we care about the neighborhood that we live in.

I agree with what you're saying about something other than parking would be great. But right now it's just being used as overnight sleeping for some individuals. So even if we could fill it with cars and beautification, that would be really helpful too. But anyway, so I just wanted to ask a little bit more about your mission, your vision statement, I think like a lot of companies will come in and say, you know we're going to give back to the community, we're going to hire, we're going to do this, that, and the other. And then that's all we ever hear about it. So it'd be nice to get a little bit more stats behind that. Not that I'm a numbers person, but thank you.

Sepp: Absolutely. And I apologize that I don't have any concrete statistics for you as to how many Las Cruces residents that we have hired so far and plan to hire. In the plan we did note that we will be hiring 100 New Mexican residents as part of our mission with our LEDA agreement with the State of New Mexico. Myself, I am a Las Cruces resident. I am from here. They put a camera in my hands when I was 11 years old over at Sierra Middle School, and I knew what I was going to do for the rest of my life. And if it wasn't for companies like 828 Productions, I wouldn't be able to do that. I was very fortunate enough to spend six years with Film Las Cruces, growing this industry and getting us to a point where we are today. This is a mission that is very important to the creatives that at least I've come in contact with over the many years of being involved in the film and media arts economy here in Las Cruces. I believe every single staff member here today with 828 Productions was Las Cruces residents when they were hired by 828 Productions. And I think there are about eight of them with us here today. And my boss is also texting me at the moment. And he might be providing some statistics as well. Could I read some notes of things that he's texting me?

Kaiser: Yes, please go ahead.

Sepp: Okay. Sorry, not stats, just thanking me for a good job. But so 828 Productions I can tell you from the bottom of my heart is dedicated to hiring locally, that is the first thing we do. And as long as I'm here, I will make sure that that is the first thing that we do is we make sure to look at our local hires. But as seen by the staff that we currently have, and we're growing and scaling, and when we do have the opportunity to start putting some of our staff inside of the 106 South Miranda church, we will be able to scale some of these businesses like our accounting company with which we have one staff here in Las Cruces, one in Albuquerque, and one in Louisiana, we'll be able to scale that and hire more Las Cruces residents. We'll be able to scale our postproduction company, which only has one employee right now outside of the State of New Mexico. But all of the people out of New Mexico are intended to bring a skill set to our locals and to train them. That is the heart of our mission when we hire these top level talent that aren't from New Mexico, to be able to spread that knowledge to the future Las Cruces, and then Doña Ana County employees that we hire. I hope that answered your question.

Kaiser: All right. Any other questions?

Smith: I don't have a question. But I have a few comments to make. I've lived very close to this church for 25 years. And first of all, I want to thank you for the decision to preserve the original façade of that church. Many of you may not be familiar with that church, but it's one of the oldest churches if not the oldest church, maybe church in Mesilla maybe older, the Catholic Church. But it's a very old church. And I've actually attended that church. It wasn't my regular choice but you know my kids were involved with youth and so we did a lot of kind of cross youth events with that church. And I always just you know just appreciate that this was a church that was in the heart of downtown, the old downtown. And so I was actually pretty sad when, you know the church decided to move up Highway 70 and become a mega church you know with church growth. And part of my sadness was that there were a lot of people who are now seniors that you know supported that church for decades and kind of had the rug pulled out from under them because they live in that community. So they only had a two or three mile commute to you know to go to church, and now they're driving up Highway 70 if they want to attend this church.

So I was a little surprised that this is how the building is now being used. You know, I think my having, I go down the street all the time, weekly, you know, I ride past that building, and always just have thoughts about how this building is going to be used, whether it's going to be used as a church or whether it's going to be used as a school. I never thought it would be used as a production company. But I'm pleasantly you know surprised that you know the plans that you have in place to be part of that area and establish yourself as a good neighbor. That you know as Vanessa said, this is you know community that's close as far as that neighborhood. I love living downtown. Everything that happens downtown, that's you know been detrimental, where we've lost buildings and churches have moved, has affected me you know personally. And so to see that things are going to, you know improve, especially in that particular area because it is kind of a blight, it's just open parking lots, open building. I drive by there; I see activity there. I wonder what's going on. So, you know I commend you for the plan that you have in place. I hope that if it's approved that you know everything will come to fruition and what you have created and on paper will become a you know just an opportunity for downtown to continue to you know revitalize yourself. But thank you.

Kaiser: Okay, go ahead.

Porter: So I'm reading that you're trying to support local middle schools and high schools. Is it kind of like almost like an internship or are you trying to give them like, skilled them with skills so that they can build that? Because I know that there's a lot of hungry youth right now. And unfortunately, you know sometimes they invested in areas that are not the best. So giving them that kind of support, and those tools that they would need would be amazing. So my question is, what kind of like support would you be providing for them?

Sepp: Commissioner Porter. As much as we possibly can. I know with some of the zoning restrictions, we aren't able to have K through 12 consistently in the building working and learning with us, but we will make sure that it is as intermediate as much as possible. We are already doing things like working with the Doña Ana County internship program.

Porter: Okay.

Sepp: We had an intern from there at our offices in downtown Las Cruces. We are working with some people over at the Las Cruces Public Schools administration to set up internship type programs. And if for some reason we can't have them take place at this facility, we have a few other facilities and opportunities that we'll be able to drive those students to. So we are very passionate about working with LCPS, GISD, New Mexico State University, Doña Ana Community College, and the charter schools as well.

Porter: Awesome. Thank you so much, and also for providing jobs that are so well needed here right now. So I appreciate that. Thank you.

Sepp: Thank you, Commissioner Porter. And one last thing on the jobs, but on the support of educational efforts, it would be through on the job training, as long as those students are above 18, and then internships as well. So it would be all of the above.

Porter: Awesome. Thank you.

Kaiser: Okay, any other questions from Commission? All right, I'm going to turn it over to public comment. Can get a raise of hands of folks who want to comment on this item, one, two, three, four, five, six, seven, eight nine, nine individuals. So we're going to go ahead and do two minutes each. And we'll start with the lady in the green t-shirt. Please state your name for the record.

Grider: My name is Jane L. Grider.

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?

Grider: I do.

Kaiser: All right, please begin.

Grider: I have lived for 38 and a half years at 305 South Miranda which is one block south of the zoning request area. Overall, I would like to say that everyone that I have talked to in the neighborhood is very pleased that 828, the production company is coming in. We see it as an asset to our community. There are two items of concern. One is and I may be mistaken, but it's my understanding that there is a residence that is directly south of the church, which is long Miranda and May, which is included in this infill. If that is true, there is concern in our community about giving infill permission to residences that have always been used for residences that are not, have not been vacant for a period of years. They have been used until fairly recently, my understanding for residences. The second issue very definitely is the parking and the traffic. That was a very big problem when the church was there. Unfortunately, it continues to be. Just the other night I was driving to my house south on Miranda, and there were about seven or eight cars parked in front of the church. Unfortunately, cars are wider now. I have an SUV, an SUV was coming northbound, I had to pull behind the line of cars to wait till the other northbound car passed so that we didn't, we had enough room for both to pass because people park in front of the houses across from the church. What I would like to ask if it is possible for the council to consider a, well I guess a stipulation that there be no parking in front of the church from Organ down to May on Miranda. I would very much, and everybody I've talked to would very much like to see the two parking lots included in this infill request, because that provides additional parking as needed. And if the council …

Kaiser: I hate to cut you off, but our little beeper doesn't work, so you are at time.

Grider: Sorry. Okay.

Kaiser: I'll let you finish that thought, but please.

Grider: Yes, well, I was going to finish anyhow. Just in the name if the Commission thinks, in the name of traffic safety, that that stipulation would be amenable, we would be very pleased. Thank you.

Kaiser: Thank you very much. Commissioner Bennett.

Bennett: Christina, did you want to answer that question about the house, the residence?

Abeyta-Corella: Commission. Yes, the house is not part of the infill development. So that is not one of the components that we will be discussing tonight. It literally is just the parcel of property for the church and these two parking lots. Okay.

Kaiser: Okay. I need to see a hands again, but I think gentleman in the black shirt, come on forward. And I'm the beeper so if I cut you off your at time. But please state your name for the record.

Steinborn: Mr. Chairman. I'm Senator Jeff Steinborn. Present from Las Cruces.

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?

Steinborn: I do.

Kaiser: Go ahead.

Steinborn: Thank you, Mr. Chair, Commission. First of all, thank you for your public service. I really value this Commission. And I know the important work that you do as a fellow unpaid public servant. I just want to say you know Film Las Cruces, on behalf of Film Las Cruces, we certainly support this proposal. We are the City and the county's economic development organization for film. This is a really exciting project for Las Cruces and for the growth of our film industry. And I think it very well aligns with several important City priorities. Number one, I think importantly, Mr. Chair, as you've talked about, it is consistent with codes. I think the codes clearly allow this. Number two, it preserves the historic structure. We just lost a hundred year old structure, the Trost building in the country club. We would have loved to have had a user of that building. It's kind of rare to find that in a way. And so we're kind of blessed that we have an entity that needs a bigger space that's taking over this space. Number three, from an economic development standpoint, these are very desirable jobs. Film jobs, the recent report and Jon quoted it, film job wages are definitely above average wages. Their company specifically will bring several sectors of film, postproduction, accounting, things that don't really exist in this community that we're now going to have these anchors of film production, which aren't just periodical film productions come there year round.

And finally, I just want to say, knowing the film industry as I've studied it a lot, I think what's important to understand about this site as I understand it is it's really going to be light industrial, at best most of the time. These are above the line jobs that will be potted there, that will be coming in and out of projects. Films do employ a lot of people and that's why the parking lots are needed. It's funny when I drive by studios and I see cars in lots to me it gets my glands going because it means that you're employing a lot of people. So I think those are needed for the employment scenario we're looking at and so I think it's a great project. And finally, it abuts to a commercial corridor on Melendres which is where these parking areas are so I think that's a good thing too. Thank you.

Kaiser: Thank you. I didn't have to cut off the senator so even better. Appreciate that. Gentleman, sorry we'll go to the lady in front. Yes. Just please state your name for the record.

A. Morales: My name is Annette Morales.

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?

A. Morales: Yes, I do.

Kaiser: Go ahead.

A. Morales: Thank you. I wish you would have put this agenda item at the very beginning, because we had to be here all night. Anyhow, my family has lived in that area for pretty much most of my entire life. My mother lives on Melendres Street. And then we have property on Bowman, by Jane's house. Miranda has always had cars in that area because of the church. We have the railroad tracks on the other side of Melendres that the train drives by and those of you that live on Melendres know that you get used to living with the train. One, I'm in support and my family's in part of the film industry or the studio coming in because there's lately, for the last year since the church hasn't occupied it, a lot of homeless people. I have an 86 year old mother that lives literally a block on the other side of Melendres. And there are homeless people that we have to call the church when they owned it and occupied it to get rid of the carts and the mattresses and all the homeless and I am fear for my mother's safety. So I think that the addition of the studio is a big plus for our community. And the traffic if we change it on Miranda, it's always been trafficked. There's always been cars parking there from the neighborhood, in addition to that of the church. So I am, my family and I are full support of the project. Thank you.

Kaiser: Thank you. All right, then we'll go to the gentleman behind. State your name for the record.

Hara: Yes. My name is Andrew Hara.

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?

Hara: Yes, I do.

Kaiser: Go ahead.

Hara: Yes. My name is Andrew Hara. I work on Film Las Cruces. I'm associate film liaison. And I'm also a filmmaker. And I just wanted to show again from Las Cruces in full support. And I'm also personally in support of the studio there. There is a need for it. The productions that are coming in needed, the filmmakers here are asking for it. And I think it's helping a lot. And also working with 828 studios, they are here and just talking with them they seem to be a company that is willing to invest in Las Cruces. I mean they already have. And so it seems like they are trying to do the best thing for Las Cruces. And I think that that's very important to support and very important to throw our support behind it. And I also, when I was at Film Las Cruces I worked under Mr. Sepp and anything that he supports, he's been working for film in Las Cruces and for the community for longer than I can remember. And so I think anything that he supports, I also am support of. And so I just wanted to throw that out there. Thank you.

Kaiser: Thank you. All right, staying on this side, show of hands of folks that wanted to speak. We'll go kind of circular here, so the lady in the far back.

Nichols: Mr. Chairman. As she's making her way down, if you want to speak to the issue, if you could make your way to the front please, it'd be helpful for our time constraints here.

Espiritu: Good evening. My name is Sandra Espiritu.

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?

Espiritu: I do.

Kaiser: Go ahead.

Espiritu: So I'm a local resident. I've been here since I was nine years old. Love the Alameda area since then. I remember going to Pioneer Park. As I grew up, we had children, we actually took our kids to the church for the daycare. So it holds a very special place in our heart. So it's amazing that the historic building is going to maintain, that's a huge thing for us and our community. So it's just wonderful. I personally met Todd and his team, Jesse, Robert, Chris, and Jon. And they're just amazing individuals. And when you meet people like that, that really truly care about the community as much as you do, it's just an amazing collaboration. And what they have plans to do with the buildings and collaborate with the schools and the students and the kids and everything is just super inspiring. So I don't work for 828, but I have worked with 828 with some real estate acquisitions and what they're doing, and their vision is just phenomenal for Las Cruces. So we're definitely in support. We live about two blocks away. And it's just been sad seeing the church vacant for so long. Just to bring life back to it and just do amazing things for it. So we appreciate your support.

Kaiser: Thank you. Okay, I think one more person on this side of the room. Please state your name for the record.

Gonzalez: Felicia Gonzalez.

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?

Gonzalez: Yes.

Kaiser: Go ahead.

Gonzalez: So I'm a business owner, and I own Ruby Sun, which is right on the corner of West Griggs and West Organ. And at any given time we have about 15 to 20 clients that are in pain that need ADA access. And so my concern is, if this does not get approved, that might encourage people to take the parking that we have, which is very limited. So I really think that the area needs the parking. We are very limited over there. We have all of the residents that park on the side of the street, so I think this would be very beneficial. Whatever project they had about a month ago, I saw that parking lot that the church has and it was completely full, so that it's not really able to be used as parking when they're using it. So having access over there would really benefit my business, it just keeps everybody safe. It keeps clients from having to walk down the road with a cast or whatever the need is. So I think that it would be super beneficial. And I hope that it gets approved, because everything that they're doing has really brought a lot of life and safety to the area. It's great too, we're mainly female, so to have just other people in the area to know that we're not the only business and we're left alone there. We're really excited about that. So I hope that they get the space that they need. Thank you.

Kaiser: Thank you. Okay, moving on to my right, gentleman right here in front come forward. Please state your name for the record.

Howell: Edward Howell.

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?

Howell: I do.

Kaiser: Go ahead.

Howell: All right. My wife and I own property about two blocks south of the church on Miranda Street, we've owned it about four or five years. I've gone by that building many, many times and have wondered, as someone who's been involved in churches in El Paso, two large churches. There are very limited uses for buildings like this. And what happens is, when they're left like this one is and they're deserted, they just go to ruin. And so this is a perfect opportunity to use that building in a way that's very constructive for the City. Everyone's been talking about employment opportunities, and their commitment to maintain the exterior of the building historically is great. So I would encourage you all to vote to allow this. Thank you.

Kaiser: Thank you. All right. Anybody else on the side? Yes. And just a show of hands, how many more after - okay about two more. All right. Thank you. State your name for the record.

Kingsley: William Kingsley.

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?

Kingsley: Yes.

Kaiser: Go ahead.

Kingsley: My wife and I have own property at 221 South Miranda, which is about two houses down and across the street from the church. Now, we've always called it the church. We remember when it was the church. And when the traffic blocked the entire street you know, wasn't good. So you know allowing this to go through and having the parking available for the production company, I think is an excellent idea. The other thing that we have seen is as since the church you know has been effectively abandoned, the homeless locations. It's an old neighborhood, and there's a lot of little nooks and crannies that people will get into. And when of these guys came in and take over a lot of that disappears. And we still have problems over there, everybody knows that. But I just think that the whole thing has been a real positive influence in the neighborhood. And I would really like to see this pass.

Kaiser: Thank you. All right, moving on back. And just state your name for the record and you can begin.

Pearson: George Pearson. Just for, the packet says this is Council District 4, well, it's still Council District 1 until the first of the year. The SUP as I understand goes to the owner and not to the land. So I presume that if they actually were sold out, Sony came in and bought them that we would be back here again have this discussion. I think one of the problems that was pointed out or scared people was the term light industrial that was in the packet. And it's been explained to me, and I just want to put it on the record that the only real reason for that, and maybe staff can affirm that, is because of the capacity of the auditorium. That there is no intent to have industry there. It's just a matter of being able to allow that auditorium to be there.

And there's been discussion about the Miranda side of the building. I guess my question is, is the main entrance really will still be on the west side of building and that's where access will be. At the neighborhood meeting, it was mentioned that they're planning at some point to maybe build another building in the parking lot. I suppose that might be allowed by right. I don't know if we'll come back later because of that. And we'd also have to look at how the ADA parking might be affected by that, because most of their parking lot seems to be ADA. We talked about trucks. Mesilla is the truck route. So I hope that they hear and direct their drivers that they come in on Mesilla and turn on Organ and stay off of Melendres, and especially stay off of Miranda. Talked about parking, well the Baptist destroyed the neighborhood for the parking. So the parking is already, the neighborhood has already been seeing the bulldozers because of that. There's a talk about the 24 calls that came in. I think that was a lack of communication from the company before the Saturday meeting that we had. On the Saturday meeting I didn't tear anything. And I want to assure you if there was going to be opposition from this neighborhood, they would be here. So there is no opposition to speak of. And I look forward to being a good neighbor with 828 Productions.

Kaiser: Thank you. All right, I think we have one more speaker.

Leslie: So Donald Leslie.

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?

Leslie: I do.

Kaiser: Go ahead.

Leslie: Just a take on, I understand that this is providing a huge economic benefit, but it's also a challenge for people who live there. I live one block south. And I can stand on the corner of Miranda and May and there are now five short term rentals. Three of those were single-family. And so the film community is going to continue applying pressure of a sort to change the character of the neighborhood from long term rentals to movie crew and people who are coming to work. And I think they have to be very careful in the way they relate to the neighborhood in that you know now basically the neighborhood consists of almost exclusively of transients which is not a neighborhood. So I think that was my concern. You know, I mean they're providing a huge benefit, but they have to be really careful about the impression they make on, and the impact that they're having on, you know it's financially of benefit to these people who are now converting properties and several of them, or did it specifically to support they believe the movie community. So now my neighbors are all transients, or a lawyer and no longer people who are living there and invested in the neighborhood. So thank you.

Kaiser: Thank you. Okay, that will close public comments on this item. And we'll come back to the Commission. Any additional comments or questions?

Smith: I just have one quick question. As far as the rental space. I mean are there, representative, are there residences that have been purchased for short term rental or that just you know just something that could, that they're concerned about?

Sepp: I think the majority of it is a bit speculation, except for the one house property that is to the south of the building that is kind of on that same block. We do utilize that to house our directors and producers that are coming to town.

Smith: And I just want to make a comment, just to address the, just the traffic on Miranda. As I stated earlier, I've been living in this neighborhood for 25 years. My daughter used to live right across the street from the church. I walk my dog, when it's not 100 plus degrees, you know to Pioneer Park on a regular basis. So I've seen that street on Sunday you know, at 11:00 a.m. when the residents, the street does get choked out. And there are many long term residents that have lived there. And I know that parking has always been a concern on the street when the church was, you know it was a living, breathing church. And, and so I hope that you know as you go forward, that your company in conjunction with the City will address their concerns about traffic. There could be some calming measures that can be used, signage, certain hours, maybe that you know that if there are going to be people associated with the production company that they would park there at a certain time. So just the possibility of measures that could help alleviate their concerns about traffic on Miranda. Thank you.

Sepp: Commissioner Smith. If I could add on to that, we would absolutely be amenable to you know additional provisions along that Miranda Street. And I think some of the concerns are some of the concerns that we have in our even vehicles from our activities, especially as of recently we've had maybe one or two cars going in and checking on that building that do park on the west side parking lot. In addition to that, like the house that we own on that block, we struggle with parking there as well and rarely can park ourselves in that area. So that I think this is a concern that we share with the community about access to that roadway.

Smith: Thank you.

Kaiser: I have one final question for staff. Bicycle parking, what would the requirements be under current code for this project?

Abeyta-Corella: Give us just a minute, Adam will have to help me with that one.

Kaiser: Okay, let me just, will it be required, whatever the requirement is, will it be required?

Ochoa: Mr. Chair. That is kind of a loaded question because essentially, in order to come into compliance with any type of bicycle parking, sir, they'd have to do something structurally to the building, an addition or alteration, a structural alteration to the building that's more than 15% of what the existing gross floor area is, then they would have to come into compliance with bicycle parking. I believe they do have the numbers, I believe they're proposing 10 bicycle parking stalls, which should get them right around there. But again, if they're not really doing anything to the building, adding or structurally modifying it, then essentially would not be required. But I believe they are looking at putting those bicycle stalls in, sir.

Kaiser: Okay, I appreciate that. I mean, I raise it because you know I think maybe part of my comments have been maybe taken in a different direction. And, and really all I'm trying to say is that parking doesn't generate anything for a City. It's a drain on resources. You've got two additional parking lots that could be developed for a single-family home, multifamily home, that could house 828 employees, that could then walk to work that wouldn't require a car. So my point is, there's other ways to get around. There's other forms of transportation. And I think it would be sort of a disservice to this neighborhood to have this amazing project come in, and don't get me wrong I think this is fantastic, but to then still kind of remain with sort of this hollowed out you know area in our downtown that could really truly be reimagined into being this amazing, beautiful urban neighborhood campus that supports your operations and the rest of the City and the rest of the neighborhood. And so that's really all I'm kind of getting at is I think there's other ways to kind of think about this. You know, one option that I was thinking about is you know perhaps floating a condition here to require you know, to come into compliance with the existing design standards for parking lots. I recognize there's a cost to that. And you know to be honest, maybe it's not fair, maybe it's too high of a burden, but I can't really say that because you said you were going to be at 217 spaces, which is about, if I did my math correct, about 54 over what the code requires. You know, I don't think it'd be fair to say hey, you need to go do you know landscaping in all three of these parking lots, but it's hard to say what parking lots would make sense.

So honestly, I think I would compromise and say I would like to see a condition for 20 bicycle parking spots. As a form, you know to compensate for these additional parking spots that you're going to be requiring allow, you know your employees to have that opportunity for people who are visiting your site. So you know I would like to you know float that as a potential condition, which I think is certainly cheaper than having to landscape a bunch of parking lots. So that would be something that I don't know if just a nod of heads if people would be supportive of that. But that you know, I think this is a great project. Again, I just would like to see you know it's great that you're doing all this on the inside of the building, but recognizing that you're going to be a long term tenant and resident of this neighborhood, I think you should also consider you know at least on the parking lot that's directly attached to the church, over time trying to beautify that a little bit, adding some shade, street trees, that, you things of that nature. So that's it for me/ I'll stand down. But I would like to I guess maybe well I'll just do this; I'll make a motion to approve item 8.5 with the condition that 20 bicycle parking spots are provided on the site.

Nichols: Mr. Chair. If I may please, a point of order. Normally, the Chair does not make a motion. Maybe you could have one of your constituents make the motion for you.

Kaiser: Even if I'm adding my own condition? I don't know if they agree with me or not.

Nichols: Mr. Chair. I'll check the points of Robert's Rules of Order, but that's my understanding. Was brought to my attention by City Clerk.

Kaiser: Fair enough. I'll wait for a motion.

Murray: Per code though isn't it say offices one space per 6,000 square feet more or less, so they would only be required to have?

Ochoa: Mr. Chair, Commissioner Murray. Correct. I believe the numbers calculation that they have, they're required to have 10 bicycle stalls. So essentially five racks. So they would be meeting code with what they're proposing. But if that was a condition it'd just be an additional five racks that they have to add in order to do 20 stalls. That would increase the bikeability I guess for the property is what we're looking at.

Kaiser: I guess just to clarify, but you said that if they don't make any exterior alterations of the building, they wouldn't be required to provide bicycle parking that, if it's not already existing, correct.

Ochoa: Mr. Chairman. That is correct. But they are actually proposing to provide that themselves. They do want the stalls themselves, sir.

Kaiser: Okay. And I just I think you know to compensate for you know additional parking lots, I think adding more bike parking would be I think a fair compromise.

Ochoa: And the applicant is open to that condition actually. Just want to clarify that.

Smith: I have one more question concerning it. So at this stage, the way the plan is being proposed, they are meeting the 10 parking stall condition, bike stalls.

Ochoa: Mr. Chair, Commissioner Smith. That is correct, with the with the 10 stalls, a.k.a., five racks that they're proposing. Yes, sir.

Smith: And then the applicant, they're saying that they would provide more bike parking.

Ochoa: The applicant is open to the condition of Chairman Kaiser, yes, sir.

Smith: So as a Commissioner, I mean, we can vote to approve this proposal. But I mean can abstain from requiring 20? Because if they're meeting the requirement for 10, and they've already stated that they would provide more, I mean is it necessary for us to even go through this process?

Ochoa: Mr. Chairman, Commissioner Smith. So the question was asked to add that condition on there. They are proposing to provide the minimum required number of bicycle parking stalls, but they're also amenable to adding that condition for additional bicycle parking stalls as well. So that's kind of left up to the Commission how you'd like to make a motion to just approve it if you feel what they're proposing, the minimum is fine, or with that condition to add the additional parking stalls.

Smith: Thank you.

Murray: So can I make a motion to approve action Item 8.5.

Vega: Second.

Ochoa: Okay, no condition.

Baum: Board Member Smith.

Smith: Yes, based on staff making recommendation and meeting the goals of Elevate Las Cruces.

Baum: Board Member Vega.

Vega: Yes, based on site visit and 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, this complies with infill development, Elevate Las Cruces and this is going to be just a huge, huge spurring economic growth for our community.

Baum: Board Member Murray.

Murray: I vote yes to approve based on staff recommendations and Elevate Las Cruces.

Baum: Chair Kaiser.

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

Baum: :Motion passes.

9. ELECTION OF OFFICERS

Kaiser: All right, moving on. So it's the first day of school today so we're voting on officers. I guess we will start with chair. Is that normally what we start with? So we'll start with chair. Need a motion for someone to be chair.

Ochoa: Yes for point of clarity. Pardon me Mr. Chair. We do need a nomination and then a second. And that would be a vote on that on that appointment.

Kaiser: On the nomination.

Bennett: I'll nominate Kaiser for a chair.

Smith: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Porter.

Porter: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Baum: Chair Kaiser.

Kaiser: Yes. All right, moving on to Vice-Chair. Need a nomination.

Bennett: I nominate Commissioner Smith.

Vega: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Porter.

Porter: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

Kaiser: All right. You can get paid back now; we're looking for Secretary.

Smith: I nominate Commissioner Bennett for Secretary.

Murray: I second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Porter.

Porter: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Board Member Murray.

Murray: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

Kaiser: All right

10. STAFF ANNOUNCEMENTS

Kaiser: And finally, staff announcements and discussion.

Nichols: Mr. Chairman. No staff announcements this evening.

Ochoa: I'm sorry. Point of order. My apologies Chair. Just wanted to give one quick announcement. Staff, we're almost fully staffed now, now that I do have almost a full staff of planners. What I'm trying to do is update all your all codes. And I'm going to be hopefully making thumb drives and getting you all updated codes, digital versions of Elevate Las Cruces, as many as we can of our Blueprints on and so forth, that way you have all those codes in the thumb drive for you. I promise this to our new Commissioners. But when I was going through the documents that we had in there, some of them were from the '70s, so I don't know how, there's people *(inaudible)* on these things. So I definitely didn't want to do that. So just letting you know staff is working on that, we'll hopefully get that to you all sooner than later. Thank you.

Kaiser: Thank you. We look forward to the reading material.

11. DISCUSSION

12. ADJOURNMENT (8:45)

Kaiser: All right. Looking for a motion to adjourn.

Vega: Make a motion to adjourn.

Smith: I second.

Kaiser: All in favor.

MOTION PASSES UNANIMOUSLY.

Kaiser: We'll see you all next month. Thank you

____
Chairperson

CITY OF LAS CRUCES

ZONING

Planning & Zoning Commission 7/25/2023

CASE 23ZO0500072: SHANNON DRIVE REZONING

STAFF CONTACT:	Vincent Banegas, (575) 528-3058, vbanegas@las-cruces.org
OWNER:	John Major
REPRESENTATIVE:	Same
DISTRICT:	District #6
SITE ADDRESSES:	7332 Shannon Drive
EXISTING ZONING:	UR (Urban Ranch)
REQUEST:	Rezone from UR (Urban Ranch) to EE (Single-Family Equestrian Estate and Agriculture)
RELATED APPLICATIONS:	N/A
STAFF RECOMMENDATION:	Approval

SUMMARY OF CASE 23ZO0500072:
A request to approve the rezoning of property from UR (Urban Ranch) to EE (Single-Family Equestrian Estate and Agriculture), located at 7332 Shannon Drive. The property is ± 1.63 acres in size and is within Council District 6. Submitted by John Major, property owner.

SUMMARY OF RECOMMENDATION:
Staff is recommending **APPROVAL** based on the findings listed below:

- The property under consideration has a non-conforming zoning designation that no longer exists in the 2001 Las Cruces Zoning Code, as amended.
- Prior to development, an appropriate zoning district designation needs to be established pursuant to code. The EE district designation is the most appropriate zoning district given the lot size, surrounding area, and development intentions stated by the owner.
- The subject property falls within the Suburban Neighborhood Place Type. This classification is characterized by low to moderate density residential land uses intermixed with areas of commercial development. The classification is consistent with what the EE zone provides.

- 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 is developed as large lot single-family development consistent with the EE zoning district. Several parcels adjacent to the subject property are already zoned EE.

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The property owner, is seeking rezoning from UR to EE in that the present UR district designation is a defunct zoning designation that does not exist within the 2001 Las Cruces Zoning Code, as amended. The UR district existed in an earlier zoning code having been eliminated under the current 2001 zoning code regime. At the time of code adoption, a two-year grace period allowed any non-conforming zoning to remain in full force and effect until rezoning or conversion of zoning took place. Staff initiated rezoning/conversion efforts for related properties and encouraged property owners to come forward with requests of their own to bring about compliance with the 2001 district standards. Due to the sheer number of properties that needed adjustment, staff could not reach out to all applicable property owners within the time frame provided even after extending the time frame for compliance. Originally, the UR district was intended to allow single-family ranchettes and farms (1 acre minimum) for families maintaining a lifestyle that included the raising and keeping of large and small animals in a semi-rural atmosphere. Changing the zoning to EE brings the zoning district into conformance while maintaining the semi-rural atmosphere and the keeping of large and small animals. One dwelling is allowed per lot and must be either site-built or a manufactured home meeting stipulated criterion.

LAND USE HISTORY:

The subject property is believed to have been created prior to approval of the East Mesa/US70 Annexation by City Council in 1986. The property is undeveloped and is located amongst several others that were initially zoned with the intention of establishing large residential lots that specifically permitted the keeping of large and small animals in a manner established prior to annexation.

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 large lot residential development in the form of site-built, and manufactured homes. The zoning districts supporting the residential uses include UR (Urban Ranch), REM-C (Residential Estate Mobile-Conditional), and EE (Equestrian Estates). Given the development pattern described, there should be no impact to the surrounding neighborhood in terms of 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. The Suburban Neighborhood Place Type is characterized as providing low-to-moderate density residential land uses intermixed with areas of commercial development.

The following goals, 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.
    - 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-9: Housing Diversity – Provide a diverse range of housing options to accommodate residents at all stages in life.

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

As the uses surrounding the subject property are congruous to the suburban place type and 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 Shannon Drive or Beyer Road. Both are partially improved local roadways that lack adequate right-of-way (ROW), curb, gutter, sidewalks, and lighting. Both roadways have approximately 20 feet of right-of-way width. Access to these roadways will primarily come from Dunn Drive. Dunn Drive, located west of the subject property is a fully improved designated minor arterial roadway within a constrained ROW width of approximately 60 feet. Although Shannon Drive and Beyer Road do not meet local roadway standards, they are adequate to accommodate any proposed single-family residential development that this pending rezoning action may facilitate in the near future.

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.
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/defunct zoning district 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 UR. The UR zoning district is a defunct designation requiring that it be brought into compliance with current code prior to any development taking place on-site. The proposed zone change to EE seeks to accomplish this in a manner that is compatible with the surrounding area.

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 Shannon Drive and Beyer Road allow future development of a residential use as envisioned by the property owner to take place. All development would then follow the requirements of the EE zoning district if approved.

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 resulting development. Septic tanks provide the means for sewer service and the subject parcels lot size will accommodate lot size standards established by the New Mexico Environment Department (NMED). Some area roadways as indicated earlier do not have the necessary improvements required by code for the designations they represent. Please be advised that said improvements are made when either property along said roadways subdivide or when City roadway projects and the necessary funding target these roadways for improvement.

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.

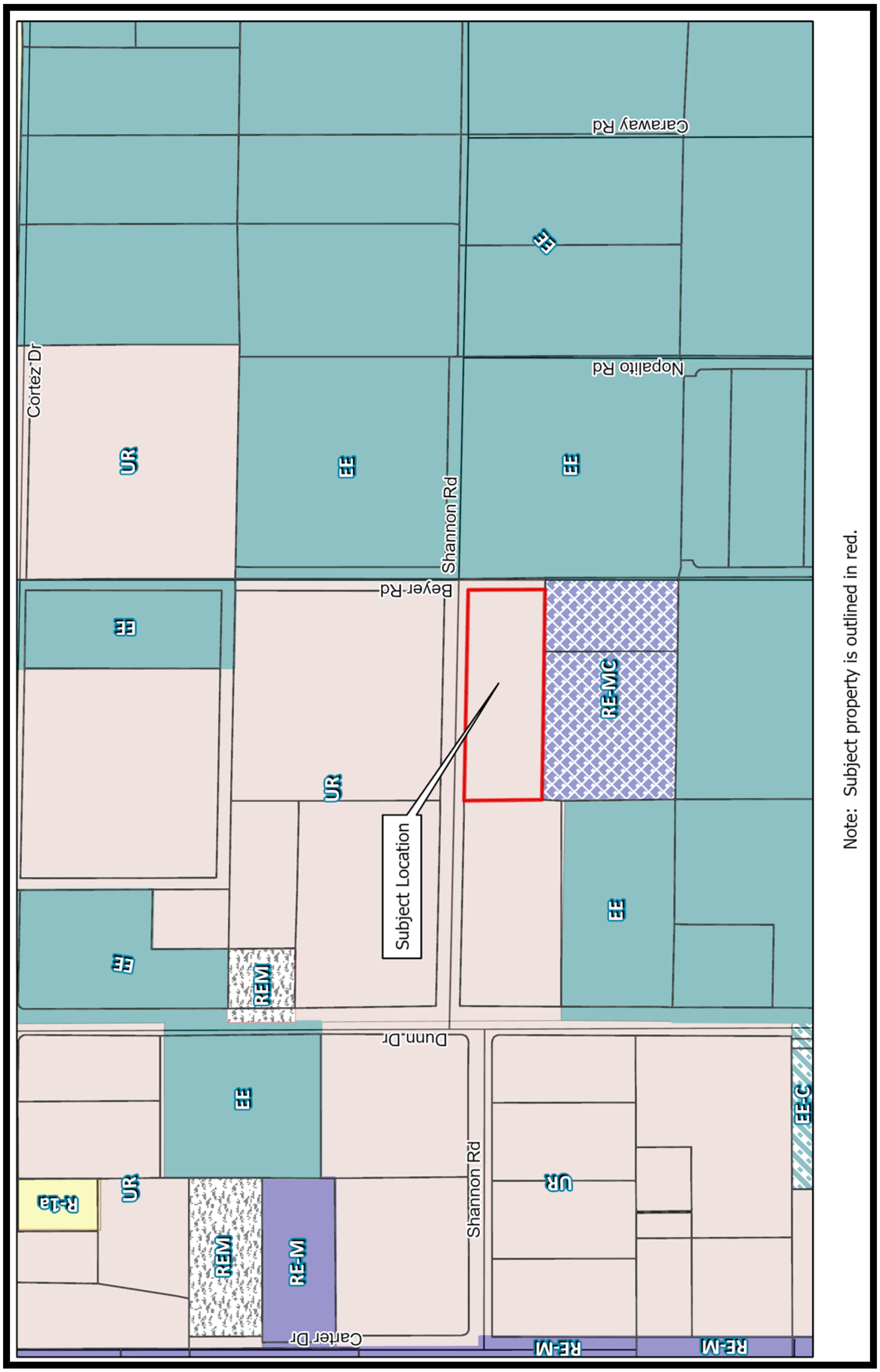
STAFF COMMENTS:

No reviewing department had any negative comments nor does any reviewing staff object 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: APPROVED

Department: Transportation

Status: NOT REQUIRED

Department: Engineering

Status: NOT REQUIRED

Department: Utility

STATUS: APPROVED W/ CONTINGENCY

1) CLC Sewer is not available in the area. NMED septic tank permit will be required.

Department: Fire

Status: APPROVED

1) Recommend the installation of fire sprinkler system within proposed residence in that property is greater than 600 feet from the nearest hydrant.

Department: MPO

Status: APPROVED

Department: Flood Review

Status: APPROVED

3050; Council Bill 24-008

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	November 6, 2023	**Adopted:**	November 20, 2023
Drafter:	Larry Nichols	**Department:**	Community Development
Program:	Building Safety	**Line of Business:**	Las Cruces Development Center
Title:	**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.**		

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

PURPOSE(S) OF ACTION:
To adopt updated NM 2021 Building Codes.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
Residential and Commercial construction in Las Cruces currently apply the 2015 International Building Code and Residential Building Code and have found that those standards have contributed to building safe and sustainable structures. The 2021 International Building Codes will further enhance those best practices.

Public outreach included four meetings with the Las Cruces Home Builders Association (LCHBA) Government Affairs Committee, in March, May, July, and September of 2023, that discussed the forthcoming 2021 Building Code update adoption. Additionally, a public forum on September 28, 2023, was held at the LCHBA Event Room. The Community Development Department (CDD) has an announcement posted on the CDD web page.

The State of New Mexico's Regulation and Licensing Department - Construction Industries Division is the governing body for construction regulations and standards for all jurisdictions within New Mexico. In May 2023 the state adopted the 2021 International Residential Code (IRC), the 2021 International Building Code (IBC), and other related codes which will be in effect for building permits issued after March 31, 2024. This will include the recommendation provided by the Las Cruces Fire Department requiring fire sprinkler systems for residential one- and two-family dwellings. To remain in compliance the City will be required to adopt the building codes as shown in Exhibit "A".

SUPPORT INFORMATION:
Exhibit "A" - Building Standards (update version)
Attachment "B" - Building Standards (redline version)

PLAN(S):

Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; will adopt 2021 building codes and maintain compliance with state rules.
2. Vote "No"; will not approve the ordinance therefore the City's code will not be consistent with the State mandate and permits cannot be issued after March 31, 2024.
3. Vote to "Amend"; will amend the ordinance, as proposed, and require direction from City Council.
4. Vote to "Table", will delay the ordinance, require direction from City Council, will not be consistent with the State mandate and permits cannot be issued after March 31, 2024.

ORDINANCE 3050; COUNCIL BILL 24-008

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.

The City Council is informed that:

WHEREAS, in March 2023, the State adopted the 2021 International Building Codes (IBC, IRC, IEBC, UPC, UMC, IPMC, IFC, 2020 NEC, 2018 IECC) and mandates their use for building permits issued after March 31, 2024; and

WHEREAS, the amendment adopts the regulations and standards as necessary to properly regulate construction activities in the City of Las Cruces; and

WHEREAS, the amendment will result in consistency between the State and the City regarding construction regulations; and

WHEREAS, the amendment is in accordance with the Construction Industries Licensing Act (CILA) and NMSA 1978, Section 3-17-6.

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

(I)

THAT Section 30-721, General Provisions, of Chapter 30 of the Las Cruces Municipal Code is hereby amended as shown on Exhibit "A", attached hereto and made part of this Ordinance.

(II)

THAT the adoption of the 2021 codes will become effective March 31, 2024.

(III)

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"

DIVISION 17. - BUILDING STANDARDS

Sec. 30-721. - General provisions.

(A) The following constitute, or are adopted by reference, as rules, regulations, and/or standards of the city building code and as further amended by this rule:

(1) 2021 International Building Code, as adopted by NMAC 14.7.2.8—14.7.2.45 (effective 7-14-23) excluding:

14.7.2.9 A (2), B (1-5), C-P.

(2) 2021 International Residential Code, as adopted by NMAC 14.7.3.8 - 14.7.3.28 (effective 7-14-23) excluding:

14.7.3.9 B (1-3), (6-7), C-N.

14.7.3.10 B (1-2).

14.7.3.11 G

14.7.3.22 add "Except that Section 2904 may be used to design fire sprinkler systems."

(3) 2018 International Energy Conservation Code, as adopted by NMAC 14.7.6.8—14.7.6.14 and NMAC 14.7.9.8—14.7.9.14 (effective 9-25-20) excluding:

14.7.6.9 A (1-3), C-G, I-J.

14.7.9.9 A (1-3), C-H, J-K

(4) 2021 International Existing Building Code, as adopted by NMAC 14.7.7.8—17.7.7.24 (effective 7-14-23) excluding:

14.7.7.9 A (1-3), B (1-3), (5), C-Q.

14.7.7.10 C

(5) 2021 New Mexico Earthen Building Materials Code, as adopted by NMAC 14.7.4 (effective 7-14-23) excluding:

14.7.4.2

(6) 2021 New Mexico Historic Earthen Buildings, as adopted by NMAC 14.7.8 (effective 7-14-23) excluding:

14.7.8.2.

(7) 2020 National Electric Code, as adopted by NMAC 14.10.4.8—14.10.4.21 (effective 3-28-23).

(8) 2021 Uniform Plumbing Code, as adopted by NMAC 14.8.2.8—14.8.2.30 (effective 3-10-22) excluding:

14.8.2.9

14.8.2.10 A,

14.8.2.11

(9) 2012 New Mexico Swimming Pool, Spa and Hot Tub Code, as adopted by NMAC 14.8.3.8—14.8.3.15 (effective 5-1-15) excluding:

14.8.3.9

14.8.3.10 A

(10) 2021 Uniform Mechanical Code, as adopted by NMAC 14.9.2.8—14.9.2.28 (effective 3-10-22) excluding:

14.9.2.9

14.9.2.10 A

(11) 2012 Uniform Solar Energy Code, as adopted by NMAC 14.9.6.8—14.9.6.21 (effective 5-1-15) excluding:

14.9.6.9 A G

(12) Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1 2017, published by the American National Standards Institute, Inc.

(13) 2021 International Property Maintenance Code, published by the International Code Council.

(14) 2021 International Solar Energy Provisions, published by the International Code Council, is adopted as a code reference.

(15) 2021 International Fire Code, as amended by the City of Las Cruces.

(16) Design Standards, Chapter 32 LCMC, 1997 as amended, is adopted by reference.

(17) Current edition City of Las Cruces Standards for Roadway Construction, as amended.

(18) Current edition Las Cruces Utility Standards, as amended.

(19) Construction Site Materials (disposal), Sections 25-186 through 25-194, LCMC, 1997, as amended.

(20) National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. 5401 et seq.)

(21) Housing and Urban Development Zone Code II.

(22) Manufactured Housing Act (Chapter 60, Article 14 NMSA 1978).

(23) Any and all other sections of the Las Cruces Municipal Code (LCMC, 1997), as amended, that pertain to construction.

(B) Copies on file. True and correct copies of the codes, specifications and standards comprising the building code for the city, as amended, are on file and available for public examination during normal business hours of the city at the Community Development Department, City Hall, located at 700 N. Main Street.

Sec. 30-722. - Amendments.

(A) 2021 International Building Code. The Building Code adopted by reference in subsection 30-721(A),(1) is amended, altered and changed as follows:

(1) Section 101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(2) Section 103 "_Code Compliance Agency" exclude in its entirety.

(3) Section 104 "Duties and Powers of the Building Official" See this Section ~~and~~ of the IBC and Chapter 30, LCMC 1997, as amended.

(4) Section 105 "Permits" exclude in its entirety except for 105.2.1 through 105.2.3 and see Chapter 30, LCMC 1997, as amended.

(5) Section 107 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(6) Section 110 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(7) Section 111 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(8) Section 112.3 "Authority to disconnect service utilities" is amended to read as follows:
The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section 112.1 or 112.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.

(9) Section 113 "Means of Appeals" is excluded in its entirety and see Chapter 30, LCMC 1997, as amended.

(10) Section 3305 "Sanitary" is amended to read as follows:
New construction and additions/alterations shall have on-site portable bathroom facilities for each project. If owners and/or contractors wish to share facilities, a request in writing, submitted for approval by the Building Official, is required. Exception: Whenever arrangements have been made with the property owner, persons working on additions/alterations may use existing on-site facilities.

(B) 2021 International Residential Code. The Residential Code adopted by reference in subsection 30-721(A),(2) is amended, altered and changed as follows:

(1) Section R101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(2) Section R103 "Department of Building Safety" exclude in entirety and see Chapter 30, LCMC 1997, as amended.

(3) Section R104 "Duties and Powers of the Building Official" See this Section and of the IBC and Chapter 30, LCMC 1997, as amended.

(4) Section R105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Section R106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(6) Section R109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(7) Section R110 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(8) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows: The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
(9) Section R112 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(10) [Table R301.2(1).]

TABLE R301.2(1)

CLIMATE AND GEOGRAPHIC DESIGN CRITERIA

Ground Snow Load	Wind Design			Seismic Design Category	Subject To Damage From		
5 psf	Speed (mph)	Topographic Effects	Wind-borne debris zone	C	Weathering	Frost Line Depth	Termite
	115	No	No		Negligible	6"	Moderate—Heavy

Winter Design Temp	Ice Barrier Underlayment	Flood Hazard	Air Freezing Index	Mean Annual Temp
18	No	See flood map	134	58.3

(11)Section R318 "Protection Against Termites" is amended to read "Protection Against Termites and Pests" and further amended as follows:
R318.3 "Barriers" See the IRC and add the following to the end of the section: All penetrations within a slab on grade foundation shall be sealed in a manner to prevent the infestation of termites or other pests to include vermin into the interior of the structure.

(12) Section R319 "Site Addresses" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(C) 2018 International Energy Conservation Code. The International Energy Conservation Code adopted by reference is amended, altered and changed as follows:

(1) Section 103 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(2) Section 105 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(3) Section 109 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(D) 2021 International Existing Building Code. The International Existing Building Code adopted by reference is amended, altered and changed as follows:

(1) Section 103 "Code Compliance Agency" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(2) Section 105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(3) Section 106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(4) Section 109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(5) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows: The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.

(6) Section 112 "Means of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(7) Add Section 1201.1.1 Buildings of Historic Value. Buildings constructed in the Las Cruces Downtown Tax Increment Development District and Amador Proximo area prior to January 1, 1970 shall be considered buildings of historic value to the City of Las Cruces. These buildings shall qualify for all exceptions and preservation protocols established by this Chapter.

(E) 2021 Uniform Plumbing Code. The Uniform Plumbing Code adopted by reference is amended, altered and changed as follows:

(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Table 104.5 "Plumbing Permit Fees" exclude in its entirety.

(F) 2021 Uniform Mechanical Code. The Uniform Mechanical Code adopted by reference is amended, altered and changed as follows:
(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Table 104.5 "Mechanical Permit Fees" exclude in its entirety.

(G) 2012 Uniform Swimming Pool, Spa & Hot Tub Code. The Uniform Swimming Pool, Spa & Hot Tub Code adopted by reference is amended, altered and changed as follows:
(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Table 104.5 "Swimming Pool. Spa and Hot Tub Permit Fees" exclude in its entirety.

(H) 2012 Uniform Solar Energy Code. The Uniform Solar Energy Code adopted by reference is amended, altered and changed as follows:
(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30 LCMC, 1997 as amended.
(5) Table 104.5 "Solar Permit Fees" exclude in its entirety.

(I) 2021 International Property Maintenance Code. The International Property Maintenance Code adopted by reference in 30-721,(A) is amended, altered, and changed as follows:
(1) Section 102.3 “Application of Other Codes” interpret all references to the International Plumbing Code, the International Mechanical Code, and the International Zoning Code to be references to the corresponding codes adopted in LCMC, 1997 as amended.
(2) Section 103 “Code Compliance Agency” exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 107 “Means of Appeals” exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 108 “Board of Appeals” exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(5) Section 304.14 “Insect Screens” strike the words “During the period from **[DATE]** to **[DATE],**”.
(6) Section 602.3 “Heat Supply” replace the first **[DATE]** with November 1 and the second **[DATE]** with April 1.
(7) Section 602.4 “Occupiable Work Spaces” replace the first **[DATE]** with November 1 and the second **[DATE]** with April 1.
(8) Appendix A “Boarding Standard” is hereby adopted with this rule.

Attachment "A"

DIVISION 17. - BUILDING STANDARDS

Sec. 30-721. - General provisions.

(A) The following constitute, or are adopted by reference, as rules, regulations, and/or standards of the city building code and as further amended by this rule:

(1) ~~2015~~2021 International Building Code, as adopted by NMAC 14.7.2.8—14.7.2.44~~4~~5 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.2.9 A (2), ~~(5) (f),~~ B (1-5), C-~~O~~P.

(2) ~~2015~~2021 International Residential Code, as adopted by NMAC 14.7.3.8 - 14.7.3.28 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.3.9 B (1-3), (6-7), C-N.

14.7.3.10 B (1-2).

14.7.3.11 G

14.7.3.22 add "Except that Section 2904 may be used to design fire sprinkler systems."

(3) 2018 International Energy Conservation Code, as adopted by NMAC 14.7.6.8—14.7.6.14 and NMAC 14.7.9.8—14.7.9.14 (effective 9-25-20) excluding:

14.7.6.9 A (1-3), C-~~E~~G, ~~G-~~I-J.

14.7.9.9 A (1-3), C-H, J-K

(4) ~~2015~~2021 International Existing Building Code, as adopted by NMAC 14.7.7.~~6~~8—17.7.7.24 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.7.9 A (1-3), B (1-3), (5), C-Q.

14.7.7.10 C ~~(1).~~

(5) ~~2015~~2021 New Mexico Earthen Building Materials Code, as adopted by NMAC 14.7.4 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.4.2

(6) ~~2015~~2021 New Mexico Historic Earthen Buildings, as adopted by NMAC 14.7.8 (effective ~~11-15-16~~ 7-14-23) excluding:

14.7.8.2.

(7) ~~2017~~2020 National Electric Code, as adopted by NMAC 14.10.4.8—14.10.4.~~11~~21 (effective ~~2-1-18~~ 3-28-23).

(8) ~~2015~~2021 Uniform Plumbing Code, as adopted by NMAC 14.8.2.8—14.8.2.30 (effective ~~5-15-18~~ 3-10-22) excluding:

14.8.2.9

14.8.2.10 A,

14.8.2.11

(9) 2012 New Mexico Swimming Pool, Spa and Hot Tub Code, as adopted by NMAC 14.8.3.8—14.8.3.15 (effective 5-1-15) excluding:

14.8.3.9

14.8.3.10 A

(10) ~~2015~~2021 Uniform Mechanical Code, as adopted by NMAC 14.9.2.8—14.9.2.28 (effective ~~5-15-18~~ 3-10-22) excluding:

14.9.2.9

14.9.2.10 A

(11) 2012 Uniform Solar Energy Code, as adopted by NMAC 14.9.6.8—14.9.6.21 (effective 5-1-15) excluding:

14.9.6.9 A G

(12) Accessible and Usable Buildings and Facilities, ICC/ANSI A117.1-~~2009~~2017, published by the American National Standards Institute, Inc.

(13) 2021 International Property Maintenance Code, published by the International Code Council.

(14) 2021 International Solar Energy Provisions, published by the International Code Council, is adopted as a code reference.

(~~13~~15) ~~2015~~2021 International Fire Code, as amended by the City of Las Cruces.

(~~14~~16) (Design Standards, Chapter 32 LCMC, 1997 as amended, is adopted by reference.

(~~15~~17) Current edition City of Las Cruces Standards for Roadway Construction, as amended.

(~~16~~18) Current edition Las Cruces Utility Standards, as amended.

(~~17~~19) Construction Site Materials (disposal), Sections 25-186 through 25-194, LCMC, 1997, as amended.

(~~18~~20) National Manufactured Housing Construction and Safety Act of 1974 (42 U.S.C. 5401 et seq.)

(~~19~~21) Housing and Urban Development Zone Code II.

(~~20~~22) Manufactured Housing Act (Chapter 60, Article 14 NMSA 1978).

(~~21~~23) Any and all other sections of the Las Cruces Municipal Code (LCMC, 1997), as amended, that pertain to construction.

(B) Copies on file. True and correct copies of the codes, specifications and standards comprising the building code for the city, as amended, are on file and available for public examination during normal business hours of the city at the Community Development Department, City Hall, located at 700 N. Main Street.

Sec. 30-722. - Amendments.

(A) ~~2015~~2021 International Building Code. The Building Code adopted by reference in subsection 30-721(A),(1) is amended, altered and changed as follows:

(1) Section 101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

~~(2) Section 102 "Applicability" exclude any reference to the International Property Maintenance Code.~~

(3) Section 103 "~~Department of Building Safety~~Code Compliance Agency" exclude in its entirety.

(4) Section 104 "Duties and Powers of the Building Official" See this Section ~~and~~ of the IBC and Chapter 30, LCMC 1997, as amended.

(5) Section 105 "Permits" exclude in its entirety except for 105.2.1 through 105.2.3 and see Chapter 30, LCMC 1997, as amended.

(6) Section 107 "~~Submittal~~Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(7) Section 110 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(8) Section 111 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(9) Section 112.3 "Authority to disconnect service utilities" is amended to read as follows: The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section 112.1 or 112.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.

(10) Section 113 "~~Board~~Means of Appeals" is excluded in its entirety and see Chapter 30, LCMC 1997, as amended.

(11) Section 3305 "Sanitary" is amended to read as follows: New construction and additions/alterations shall have on-site portable bathroom facilities for each project. If owners and/or contractors wish to share facilities, a request in writing, submitted for approval by the Building Official, is required. Exception: Whenever arrangements have been made with the property owner, persons working on additions/alterations may use existing on-site facilities.

(B) ~~2015~~2021 International Residential Code. The Residential Code adopted by reference in subsection 30-721(A),(2) is amended, altered and changed as follows:

(1) Section R101 "General" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

~~(2) Section R102 "Applicability" exclude any reference to the International Property Maintenance Code.~~

(3) Section R103 "Department of Building Safety" exclude in entirety and see Chapter 30, LCMC 1997, as amended.

(4) Section R104 "Duties and Powers of the Building Official" See this Section and of the IBC and Chapter 30, LCMC 1997, as amended.

(5) Section R105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(6) Section R106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(7) Section R109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(8) Section R110 "Certificate of Occupancy" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(9) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows: The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.

(10) Section R112 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(11) [Table R301.2(1).]

TABLE R301.2(1)

CLIMATE AND GEOGRAPHIC DESIGN CRITERIA

Ground Snow Load	Wind Design			Seismic Design Category	Subject To Damage From		
5 psf	Speed (mph)	Topographic Effects	Wind-borne debris zone	C	Weathering	Frost Line Depth	Termite
	115	No	No		Negligible	6"	Moderate—Heavy

Winter Design Temp	Ice Barrier Underlayment	Flood Hazard	Air Freezing Index	Mean Annual Temp
18	No	~~Public Works~~ <u>See flood map</u>	134	58.3

(12) Section R318 "Protection Against Termites" is amended to read "Protection Against Termites and Pests" and further amended as follows:
R318.3 "Barriers" See the IRC and add the following to the end of the section: All penetrations within a slab on grade foundation shall be sealed in a manner to prevent the infestation of termites or other pests to include vermin into the interior of the structure.
(13) Section R319 "Site Addresses" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(C) 2018 International Energy Conservation Code. The International Energy Conservation Code adopted by reference is amended, altered and changed as follows:
(1) Section 103 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section ~~104~~105 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 109 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(D) ~~2015~~2021 International Existing Building Code. The International Existing Building Code adopted by reference is amended, altered and changed as follows:
(1) Section 103 "~~Department of Building Safety~~Code Compliance Agency" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106 "Construction Documents" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 109 "Inspections" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Section R111.3 "Authority to disconnect service utilities" is amended to read as follows:
The building official shall have the authority to authorize disconnection of utility of service to the building, structure or system regulated by this code and the referenced codes and standards set forth in Section 30-721, LCMC 1997, as amended, in case of emergency where necessary to eliminate an immediate hazard to life or property or when such utility connection has been made without the approval required by Section R111.1 or R111.2. The building official shall notify the service utility, and wherever possible the owner and occupant of the building, structure, or service system of the decision to disconnect prior to taking such action. If not notified prior to disconnecting, the owner or occupant of the building, structure, or system shall be notified in writing, as soon as practical thereafter.
(6) Section 112 "~~Board~~Means of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(7) Add Section 1201.1.1 Buildings of Historic Value. Buildings constructed in the Las Cruces Downtown Tax Increment Development District and Amador Proximo area prior to January 1, 1970 shall be considered buildings of historic value to the City of Las Cruces. These buildings shall qualify for all exceptions and preservation protocols established by this Chapter.

(E) ~~2015~~2021 Uniform Plumbing Code. The Uniform Plumbing Code adopted by reference is amended, altered and changed as follows:

(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Table 104.5 "Plumbing Permit Fees" exclude in its entirety.

(F) ~~2015~~<u>2021</u> Uniform Mechanical Code. The Uniform Mechanical Code adopted by reference is amended, altered and changed as follows:
(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Table 104.5 "Mechanical Permit Fees" exclude in its entirety.

(G) 2012 Uniform Swimming Pool, Spa & Hot Tub Code. The Uniform Swimming Pool, Spa & Hot Tub Code adopted by reference is amended, altered and changed as follows:
(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(5) Table 104.5 "Swimming Pool. Spa and Hot Tub Permit Fees" exclude in its entirety.

(H) 2012 Uniform Solar Energy Code. The Uniform Solar Energy Code adopted by reference is amended, altered and changed as follows:
(1) Section 104.0 "Permits" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(2) Section 105.0 "Inspections and Testing" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(3) Section 106.0 "Violations and Penalties" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.
(4) Section 107.0 "Board of Appeals" exclude in its entirety and see Chapter 30 LCMC, 1997 as amended.
(5) Table 104.5 "Solar Permit Fees" exclude in its entirety.

(I) <u>2021 International Property Maintenance Code. The International Property Maintenance Code adopted by reference in 30-721,(A) is amended, altered, and changed as follows:</u>
(1) <u>Section 102.3 “Application of Other Codes” interpret all references to the International Plumbing Code, the International Mechanical Code, and the International Zoning Code to be references to the corresponding codes adopted in LCMC, 1997 as amended.</u>

(2) Section 103 "Code Compliance Agency" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(3) Section 107 "Means of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(4) Section 108 "Board of Appeals" exclude in its entirety and see Chapter 30, LCMC 1997, as amended.

(5) Section 304.14 "Insect Screens" strike the words "During the period from **[DATE]** to **[DATE],**".

(6) Section 602.3 "Heat Supply" replace the first **[DATE]** with November 1 and the second **[DATE]** with April 1.

(7) Section 602.4 "Occupiable Work Spaces" replace the first **[DATE]** with November 1 and the second **[DATE]** with April 1.

(8) Appendix A "Boarding Standard" is hereby adopted with this rule.

3051; Council Bill 24-009

City Council Action and Executive Summary

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	November 6, 2023	**Adopted:**	November 20, 2023
Drafter:	Tim Pitts	**Department:**	Community Development
Program:	Land Development	**Line of Business:**	Development Center
Title:	**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.**		

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

PURPOSE(S) OF ACTION:

To adopt updated flood mitigation regulations.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) participates in the National Flood Insurance Program (NFIP), which allows property owners to purchase affordable flood insurance. As a participant in the program, the City commits to take actions in order to reduce flood risks such as requiring flood-proof construction, elevating homes out of potential flood waters, and making sure stormwater is managed effectively. The City is already adopting higher standards in its Building Codes, the changes recommended here ensure that we get maximum credit from the Federal Emergency Management Agency (FEMA) for these changes.

Adoption of the revised LCMC Chapter 34 allows the City to continue to participate in the NFIP. The key amendments address comments provided by the New Mexico Department of Homeland Security and Emergency Management such as: 1) including a freeboard requirement of 1 foot above base flood elevation; 2) codifying the requirement to track 5 years of cumulative substantial building improvements; 3) requiring all plats to graphically indicate the location of any floodplains; and 4) updating various administrative edits.

Revisions to the ordinance will not impose any additional or new requirements affecting residential and/ or commercial development. On the other hand, these amendments will allow the City to improve the flood classification rating. With each increase in rating, an additional five percent (5%) discount on flood insurance is available to our citizens.

The Transportation, Sustainability, and Infrastructure Policy Review Committee voted 3-0 on Tuesday, August 1, 2023, to recommend bringing the proposed Ordinance forward for City Council consideration. This proposed Ordinance is in alignment with Elevate Las Cruces, Goal CE-13: Natural Features and Habitat, Action CE-13.1.5: Continue to prevent development within floodplain areas.

SUPPORT INFORMATION:

Exhibit A Flood Standards (adoption version)

Attachment A Flood Standards (redline version)

PLAN(S):

Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

TSI PRC

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes" will approve the Ordinance within LCMC Chapter 34, Article II to better comply with NFIP.
2. Vote "No" will not approve the Ordinance within LCMC Chapter 34, Article II with the potential of losing NFIP compliance.
3. Vote to "Amend" would allow City Council to modify the proposed ordinance.
4. Vote to "Table" would postpone the decision to amend the ordinance and would allow City Council to provide further staff direction.

ORDINANCE 3051; COUNCIL BILL 24-009

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.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) desires to reduce or eliminate flood damage in our community; and

WHEREAS, the City participates in the National Flood Insurance Program (NFIP); and

WHEREAS, the NFIP allows property owners to purchase more affordable flood insurance; and

WHEREAS, the proposed amendments help to maintain and/or improve the flood insurance discount made available to Las Cruces residents; and

WHEREAS, the requirements to be enacted are already in place elsewhere in state statute and city ordinance; and

WHEREAS, the proposed amendments to Chapter 34 – Drainage and Flood Control address comments provided by the New Mexico Department of Homeland Security and Emergency Management to better comply with NFIP.

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

(I)

THAT Chapter 34 – Drainage and Flood Control, Article II – Flood Damage Prevention of the Las Cruces Municipal Code, is hereby repealed and replaced with Exhibit “A” attached hereto and made part of this Ordinance.

(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”

ARTICLE II. FLOOD DAMAGE PREVENTION

DIVISION 1. GENERALLY

Sec. 34-31. Definitions.

Words or phrases used in this article, unless specifically defined below, shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by the high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appeal means a request for a review of the floodplain administrator's interpretation of any section of this article or a request for a variance.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of shallow flooding means a designated AO, AH, or VO zone on the City of Las Cruces's flood insurance rate map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within the City of Las Cruces subject to a one-percent or greater chance of flooding in any given year. The area may be designated as zone A on the Flood Boundary – Floodway Map (FBFM). After detailed rate-making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE, or V.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one-percent chance of equaling or exceeding that level in any given year - also called the Base Flood.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Community Development Director means the director of the City of Las Cruces Community Development Department.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a building without a basement that has its lowest floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction means, for the purposes of determining rates, structures for which the “start of construction” commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. “Existing construction” may also be referred to as “existing structures.”

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the City of Las Cruces.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA) means the federal agency responsible for administering the National Flood Insurance Program.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.
(2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (e.g., mudflow) or other flood-related erosion hazards.

Flood insurance rate map (FIRM) means the official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, the water surface elevation of the base flood, and the Flood Boundary-Floodway Map.

Floodplain or flood prone area means any land area susceptible to being inundated by flooding.
Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinance (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power. The term describes such federal, state, or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within the City of Las Cruces subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot cumulatively.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface next to a finished structure's walls or, if the structure has not been constructed, next to the proposed walls of the structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of Interior; or,

(4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

  (a) By an approved state program as determined by the Secretary of the Interior or;

  (b) Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

Levee system means a flood protection system which consists of at least one levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area of a structure, including the basement. An unfinished enclosure, usable solely for parking or vehicles, building access, or storage in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. The term “manufactured home” does not include a “recreational vehicle.”

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, North American Vertical Datum of 1988 (NAVD 1988) or other datum, to which base flood elevations shown on the City of Las Cruces's Flood Insurance Rate Map are referenced.

New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City of Las Cruces and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulation adopted by the City of Las Cruces.

Public Works Director means the director of the City of Las Cruces Public Works Department.

Recreational Vehicle means a vehicle which is:

(1) Built on a single chassis;
(2) 400 square feet or less when measured at the largest horizontal projections;
(3) Designed to be self-propelled or permanently towable by a light duty truck; and
(4) Designed primarily not for use as a permanent dwelling by as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a portion of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. (see the definition of start of construction.) This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed (see the definition of substantial damage.) For purposes of this definition,"substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of federal, state, or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
(2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Variance is a grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. For full requirements, see section 60.6 of the National Flood Insurance Program regulations.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 or (other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Code 1988, § 11-25; Ord No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Cross reference— Definitions generally, § 1-2.

Sec. 34-32. Statutory authorization.

The Legislature of the State of New Mexico has in New Mexico Statutes Annotated 1978, § 3-18-7 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses, and it is determined to be in the public interest and in the best interest of the health, welfare and morals of the City of Las Cruces to establish the flood control damage prevention regulations in this ordinance.

(Code 1988, § 11-21)

Sec. 34-33. Findings of fact.

(1) The flood hazard areas of the City of Las Cruces are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.
(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage.

(Code 1988, § 11-22; Ord. No. 1933, § I, 8-19-02)

Sec. 34-34. Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;
(2) Minimize expenditure of public money for costly flood control projects;
(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
(4) Minimize prolonged business interruptions;
(5) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; streets and bridges located in floodplains;
(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
(7) Ensure that potential buyers are notified that property is in a flood area.

(Code 1988, § 11-23)

Sec. 34-35. Methods of reducing flood losses.

In order to accomplish its purposes, this article is intended to reduce flood losses by methods designed to:

(1) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or that cause excessive increases in flood heights or velocities.
(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.
(4) Control filling, grading, dredging, and other development which may increase flood damage.

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1988, § 11-24)

Sec. 34-36. Applicability of article.

This article shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Code 1988, § 11-26)

Sec. 34-37. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for the City of Las Cruces, Doña Ana County, NM, dated July 6, 2016, with accompanying Flood Insurance Rate Maps (FIRM) dated July 6, 2016 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

(Code 1988, § 11-27; Ord. No. 1933, § I, 8-19-02)

Sec. 34-38. Establishment of development permit.

A development permit shall be required to ensure conformance with the provisions of this ordinance prior to the commencement of any development activities.

(Code 1988, § 11-28; Ord. No. 1933, § I, 8-19-02)

Sec. 34-39. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

(Code 1988, § 11-29; Ord. No. 1933, § I, 8-19-02)

Sec. 34-40. Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing regulations, ordinances, easements, covenants, or deed restrictions. However, where this ordinance and the provisions of other regulations or ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Code 1988, § 11-30)

Sec. 34-41. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

(1) Considered as minimum requirements;
(2) Liberally construed in favor of the City Council; and
(3) Deemed neither to limit nor repeal any other powers granted under State Statutes.

(Code 1988, § 11-31; Ord. No. 1933, § I, 8-19-02)

Sec. 34-42. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

(Code 1988, § 11-32)

Sec. 34-43. Lands to which this ordinance applies.

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Las Cruces, New Mexico.

(Ord. No. 1933, § 1, 8-19-02)

Sec. 34-44. Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas. For applications for reconstruction, rehabilitation, repair, alteration, addition or other improvement of existing buildings or structures located in flood hazard areas, the Flood Plain Administrator shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the Flood Plain Administrator determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements. The cost used in the substantial improvement determination shall be the cumulative costs of all previous improvements for a specific building or structure occurring during the immediate past 5-year period.

DIVISION 2. ADMINISTRATION

Sec. 34-71. Designation of the floodplain administrator.

The Community Development Director hereby appoints a Floodplain Administrator who is certified to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Regulations) pertaining to floodplain management.

(Code 1988, § 11-41; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)
Cross reference— Officers and employees, § 2-56 et seq.

Sec. 34-72. Duties and responsibilities of the certified floodplain administrator.

Duties and responsibilities of the certified Floodplain Administrator under this article shall include but not be limited to:

(1) Maintaining and holding open for public inspection all records pertaining to this ordinance;
(2) Reviewing permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;
(3) Reviewing and then approving or denying all applications for development permits required by this ordinance;
(4) Reviewing permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies, (including section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1334) from which prior approval is required);
(5) Making the necessary interpretation where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions);
(6) Notifying, in riverine situations, adjacent communities and the State Coordinating Agency, which is the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
(7) Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
(8) Obtaining, reviewing, and reasonably utilizing any base flood elevation data and floodway data available from a federal, state, local, or other source in order to administer the provisions of sections 34-101 through 34-105 when base flood elevation data has not been provided, in accordance with section 34-37;
(9) Requiring that, when a regulatory floodway has not been designated, no new construction, substantial improvements or other development, including fill, shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
(10) Assuring that, under the provisions of 44 CFR Chapter 1, Section 65-12, of the National Flood Insurance Program regulations, the City of Las Cruces may approve certain development in Zones A1-30, AE, AH, on the community’s FIRM which increases the water surface elevations of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

(Code 1988, § 11-42; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-73. Permit procedures.

(1) Application for a development permit required under this ordinance shall be presented to the Floodplain Administrator on forms furnished by the property owner or the property owner's representative and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the development in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Where base flood elevations have not been provided by the Federal Emergency Management Agency, a drainage study prepared and certified by a professional engineer registered in the state. The drainage study shall include:

(i) An aerial photo of the area to be developed and contributing watershed;

(ii) An up-to-date contour map of the site to be developed at a scale of one inch equals 100 feet and contour lines at intervals of no more than one foot and spot elevations at all breaks in grade along all drainage channels or swales and at selected points not more than 100 feet apart in all directions;

(iii) A contour map identifying the site to be developed and the entire watershed that contributes storm runoff to the development site;

(iv) Calculations showing the peak discharge and volume of runoff that will pond or pass through the development site from a one percent (100 year) storm; and

(v) Calculations showing the one percent (100 year) storm elevation in relation to mean sea level on the site to be developed.

(b) Elevation in relation to mean sea level of the lowest floor, including basement, of all new and substantially improved structures;

(c) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(d) A certificate from a professional engineer or architect registered in the state that the nonresidential floodproofed structure shall meet the floodproofing criteria of subsection 34-102(2);

(e) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

(f) Maintenance of a record of all such information in accordance with subsection 34-72(1).

(2) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the sections of this ordinance and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage;

(b) The susceptibility of the proposed structure and its contents to flood damage and the effect of such damage on the individual owner;

(c) The danger that materials may be swept onto other lands to the injury of others;

(d) The compatibility of the proposed use with existing and anticipated development;

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(f) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;
(g) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
(h) The necessity to the facility of a waterfront location, where applicable; and
(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Code 1988, § 11-43; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-74. Variance procedures.

(1) The City Council shall hear and render judgment on request for variances from the requirements of this ordinance.
(2) The City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.
(3) Any person aggrieved by the decision of the City Council may appeal such decision to the District Court within 30 days of the rendering of the decision.
(4) Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
(5) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic places without regard to the procedures set forth in the remainder of this ordinance.
(6) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection 34-73(2) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
(7) Upon consideration of the factors noted in this ordinance and the intent of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article stated in sections 34-34 and 34-35.
(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
(10) Prerequisites for granting variances shall be as follows:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
(b) Variances shall only be issued upon:
   (i) Showing a good and sufficient cause;
   (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
   (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, and extraordinary public expense, and create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
(c) Any applicant, to whom a variance is granted, shall be given written notice of the permitted elevation of the lowest floor of the structure to be built, which shall not be more than two feet below the base flood elevation. The cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by the City of Las Cruces for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
(a) The criteria outlined in subsections (1) through (10) are met; and
(b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Code 1988, § 11-44; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933 § I, 8-19-02)

Secs. 34-75--34-100. Reserved.

34-75 - Substantial improvement and substantial damage determinations. For applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

(1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.

(2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.

(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.

(4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.

DIVISION 3. FLOOD HAZARD REDUCTION

Sec. 34-101. General standards.

In all areas of special flood hazards, the following are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.
(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.
(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.
(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
(8) Floodplain development shall follow the Federal Emergency Management Agency's letter of map change (LOMC) process (e.g., LOMA, LOMR, LOMR-F, CLOMR, CLOMR-F) as specified in 44 CFR. Floodplain information shall be required along with a Conditional Letter of Map Revision (CLOMR and CLOMR-F) and a Letter of Map Revision (LOMR and LOMR-F) for one-percent chance for storm flows of greater than 250 cubic feet per second (2.83 meters cubed per second), developments of five acres and larger, developments with fifty or more lots, and/or developments with any changes to the existing flow path in flood hazard zones AE, A, AH, AO, and D upon the submittal of any on preliminary and/or final drainage drawings for review. Information shall include peak discharges for the ten percent (10%), two percent (2%), one-percent (1%), and two-tenth percent (0.2%) chance storms for the floodplain inundation area and anticipated depth of floodwaters one foot and deeper. Standard step backwater models shall be used for flood depth determination. The Hydrologic Engineering Centers HEC-2 analysis method may be required. Improvements and subdivisions will not be accepted by the City until the flood study has been approved by the Federal Emergency Management Agency.
    (a) A CLOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency prior to plan and/or final plat approval.
    (b) A LOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency before acceptance by the City and before the

issuance of any Certificate of Occupancy. Costs incurred for the preparation of materials and fees paid to the Federal Emergency Management Agency will be borne by the developer.

(Code 1988, § 11-51; Ord. No. 1933, § I, 8-19-02)

Sec. 34-102. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 34-37, subsection 34-72(8), or subsection 34-103(3), the following are required:

(1) *Residential construction.* All new construction and substantial improvements of any residential structure shall have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated at least one (1) foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in subsection 34-73(1)(a) is satisfied.

(2) *Nonresidential construction.* All new construction and substantial improvements of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated at least one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification, which includes the specific elevation in relation to mean sea level to which such structures are floodproofed, shall be issued by the certifying professional to the Floodplain Administrator and be maintained by the Floodplain Administrator.

(3) *Enclosures.* New construction and substantial improvements with fully enclosed areas below the lowest floor that are useable solely for the parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:
   (a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;
   (b) The bottom of all openings shall be no higher than one foot above grade; and
   (c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) *Manufactured homes. Manufactured homes are subject to the following regulations.*
   (a) All manufactured homes to be placed within Zone A on a community's FIRM shall be installed using methods and practices which minimize flood damage.

For the purpose of this subsection, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(b) Manufactured homes in the following categories that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated at least one (1) foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movements in accordance with subsection (4)(d) of this section:
(i) outside of a manufactured home park or subdivision,
(ii) in a new manufactured home park or subdivision,
(iii) in an expansion to an existing manufactured home park or subdivision, or
(iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.

(c) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zone A1-30, AH, and AE on the community's FIRM that are not subject to the provision of paragraph (4)(b) of this section must be elevated so that it meets the greater of either:
(i) the lowest floor of the manufactured home is elevated at least one (1) foot above the base flood elevation, or
(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement whichever is higher.

(d) Ground anchoring systems shall meet the requirements outlined in the City manufactured housing installation code. Anchors and anchoring systems that do not meet these requirements shall be designed by a professional engineer registered in the state and approved by the Floodplain Administrator.

(5) *Recreational Vehicles.* Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
(a) Be on the site for fewer than 180 consecutive days,
(b) Be fully licensed and ready for highway use, or
(c) Meet the permit requirements of subsection 34-73, (1)(b), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Code 1988, § 11-52; Ord. No. 1933, § I, 8-19-02)

Sec. 34-103. Standards for subdivision proposals.

(1) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with sections 34-33 through 34-35.
(2) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet development permit requirements of sections 34-38 and 34-73, of this section.
(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is less, if not otherwise provided pursuant to section 34-37 or subsection 34-72(8).
(4) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards
(5) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
(6) All proposals for the development of subdivisions shall meet development permit requirements of sections 34-38 and 34-73, and this division, as well as the requirements of section 37-112.
(7) All preliminary and final plats submitted for approval must have floodplain clearly graphically delineated and noted.
(8) When developing property that extends into the city's regulatory floodplain, the floodplain shall be dedicated to the city in fee, as a flood water conservation easement, or as open space, as appropriate under the circumstances as determined by the Community Development Director. This area shall be shown on the subdivision map.

(Code 1988, § 11-53; Ord. No. 1933, § I, 8-19-02)

Sec. 34-104. Standards for areas of shallow flooding (AO/AH zones).

Located within the area of special flood hazard as established in section 34-37 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following apply to AO and AH zones:

(1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least three feet if no depth number is specified).
(2) All new construction and substantial improvements of nonresidential structures shall:
    (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least three feet if no depth number is specified); or

(b) Together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in subsection 34-73 (1)(a), are satisfied.

(4) Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

(Code 1988, § 11-54; Ord. No. 1933, § I, 8-19-02)

Sec. 34-105. Floodways

Floodways located within areas of special flood hazard established in section 34-37 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply to the floodway:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of section 34-101, section 34-102, section 34-103, section 34-104.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City of Las Cruces may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through the Federal Emergency Management Agency.

(Ord. No. 1933, § I, 8-19-02)

Sec. 35-106. Severability

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Sec. 35-107 Penalties for non-compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $10,000 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Las Cruces City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

Secs. 34-108—34-124. Reserved.

Attachment "A"

ARTICLE II. FLOOD DAMAGE PREVENTION

DIVISION 1. GENERALLY

Sec. 34-31. Definitions.

Words or phrases used in this article, unless specifically defined below, shall be interpreted to give them the meaning they have in common usage and to give this article its most reasonable application. The following words, terms, and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Alluvial fan flooding means flooding occurring on the surface of an alluvial fan or similar landform which originates at the apex and is characterized by the high-velocity flows; active processes of erosion, sediment transport, and deposition; and unpredictable flow paths.

Apex means a point on an alluvial fan or similar landform below which the flow path of the major stream that formed the fan becomes unpredictable and alluvial fan flooding can occur.

Appeal means a request for a review of the floodplain administrator's interpretation of any section of this article or a request for a variance.

Appurtenant structure means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.

Area of shallow flooding means a designated AO, AH, or VO zone on the City of Las Cruces's flood insurance rate map (FIRM) with a one-percent chance or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.

Area of special flood hazard is the land in the floodplain within the City of Las Cruces subject to a one-percent or greater chance of flooding in any given year. The area may be designated as zone A on the Flood Boundary – Floodway Map (FBFM). After detailed rate-making has been completed in preparation for publication of the FIRM, Zone A usually is refined into Zones A, AE, AH, AO, A1-99, VO, V1-30, VE, or V.

Base flood means the flood having a one-percent chance of being equaled or exceeded in any given year.

Base flood elevation (BFE) means the elevation shown on the Flood Insurance Rate Map (FIRM) and found in the accompanying Flood Insurance Study (FIS) for zones A, AE, AH, A1-A30, AR, V1-V30, or VE that indicates the water surface elevation resulting from the flood that has a one-percent chance of equaling or exceeding that level in any given year - also called the Base Flood.

Basement means any area of the building having its floor sub-grade (below ground level) on all sides.

Breakaway wall means a wall that is not part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

Critical feature means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the entire system would be compromised.

Community Development Director means the director of the City of Las Cruces Community Development Department.

Development means any manmade change in improved and unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

Elevated building means a building without a basement that has its lowest floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Existing construction means, for the purposes of determining rates, structures for which the "start of construction" commenced before the effective date of the FIRM or before January 1, 1975, for FIRMs effective before that date. "Existing construction" may also be referred to as "existing structures."

Existing manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by the City of Las Cruces.

Expansion to an existing manufactured home park or subdivision means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads).

Federal Emergency Management Agency (FEMA) means the federal agency responsible for administering the National Flood Insurance Program.

Flood or flooding means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) The overflow of inland or tidal waters.
(2) The unusual and rapid accumulation of runoff of surface waters from any source.

Flood elevation study means an examination, evaluation, and determination of flood hazards and, if appropriate, corresponding water surface elevations, or an examination, evaluation, and determination of mudslide (e.g., mudflow) or other flood-related erosion hazards.

Flood insurance rate map (FIRM) means the official map of a community on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

Flood insurance study (FIS) is the official report provided by the Federal Emergency Management Agency. The report contains flood profiles, the water surface elevation of the base flood, and the Flood Boundary-Floodway Map.

Floodplain or flood prone area means any land area susceptible to being inundated by flooding.
Floodplain management means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and floodplain management regulations.

Floodplain management regulations means zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinance (such as a floodplain ordinance, grading ordinance and erosion control ordinance), and other applications of police power. The term describes such federal, state, or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

Flood proofing means any combination of structural and non-structural additions, changes, or adjustments to structures which reduce or eliminate flood damage to real estate or improved real property, water and sanitary facilities, structures, and their contents.

Flood protection system means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of the areas within the City of Las Cruces subject to a special flood hazard and the extent of the depths of associated flooding. Such a system typically includes hurricane tidal barriers, dams, reservoirs, levees or dikes. These specialized flood-modifying works are those constructed in conformance with sound engineering standards.

Floodway (regulatory floodway) means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot cumulatively.

Functionally dependent use means a use which cannot perform its intended purpose unless it is located or carried out in close proximity to water. The term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passenger~~s~~, and shipbuilding and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

Highest adjacent grade means the highest natural elevation of the ground surface next to a finished structure's walls or, if the structure has not been constructed, next to the proposed walls of the structure.

Historic structure means any structure that is:

(1) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;

(2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(3) Individually listed on a state inventory of historic places in states with historic preservation programs which have been approved by the secretary of Interior; or,

(4) Individually listed on a local inventory or historic places in communities with historic preservation programs that have been certified either:

  (a) By an approved state program as determined by the Secretary of the Interior or;

  (b) Directly by the Secretary of the Interior in states without approved programs.

Levee means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water to provide protection from temporary flooding.

Levee system means a flood protection system which consists of at least one levee and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

Lowest floor means the lowest floor of the lowest enclosed area of a structure, including the basement. An unfinished enclosure, usable solely for parking or vehicles, building access, or storage in an area other than a basement, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirement of section 60.3 of the National Flood Insurance Program regulations.

Manufactured home means a structure transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. For floodplain management purposes, the term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site for greater than 180 consecutive days. The term "manufactured home" does not include a "recreational vehicle."

Manufactured home park or subdivision means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

Mean sea level means, for purposes of the National Flood Insurance Program, North American Vertical Datum of 1988 (NAVD 1988) or other datum, to which base flood elevations shown on the City of Las Cruces's Flood Insurance Rate Map are referenced.

New construction means, for the purposes of determining insurance rates, structures for which the "start of construction" commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, "new construction" means structures for which the "start of construction" commenced on or after the effective date of a floodplain management regulation adopted by the City of Las Cruces and includes any subsequent improvements to such structures.

New manufactured home park or subdivision means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed on or after the effective date of floodplain management regulation adopted by the City of Las Cruces.

Public Works Director means the director of the City of Las Cruces Public Works Department.

Recreational Vehicle means a vehicle which is:

(1) Built on a single chassis;
(2) 400 square feet or less when measured at the largest horizontal projections;
(3) Designed to be self-propelled or permanently towable by a light duty truck; and
(4) Designed primarily not for use as a permanent dwelling by as temporary living quarters for recreational, camping, travel, or seasonal use.

Start of construction, for other than new construction or substantial improvements under the Coastal Barrier Resources Act (PL 97-348), includes substantial improvement and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a portion of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not the alteration affects the external dimensions of the building.

Structure means a walled and roofed building, including a gas or liquid storage tank, that is principally aboveground, as well as a manufactured home.

Substantial damage means damage of any origin sustained by a structure whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

Substantial improvement means any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before “start of construction” of the improvement. (see the definition of start of construction.) This includes structures which have incurred “substantial damage”, regardless of the actual repair work performed (see the definition of substantial damage.) For purposes of this definition,"substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not, however, include either:

(1) Any project for improvement of a structure to correct existing violations of federal, state, or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary conditions or
(2) Any alteration of a “historic structure,” provided that the alteration will not preclude the structure’s continued designation as a “historic structure.”

Variance is a grant of relief to a person from the requirements of this ordinance when specific enforcement would result in unnecessary hardship. A variance, therefore, permits construction or development in a manner otherwise prohibited by this ordinance. For full requirements, see section 60.6 of the National Flood Insurance Program regulations.

Violation means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in section 60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) of the National Flood Insurance Program regulations is presumed to be in violation until such time as that documentation is provided.

Water surface elevation means the height, in relation to the North American Vertical Datum (NAVD) of 1988 or (other datum, where specified), of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

(Code 1988, § 11-25; Ord No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Cross reference— Definitions generally, § 1-2.

Sec. 34-32. Statutory authorization.

The Legislature of the State of New Mexico has in New Mexico Statutes Annotated 1978, § 3-18-7 delegated the responsibility to local governmental units to adopt regulations designed to minimize flood losses, and it is determined to be in the public interest and in the best interest of the health, welfare and morals of the City of Las Cruces to establish the flood control damage prevention regulations in this ordinance.

(Code 1988, § 11-21)

Sec. 34-33. Findings of fact.

(1) The flood hazard areas of the City of Las Cruces are subject to periodic inundation which could result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, and extraordinary public expenditures for flood protection and relief, all of which adversely affect the public health, safety, and general welfare.
(2) These flood losses are created by the cumulative effect of obstructions in floodplains which cause an increase in flood heights and velocities and by the occupancy of flood hazard areas by uses vulnerable to floods and hazardous to other lands because they are inadequately elevated, floodproofed, or otherwise protected from flood damage.

(Code 1988, § 11-22; Ord. No. 1933, § I, 8-19-02)

Sec. 34-34. Statement of purpose.

It is the purpose of this article to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

(1) Protect human life and health;
(2) Minimize expenditure of public money for costly flood control projects;
(3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
(4) Minimize prolonged business interruptions;
(5) Minimize damage to public facilities and utilities such as water and gas mains; electric, telephone and sewer lines; streets and bridges located in floodplains;
(6) Help maintain a stable tax base by providing for the sound use and development of floodprone areas in such a manner as to minimize future flood blight areas; and
(7) Ensure that potential buyers are notified that property is in a flood area.

(Code 1988, § 11-23)

Sec. 34-35. Methods of reducing flood losses.

In order to accomplish its purposes, this article is intended to reduce flood losses by methods designed to:

(1) Restrict or prohibit uses that are dangerous to health, safety, or property in times of flood, or that cause excessive increases in flood heights or velocities.
(2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction.
(3) Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters.
(4) Control filling, grading, dredging, and other development which may increase flood damage.

(5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

(Code 1988, § 11-24)

Sec. 34-36. Applicability of article.

This article shall apply to all areas of special flood hazard within the jurisdiction of the city.

(Code 1988, § 11-26)

Sec. 34-37. Basis for establishing the areas of special flood hazard.

The areas of special flood hazard identified by the Federal Emergency Management Agency in the current scientific and engineering report entitled, "The Flood Insurance Study (FIS) for the City of Las Cruces, Doña Ana County, NM, dated July 6, 2016, with accompanying Flood Insurance Rate Maps (FIRM) dated July 6, 2016 and any revisions thereto are hereby adopted by reference and declared to be a part of this ordinance.

(Code 1988, § 11-27; Ord. No. 1933, § I, 8-19-02)

Sec. 34-38. Establishment of development permit.

A development permit shall be required to ensure conformance with the provisions of this ordinance prior to the commencement of any development activities.

(Code 1988, § 11-28; Ord. No. 1933, § I, 8-19-02)

Sec. 34-39. Compliance.

No structure or land shall hereafter be located, altered, or have its use changed without full compliance with the terms of this ordinance and other applicable regulations.

(Code 1988, § 11-29; Ord. No. 1933, § I, 8-19-02)

Sec. 34-40. Abrogation and greater restrictions.

This ordinance is not intended to repeal, abrogate, or impair any existing regulations, ordinances, easements, covenants, or deed restrictions. However, where this ordinance and the provisions of other regulations or ordinances conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Code 1988, § 11-30)

Sec. 34-41. Interpretation.

In the interpretation and application of this ordinance, all provisions shall be:

(1) Considered as minimum requirements;
(2) Liberally construed in favor of the City Council; and
(3) Deemed neither to limit nor repeal any other powers granted under State Statutes.

(Code 1988, § 11-31; Ord. No. 1933, § I, 8-19-02)

Sec. 34-42. Warning and disclaimer of liability.

The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. On rare occasions, greater floods can and will occur, and flood heights may be increased by manmade or natural causes. This ordinance does not imply that land outside the areas of special flood hazards or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the city or any officer or employee thereof for any flood damages that result from reliance on this ordinance, or any administrative decision lawfully made thereunder.

(Code 1988, § 11-32)

Sec. 34-43. Lands to which this ordinance applies.

The ordinance shall apply to all areas of special flood hazard within the jurisdiction of the City of Las Cruces, New Mexico.

(Ord. No. 1933, § 1, 8-19-02)

Sec. 34-44. Determination of substantially improved or substantially damaged existing buildings and structures in flood hazard areas. For applications for reconstruction, rehabilitation, repair, alteration, addition or other improvement of existing buildings or structures located in flood hazard areas, the Flood Plain Administrator shall determine if the proposed work constitutes substantial improvement or repair of substantial damage. Where the Flood Plain Administrator determines that the proposed work constitutes substantial improvement or repair of substantial damage, and where required by this code, the building official shall require the building to meet the requirements. The cost used in the substantial improvement determination shall be the cumulative costs of all previous improvements for a specific building or structure occurring during the immediate past 5-year period.

DIVISION 2. ADMINISTRATION

Sec. 34-71. Designation of the floodplain administrator.

The ~~Public Works~~ Community Development Director hereby appoints a Floodplain Administrator who is certified to administer and implement the provisions of this ordinance and other appropriate sections of 44 CFR (National Flood Insurance Regulations) pertaining to floodplain management.

(Code 1988, § 11-41; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)
Cross reference— Officers and employees, § 2-56 et seq.

Sec. 34-72. Duties and responsibilities of the certified floodplain administrator.

Duties and responsibilities of the certified Floodplain Administrator under this article shall include but not be limited to:

(1) Maintaining and holding open for public inspection all records pertaining to this ordinance;
(2) Reviewing permit applications to determine whether a proposed building site, including the placement of manufactured homes, will be reasonably safe from flooding;
(3) Reviewing and then approving or denying all applications for development permits required by this ordinance;
(4) Reviewing permits for proposed development to ensure that all necessary permits have been obtained from those federal, state or local governmental agencies, (including section 404 of the Federal Water Pollution Control Act Amendments of 1972 (33 USC 1334) from which prior approval is required);
(5) Making the necessary interpretation where interpretation is needed as to the exact location of the boundaries of the areas of special flood hazards (for example, where there appears to be a conflict between a mapped boundary and actual field conditions);
(6) Notifying, in riverine situations, adjacent communities and the State Coordinating Agency, which is the New Mexico Department of Homeland Security and Emergency Management (NMDHSEM), prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency;
(7) Assuring that the flood-carrying capacity within the altered or relocated portion of any watercourse is maintained;
(8) Obtaining, reviewing, and reasonably utilizing any base flood elevation data and floodway data available from a federal, state, local, or other source in order to administer the provisions of sections 34-101 through 34-105 when base flood elevation data has not been provided, in accordance with section 34-37;
(9) Requiring that, when a regulatory floodway has not been designated, no new construction, substantial improvements or other development, including fill, shall be permitted within Zones A1-30 and AE on the community's FIRM, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community; and
(10) Assuring that, under the provisions of 44 CFR Chapter 1, Section 65-12, of the National Flood Insurance Program regulations, the City of Las Cruces may approve certain development in Zones A1-30, AE, AH, on the community's FIRM which increases the water surface elevations of the base flood by more than one foot, provided that the community first applies for a conditional FIRM revision through FEMA (Conditional Letter of Map Revision).

(Code 1988, § 11-42; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-73. Permit procedures.

(1) Application for a development permit required under this ordinance shall be presented to the Floodplain Administrator on forms furnished by the property owner or the property owner's representative and may include, but is not limited to, plans in duplicate drawn to scale showing the location, dimensions, and elevation of proposed landscape alterations, existing and proposed structures, including the placement of manufactured homes, and the location of the development in relation to areas of special flood hazard. Additionally, the following information is required:

(a) Where base flood elevations have not been provided by the Federal Emergency Management Agency, a drainage study prepared and certified by a professional engineer registered in the state. The drainage study shall include:

(i) An aerial photo of the area to be developed and contributing watershed;

(ii) An up-to-date contour map of the site to be developed at a scale of one inch equals 100 feet and contour lines at intervals of no more than one foot and spot elevations at all breaks in grade along all drainage channels or swales and at selected points not more than 100 feet apart in all directions;

(iii) A contour map identifying the site to be developed and the entire watershed that contributes storm runoff to the development site;

(iv) Calculations showing the peak discharge and volume of runoff that will pond or pass through the development site from a one percent (100 year) storm; and

(v) Calculations showing the one percent (100 year) storm elevation in relation to mean sea level on the site to be developed.

(b) Elevation in relation to mean sea level of the lowest floor, including basement, of all new and substantially improved structures;

(c) Elevation in relation to mean sea level to which any nonresidential structure shall be floodproofed;

(d) A certificate from a professional engineer or architect registered in the state that the nonresidential floodproofed structure shall meet the floodproofing criteria of subsection 34-102(2);

(e) A description of the extent to which any watercourse or natural drainage will be altered or relocated as a result of proposed development; and

(f) Maintenance of a record of all such information in accordance with subsection 34-72(1).

(2) Approval or denial of a development permit by the Floodplain Administrator shall be based on all of the sections of this ordinance and the following relevant factors:

(a) The danger to life and property due to flooding or erosion damage;

(b) The susceptibility of the proposed structure and its contents to flood damage and the effect of such damage on the individual owner;

(c) The danger that materials may be swept onto other lands to the injury of others;

(d) The compatibility of the proposed use with existing and anticipated development;

(e) The safety of access to the property in times of flood for ordinary and emergency vehicles;

(f) The costs of providing governmental services during and after flood conditions, including maintenance and repair of streets and bridges, and public utilities and facilities such as sewer, gas, electrical, and water systems;
(g) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site;
(h) The necessity to the facility of a waterfront location, where applicable; and
(i) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.

(Code 1988, § 11-43; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933, § I, 8-19-02)

Sec. 34-74. Variance procedures.

(1) The City Council shall hear and render judgment on request for variances from the requirements of this ordinance.
(2) The City Council shall hear and render judgment on an appeal only when it is alleged there is an error in any requirement, decision, or determination made by the Floodplain Administrator in the enforcement or administration of this article.
(3) Any person aggrieved by the decision of the City Council may appeal such decision to the District Court within 30 days of the rendering of the decision.
(4) Floodplain Administrator shall maintain a record of all actions involving an appeal and shall report variances to the Federal Emergency Management Agency upon request.
(5) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the State Inventory of Historic places without regard to the procedures set forth in the remainder of this ordinance.
(6) Generally, variances may be issued for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the relevant factors in subsection 34-73(2) have been fully considered. As the lot size increases beyond one-half acre, the technical justification required for issuing the variance increases.
(7) Upon consideration of the factors noted in this ordinance and the intent of this ordinance, the City Council may attach such conditions to the granting of variances as it deems necessary to further the purpose and objectives of this article stated in sections 34-34 and 34-35.
(8) Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.
(9) Variances may be issued for the repair or rehabilitation of historic structures upon a determination that the repair or rehabilitation will not preclude the structures continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.
(10) Prerequisites for granting variances shall be as follows:

(a) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
(b) Variances shall only be issued upon:
    (i) Showing a good and sufficient cause;
    (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant; and
    (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, and extraordinary public expense, and create nuisances, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
(c) Any applicant, to whom a variance is granted, shall be given written notice of the permitted elevation of the lowest floor of the structure to be built, which shall not be more than two feet below the base flood elevation. The cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

(11) Variances may be issued by the City of Las Cruces for new construction and substantial improvements and for other development necessary for the conduct of a functionally dependent use, provided that:
(a) The criteria outlined in subsections (1) through (10) are met; and
(b) The structure or other development is protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.

(Code 1988, § 11-44; Ord. No. 1929, §§ I, II, 8-5-02; Ord. No. 1933 § I, 8-19-02)

Secs. 34-75--34-100. Reserved.

<u>**34-75 - Substantial improvement and substantial damage determinations.** For applications for building permits to improve buildings and structures, including alterations, movement, repair, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:</u>
<u>(1) Estimate the market value, or require the applicant to obtain a professional appraisal prepared by a qualified independent appraiser, of the market value of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made.</u>
<u>(2) Compare the cost to perform the improvement, the cost to repair the damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, where applicable, to the market value of the building or structure.</u>
<u>(3) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage.</u>
<u>(4) Notify the applicant when it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the building code is required and notify the applicant when it is determined that work does not constitute substantial improvement or repair of substantial damage.</u>

DIVISION 3. FLOOD HAZARD REDUCTION

Sec. 34-101. General standards.

In all areas of special flood hazards, the following are required for all new construction and substantial improvements:

(1) All new construction or substantial improvements shall be designed or modified and adequately anchored to prevent flotation, collapse or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(2) All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damage.

(3) All new construction or substantial improvements shall be constructed with materials resistant to flood damage.

(4) All new construction or substantial improvements shall be constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from the systems into flood waters.

(7) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

(8) Floodplain development shall follow the Federal Emergency Management Agency's letter of map change (LOMC) process (e.g., LOMA, LOMR, LOMR-F, CLOMR, CLOMR-F) as specified in 44 CFR. Floodplain information shall be required along with a Conditional Letter of Map Revision (CLOMR and CLOMR-F) and a Letter of Map Revision (LOMR and LOMR-F) for one-percent chance for storm flows of greater than 250 cubic feet per second (2.83 meters cubed per second), developments of five acres and larger, developments with fifty or more lots, and/or developments with any changes to the existing flow path in flood hazard zones AE, A, AH, AO, and D upon the submittal of any on preliminary and/or final drainage drawings for review. Information shall include peak discharges for the ten percent (10%), two percent (2%), one-percent (1%), and two-tenth percent (0.2%) chance storms for the floodplain inundation area and anticipated depth of floodwaters one foot and deeper. Standard step backwater models shall be used for flood depth determination. The Hydrologic Engineering Centers HEC-2 analysis method may be required. Improvements and subdivisions will not be accepted by the City until the flood study has been approved by the Federal Emergency Management Agency.

   (a) A CLOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency prior to plan and/or final plat approval.

   (b) A LOMR will be submitted for review by the City and submitted to the Federal Emergency Management Agency before acceptance by the City and before the issuance of any Certificate of Occupancy. Costs incurred for the preparation of materials and fees paid to the Federal Emergency Management Agency will be borne by the developer.

(Code 1988, § 11-51; Ord. No. 1933, § I, 8-19-02)

Sec. 34-102. Specific standards.

In all areas of special flood hazards where base flood elevation data has been provided as set forth in section 34-37, subsection 34-72(8), or subsection 34-103(3), the following are required:

(1) *Residential construction.* All new construction and substantial improvements of any residential structure shall have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated ~~to or~~ at least one (1) foot above the base flood elevation. A registered professional engineer, architect, or land surveyor shall submit a certification to the Floodplain Administrator that the standard of this subsection as proposed in subsection 34-73(1)(a) is satisfied.

(2) *Nonresidential construction.* All new construction and substantial improvements of any commercial, industrial or other non-residential structure shall either have the lowest floor, including basement, all electrical and mechanical equipment and ductwork, elevated ~~to or~~ at least one (1) foot above the base flood elevation or, together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. A registered professional engineer or architect shall develop and/or review structural design, specifications, and plans for the construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice as outlined in this subsection. A record of such certification, which includes the specific elevation in relation to mean sea level to which such structures are floodproofed, shall be issued by the certifying professional to the Floodplain Administrator and be maintained by the Floodplain Administrator.

(3) *Enclosures.* New construction and substantial improvements with fully enclosed areas below the lowest floor that are useable solely for the parking of vehicles, building access, or storage in an area other than a basement and which are subject to flooding, shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or meet or exceed all of the following minimum criteria:

(a) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided;

(b) The bottom of all openings shall be no higher than one foot above grade; and

(c) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

(4) *Manufactured homes. Manufactured homes are subject to the following regulations.*

(a) All manufactured homes to be placed within Zone A on a community's FIRM shall be installed using methods and practices which minimize flood damage.

For the purpose of this subsection, manufactured homes must be elevated and anchored to resist flotation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top frame ties to ground anchors. This requirement is in addition to applicable state and local anchoring requirements for resisting wind forces.

(b) Manufactured homes in the following categories that are placed or substantially improved within Zones A1-30, AH, and AE on the community's FIRM must be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated ~~to or~~ at least one (1) foot above the base flood elevation and shall be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movements in accordance with subsection (4)(d) of this section:
(i) outside of a manufactured home park or subdivision,
(ii) in a new manufactured home park or subdivision,
(iii) in an expansion to an existing manufactured home park or subdivision, or
(iv) in an existing manufactured home park or subdivision on which a manufactured home has incurred "substantial damage" as a result of a flood.

(c) Manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision with Zone A1-30, AH, and AE on the community's FIRM that are not subject to the provision of paragraph (4)(b) of this section must be elevated so that it meets the greater of either:
(i) the lowest floor of the manufactured home is ~~at or~~ elevated at least one (1) foot above the base flood elevation, or
(ii) the manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and ~~be~~ is securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement whichever is higher.

(d) Ground anchoring systems shall meet the requirements outlined in the City manufactured housing installation code. Anchors and anchoring systems that do not meet these requirements shall be designed by a professional engineer registered in the state and approved by the Floodplain Administrator.

(5) *Recreational Vehicles.* Recreational vehicles placed on sites within Zones A1-30, AH, and AE on the community's FIRM either:
(a) Be on the site for fewer than 180 consecutive days,
(b) Be fully licensed and ready for highway use, or
(c) Meet the permit requirements of subsection 34-73, (1)(b), and the elevation and anchoring requirements for "manufactured homes" in paragraph (4) of this section. A recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions.

(Code 1988, § 11-52; Ord. No. 1933, § I, 8-19-02)

Sec. 34-103. Standards for subdivision proposals.

(1) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall be consistent with sections 34-33 through 34-35.
(2) All proposals for the development of subdivisions, including the placement of manufactured home parks and subdivisions, shall meet development permit requirements of sections 34-38 and 34-73, of this section.
(3) Base flood elevation data shall be generated for subdivision proposals and other proposed development, including the placement of manufactured home parks and subdivisions, which is greater than 50 lots or five acres, whichever is less, if not otherwise provided pursuant to section 34-37 or subsection 34-72(8).
(4) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have adequate drainage provided to reduce exposure to flood hazards
(5) All subdivision proposals, including the placement of manufactured home parks and subdivisions, shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize or eliminate flood damage.
(6) All proposals for the development of subdivisions shall meet development permit requirements of sections 34-38 and 34-73, and this division, as well as the requirements of section 37-112.
(7) All preliminary and final plats submitted for approval must have floodplain clearly graphically delineated and noted.
(8) When developing property that extends into the city's regulatory floodplain, the floodplain shall be dedicated to the city in fee, as a flood water conservation easement, or as open space, as appropriate under the circumstances as determined by the Community Development Director. This area shall be shown on the subdivision map.

(Code 1988, § 11-53; Ord. No. 1933, § I, 8-19-02)

Sec. 34-104. Standards for areas of shallow flooding (AO/AH zones).

Located within the area of special flood hazard as established in section 34-37 are areas designated as shallow flooding. These areas have special flood hazards associated with base flood depths of one to three feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow; therefore, the following apply to AO and AH zones:

(1) All new construction and substantial improvements of residential structures shall have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least ~~two~~ three feet if no depth number is specified).
(2) All new construction and substantial improvements of nonresidential structures shall:
 (a) Have the lowest floor, including basement, elevated above the highest adjacent grade at least as high as the depth number specified in feet on the community's FIRM plus one (1) foot of freeboard (at least ~~two~~ three feet if no depth number is specified); or

(b) Together with attendant utility and sanitary facilities, be designed so that below the base flood level plus one (1) foot of freeboard the structure is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads of effects of buoyancy.

(3) A registered professional engineer or architect shall submit a certification to the Floodplain Administrator that the standards of this section, as proposed in subsection 34-73 (1)(a), are satisfied.

(4) Adequate drainage paths around structures on slopes shall be required to guide floodwaters around and away from proposed structures.

(Code 1988, § 11-54; Ord. No. 1933, § I, 8-19-02)

Sec. 34-105. Floodways

Floodways located within areas of special flood hazard established in section 34-37 are areas designated as floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions shall apply to the floodway:

(1) Encroachments are prohibited, including fill, new construction, substantial improvements, and other development within the adopted regulatory floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in flood levels within the community during the occurrence of the base flood discharge.

(2) If subsection (1) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction provisions of section 34-101, section 34-102, section 34-103, section 34-104.

(3) Under the provisions of 44 CFR Chapter 1, Section 65.12, of the National Flood Insurance Regulations, the City of Las Cruces may permit encroachments within the adopted regulatory floodway that would result in an increase in base flood elevations, provided that the community first applies for a conditional FIRM and floodway revision through the Federal Emergency Management Agency.

(Ord. No. 1933, § I, 8-19-02)

Sec. 35-106. Severability

If any section, clause, sentence, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this ordinance.

Sec. 35-107 Penalties for non-compliance

No structure or land shall hereafter be constructed, located, extended, converted, or altered without full compliance with the terms of this ordinance and other applicable regulations. Violation of the provisions of this ordinance by failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with conditions) shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall upon conviction thereof be fined not more than $10,000 for each violation, and in addition shall pay all costs and expenses involved in the case. Nothing herein contained shall prevent the Las Cruces City Council from taking such other lawful action as is necessary to prevent or remedy any violation.

Secs. 34-108—34-124. Reserved.