

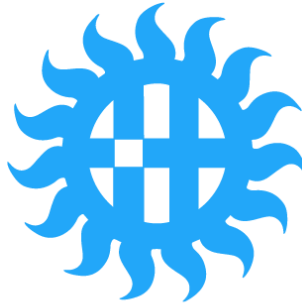
CITY COUNCIL AGENDA

Mayor
Ken Miyagishima

Monday, July 3, 2023 at 1:00 PM
Council Chambers

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores



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](tel:541-2115).

CONSENT AGENDA

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

Page

1. OPENING CEREMONIES

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

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 June 26, 2023 Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

- 6.1. Work Session of May 22, 2023.

[Work Session - May 22 2023 - Minutes - Pdf](#)

5 - 24

- 6.2. Work Session of June 12, 2023. 25 - 34

[Work Session - Jun 12 2023 - Minutes - Pdf](#)

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

- 7.1. RESOLUTION NO. 24-001: A RESOLUTION APPROVING THE LAS CRUCES INTERNATIONAL AIRPORT FISCAL YEAR 2024-2026 RATES AND FEES REPEALING AND REPLACING RESOLUTION 21-189 EFFECTIVE AS OF JULY 1, 2023. 35 - 44

[Resolution No. 24-001 - Pdf](#)

- 7.2. RESOLUTION NO. 24-002: A RESOLUTION TO AWARD CONTRACTS FOR ENVIRONMENTAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO DANIEL B STEPHENS & ASSOCIATES INC., PARKHILL, SOUDER, MILLER & ASSOCIATES, TERRACON CONSULTANTS INC., AND ZIA ENGINEERING & ENVIRONMENTAL CONSULTANTS LLC, IN AN AMOUNT NOT TO EXCEED \$500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR FOUR (4) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-036). 45 - 109

[Resolution No. 24-002 - Pdf](#)

- 7.3. COUNCIL BILL NO. 23-036; ORDINANCE NO. 3042: AN ORDINANCE APPROVING INVESTMENT FUNDS OF \$150,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN (LEDA), AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND VARIOUS QUALIFYING BUSINESSES THAT HAVE SUFFERED CATASTROPHIC INCIDENTS. 110 - 126

[Ordinance No. 3042 - Pdf](#)

8. OLD BUSINESS

- 8.1. RESOLUTION NO. 23-135: A RESOLUTION APPROVING THE PARKS AND RECREATION DEPARTMENT 2023/2024 FEES AND CHARGES/FACILITY USE POLICY REPLACING AND REPEALING RESOLUTION 19-145. 127 - 194

[Resolution No. 23-135 - Pdf](#)

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

- 9.1. **PUBLIC HEARING REQUIRED.** RESOLUTION NO. 24-003: A RESOLUTION APPROVING A WHOLESALER (SPIRITS, BEER, AND WINE) LIQUOR LICENSE. PURSUANT TO RULE 15.10.32.8 IF THE PROPOSED LICENSED PREMISES IS WITHIN 400 FEET OF A CHURCH OR SCHOOL, AND THE APPLICANT DOES NOT ADMIT THE PROPOSED LICENSED PREMISES IS WITHIN 300 FEET OF A CHURCH OR SCHOOL, THE APPLICATION MUST BE ACCOMPANIED BY A CERTIFIED REPORT OF A REGISTERED ENGINEER OR DULY LICENSED SURVEYOR OR MAY OBTAIN A WAIVER FROM A LOCAL OPTION DISTRICT GOVERNING BODY FOR THE PROPOSED LOCATION. THE APPLICANT AT THIS TIME 195 - 221

IS SEEKING A WAIVER, LOCATED AT 508 N. MESQUITE STREET
1/2, LAS CRUCES, NEW MEXICO 88001.

[Resolution No. 24-003 - Pdf](#)

- 9.2. RESOLUTION NO. 24-004: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2022-23 BUDGET FOR 2023 FISCAL YEAR-END. 222 - 241

[Resolution No. 24-004 - Pdf](#)

- 9.3. RESOLUTION NO. 24-005: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023-24 BUDGET. 242 - 260

[Resolution No. 24-005 - Pdf](#)

- 9.4. RESOLUTION NO. 24-006: 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 FY2023 BUDGET. 261 - 312

[Resolution No. 24-006 - Pdf](#)

- 9.5. RESOLUTION NO. 24-007: A RESOLUTION TO AWARD CONTRACTS FOR SURVEY SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC., COBB, FENDLEY & ASSOCIATES INC., CONSTRUCTION SURVEY TECHNOLOGIES, INC., FRANK X. SPENCER AND ASSOCIATES, INC., HIGH MESA CONSULTING GROUP, LIBBIN UNDERWOOD ENGINEERING & SURVEYING, LLC, AND SOUDER, MILLER & ASSOCIATES, FOR INDEFINITE COST, INDEFINITE QUANTITY FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR FOUR (4) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-032). 313 - 411

[Resolution No. 24-007 - Pdf](#)

- 9.6. COUNCIL BILL NO. 23-035; ORDINANCE NO. 3041: AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1C (COMMERCIAL LOW INTENSITY - CONDITIONAL) TO C-1C (COMMERCIAL LOW INTENSITY - CONDITIONAL) TO REMOVE AN EXISTING CONDITION RESTRICTING BUILDING USE FOR NON-RESIDENTIAL PURPOSES FOR PROPERTY ± 0.20 ACRES IN SIZE AND LOCATED AT 1024 SOUTH MAIN STREET. 412 - 454

[Ordinance No. 3041 - Pdf](#)

10. BOARD APPOINTMENTS

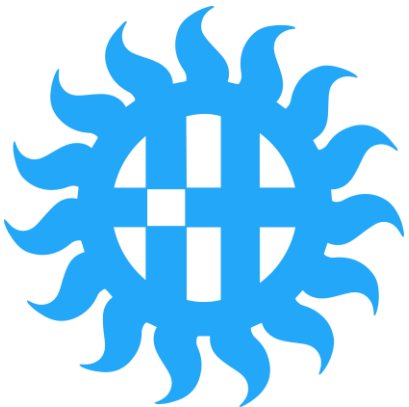
11. NOTICE OF PROPOSED ORDINANCE(S)

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

12. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

13. CITY MANAGER REPORT

14. ADJOURNMENT



MINUTES
Work Session
Monday, May 22, 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. TELEPHONIC PARTICIPATION

1.1

Councilor Yvonne Flores moved, seconded by Councilor Johana Bencomo, to allow Councilor Gandara to participate telephonically.

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

2. PETS OF THE WEEK

2.1

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

3. JOBS OF THE WEEK

3.1

No Presentation.

4. AGENDA ITEM

4.1 CIVILIAN POLICE OVERSIGHT COMMISSION DISCUSSION.

Peter Goodman, Member of the Public gave an oral presentation.

Dr. Earl Nissen, Member of the continued the oral presentation.

Bobbie Green, President of the Dona Ana County NAACP continued the presentation.

Peter Goodman continued the presentation.

Councilor Gandara asked is there something that you can help clarify for us as it relates to something like this and the union?

Ifo Pili, City Manager said I have not spoken to the union so I hate to speak for them but just on the surface we internally in staff recognize that this could be a concern just the way we read it, the way we interpret it but I have not approached the subject with the union yet. My staff internally we look at this as something that does cause concern and we can anticipate concern coming from them, but I hate to speak in their behalf.

Councilor Gandara said I didn't want you to speak on behalf of the union I just want to see if someone on staff or if there is a union representative in the audience or I am not sure if Chief Dominguez has had that opportunity to have the conversation. When is our union contract up for negotiation?

Ifo Pili said we just concluded not too long ago the negotiations so it is not up for a couple of years but I don't believe there are any representatives for the union in the audience. Again, our thought was to hear the presentation and if this was something that the council was considering that would be the first place we would go and talk to the union about what concerns they would have if any.

Councilor Gandara asked is there a presentation by the ACLU?

Mayor Miyagishima said I was not aware of any other presentations. I did see a gentleman raise his hand. He will most likely be part of when I allow the public to have some kind of comment but I can tell you based on the amount of time that I can give to the residents is probably going to be a small amount of time each.

Councilor Flores asked looking at the five cities that you selected the demographics were quite different and the only one that maybe comes close amazingly enough is Davis, California which is a university town. In that town the NAACP, the Mexican American group and another group were really behind this. However, all of the municipalities that you presented to us seem to be the inception of the oversight boards and have been pretty recent and there is really no data. At least not in the reports that you presented that have any kind of outcomes in terms of has crime gone down, has there been less brutality? I know that our political analyst, Sergio Ruiz prepared some data and he actually included Beaumont, Texas which is northeast of Houston, that one too doesn't have a demographic break down. Also, the population and the ratio of police officers is different than what we have as well. I really like the

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fact that all of you emphasize the fact that this would not keep the oversight committees from functioning and that we would have transparency which is what has been lacking and I agree with you Mr. Goodman that we have settled too many cases. Is there any data as to which neighborhoods are affected and how these changes would affect outcomes? Some of these had police officers appearing before oversight boards, would they have legal counsel?

Peter Goodman said if they wanted to have union representative I would imagine, I am not on the board. That would be for the board to decide, if I were on the board I would say yes. Like the union rep not interfering in it, just observing and a statement if he or she wanted to but yes that certainly would be feasible. I think Dr. Nissen was concentrating on these five because of the city's connection with OIR and the fact that OIR was functioning there in tandem with these councils. If you are interested, we can provide probably some more information of the type you are looking for.

Councilor Flores said if there is any way of gathering information not that it would impede my support of having this oversight board established but it would be great to see if there is any data out there on how these changes and this oversight board has affected and what the outcomes have been.

Councilor Graham asked what is the empirical data available that demonstrates that these boards are effective for the problems that we are looking to solve? I read carefully the packet that was presented to us, of the five cities. I went to their individual websites to get a look at how they were framing their boards. I went to OIR to look at independent OIR reports for each of the cities and looked for meta-analysis of oversight boards generally and how they perform and what I could find was nothing. There was no real hard data that showed cities that implement these kind of boards show a decrease and I am not saying that it is not true and I am saying I was unable to find it. The closest I was able to come was an independent OIR report for Anaheim for which they looked like they piloted their Oversight Board for 2016 and 2017 and then made it official in 2018. There was no appreciable change in use of force reports pre or post the board and that was the closest I could find to any kind of hard data. Do you have information on that? Can you give me any indication of how going from the metrics that were mentioned during your presentation which was loss of life and dollars spent and realizing that there are other metrics possible, what can you offer right now or can you give me direction for more research?

Dr. Earl Nissen said the only thing I came up with in some of the conversations I had with different liaison people or the monitors they did not share any empirical stuff. I would have liked to have gotten that myself. However, in Boulder I think they have the most sophisticated system and I am sure that Peter and I talked to the co-chairs of that board we could dig further and get more empirical data if they have it. I am not sure either. I cannot 100% say that everyone is exhibiting some model of statistical analysis. I would think that some of the city councils in those five cities have probably asked for evaluations of the Citizen's Review Boards and I don't know how much they would allow you to dig into the city council stuff but I think that could be possible and I could do that and get as much as I could.

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Peter Goodman said the findings are all over the lot because a lot of these boards opposition from the police required compromises that made a board that had no power and had no ability to get the documents. I think your question is great. We will try to go to some of these places that have had these boards longer and see what we can get.

Councilor Bencomo asked do you know if Seattle has a Citizen Oversight Board?

Dr. Earl Nissen said I think so.

Councilor Bencomo said I didn't find that they did however I did want to note that Seattle's consent decree was just terminated and several of the recommendations that the Department of Justice made and notable progress they noted that had been made included reduced use of force, improved response to behavioral health crisis, improved response to investigative stops, new biased free policing policy and training, and new supervision model. This is directly from justice.gov., obviously, that has additional details on it but I did note that I could not find that any recommendations from the DOJ to end the consent decree noted that a board of this type was necessary and they still will make significant progress. I think there is many ways in which we can achieve the goals that you all want which is real community safety. What have you found that has measuring any real or perceived bias for membership?

Dr. Earl Nissen said the two co-chairs of the panel discussed that with us. One of their members made some statements out in the community that were not accepted by the city council so they pulled her membership on the panel and the two co-chairs explained that they were ironing that out and they were going to have to find another new member. Their ordinance provides how to replace a member.

Peter Goodman said someone kindly handed me the answer to your question about Seattle. They definitely have Police Oversight. They have both a Community Police Commission and an Office of Professional Accountability.

Councilor Bencomo said I think at the core of it I think I agree with this advocates group's goals and desires and the concerns. I also just every time I read about a Citizens Oversight Committee, I come across controversies that I think distract from the real work ahead and that is my biggest concern. I hope that you hear me when I say that. The reason that I also wanted to keep my comments short Mayor is because I do want someone from the ACLU to come up and I would hope that you would give them at least five minutes because I think they have pertinent and critical information on this.

Daniel Williams, Policing Policy Advocate of ALCU of New Mexico said the first thing I want to say is we at the ALCU understand concern about safety and our communities and that our concerns are real. We are all New Mexicans and we all see the same things in our neighborhoods that are neighbors are seeing and causing concern. We recognize the criminal legal system isn't the only way to build safety in our communities. In fact, often it makes us less safe to rely too heavily on the carceral system and not invest in more meaningful infrastructure for safety in our communities.

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Real safety is not just how we respond to criminalized behavior it is also about economic justice and food security and housing and health care including mental health care, education and more. The ACLU of New Mexico believes that simply an oversight of the police can be a very good thing. We also recognize that is hard pull off well and that civilian oversight mechanisms can become part of the status quo and so we have a few things that we look for when we think about Civilian Police Oversight. One is independent board membership, broad scope to review complaints, independent investigatory authority, discipline that sticks, findings of fact that determine discipline, the ability to review and make recommendations related to policies and practices, secure funding, due process protections for officers and public access and reporting to and by the commission. Does this mean we see many of these things in the proposed ordinance and we think that is fantastic and we hope that as you are moving forward and thinking about what kind of action you want to take on this kind of proposal these are the things that you keep in mind. We also recognize that any kind of action around oversight is again only part of one piece of the puzzle around policing in Las Cruces and so I also want to briefly touch on a couple of opportunities that we can think Las Cruces has to take action to keep all of us safe with regards to policing. One is led to use of force. We think that there is a real opportunity for Las Cruces to take action here. We are looking at Las Cruces adopting a higher standard than what is required by federal law. We would advocate a necessary standard that force only be used when necessary. We also advocate that policy expressly prohibit the use of deadly force against a person who only poses a risk to themselves or the property and the policy explicitly require that use of reasonably available de-escalation tactics and techniques prior to using deadly force. We also advocate that policy require that officers stop or reduce the level of force as the individual reduces their resistance or as the threat of harm abates. We think that one thing that policy makers such as yourselves and the community could benefit from is increased data and transparency and we would love to see the police department and the city collecting and reporting more comprehensive data including demographic data related to stops, searches, and arrests and uses of force. Finally, we think that there is opportunities to look for ways to reduce interactions between the police and members of the public particularly people who are in mental health crisis. We are really excited about Project LIGHT and about progress that you all have made in that regard and we hope that the city will continue access Project LIGHT and consider opportunities to expand nonpolice responses.

Councilor Abeyta said I appreciate you looking at our City Charter and how everything coincides. I am not sure if you saw that we also have Standards, Policies and Procedures as well within that. My view and interpretation of our charter I think is perhaps a little bit different so when entertaining this conversation it is definitely something that I would want us to look at for legal. As you mentioned with Section 2.4 General Powers, it does state that unless something is explicitly directed then it is under our purview of council however this is an area that when it comes to personnel matters and there are explicit directions on how we engage and interact. You even quoted and mentioned in that Section 2.05 Section C under prohibitions, shall be adopted with council and going onto page 8, Section C is interference with administration. Neither the Mayor, council nor individual councilors shall in any matter serve the administrative authority of the City Manager's set forth in Article III. So, when you go through to Article III, in Section 3.02 B, that is on page 11, you can look

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and see the City Manager is subject to removal by us because that is our one employee but when it comes to powers and duties under that the powers and duties that the City Manager have is that of any sort of removal or administrative affairs of personnel. So, with that in mind I am curious to see how an oversight board integrates with that sort of item when they want to and what it is asking for in this ordinance is to look at HR personnel files. That is something that we as councilors don't even have access to and as you mentioned before when oversight boards don't have access to those items which it seems that there is probably legal reasons that they don't have access to it why it makes them less effective which therefore leads me to think that there are other tools and mechanisms that are in place that help with accountability and transparency that go beyond this type of board.

Peter Goodman said what you said I think confirms that although the board could not discipline somebody or discharge somebody they can opine. Let me throw something in that is relevant that I had wondered about that we learned from the Boulder people. There are people on the commission and not everybody on the commission works on each case but they sign a confidentiality agreement with regard to any personnel files.

Councilor Abeyta said we also have confidentiality in closed sessions and we are still not allowed access to those, so I am curious to see how that coincides with our charter.

Peter Goodman said that might present a problem but most of the documents that we are talking about are not personnel files. They would be or might be placed in somebody's personnel file but they would be basically about the cases. I think that is a fair question. I think it's a question that falls into the how do we do this? Not this a deal breaker category because it might be at the end of the day that personnel specifically and I am not saying that we would be asking for these anyway but specifically a supervisor's evaluation of somebody working under her would not be available to the board. On the other hand, a lot of documents that are considered confidential that have to do with a case that is ongoing would be.

Dr. Bobbie Green said I serve on the Law Enforcement Academy Board which certifies and decertifies officers who have been accused of misconduct and we do not see their personnel files but we do see the complaints that come forward as result of the investigation of the cases. We are not looking at their personnel records we are looking at records that have to do with the cases and the complaints either from the citizens or something that has to do with the case itself.

Councilor Abeyta asked are you seeing that in concurrence of when a case is in active status or is it only afterward?

Dr. Bobbie Green said we are seeing cases that have gone through internal affairs and that now have been sent through the law enforcement academy board to decide whether these officers will continue to be police officers or not.

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Councilor Abeyta said with that in mind one of the sections here in the ordinance says that jurisdiction of the board shall be concurrent of that in investigations. So how is there protection and integrity of a case if it is being viewed concurrently?

Dr. Bobbie Green said I don't know in that case. That is a reactive approach. What we are hoping to do is something that is more proactive and if there are consistent and continuous complaints of misconduct, excessive use of force specifically of officers we can hopefully avoid the inevitable of a rogue officer killing somebody before it happens is what I would like to see. We are not trying to react but trying to be more proactive.

Councilor Abeyta asked would that mean that the board would potentially make decisions on an investigation before an investigation is Closed out on the city personnel side?

Peter Goodman said I would say yes that is a possibility. The broad scope of the board is as Dr. Green was saying but in certain situations yes that might happen. It might be that they would only give that to the internal affairs investigator for his or her consideration until such time that the city had concluded it but the board should not have to wait.

Councilor Abeyta asked what has happened on your research with, does any other model use this where it is concurrent, and the oversight board determines whether a person is guilty or not guilty before it has been done through due process in the legal system?

Peter Goodman said I believe so, but I will try to get you specific cases.

Councilor Abeyta asked I would like to know the liability risk that these municipalities have had to have? I have strong concerns against this as well.

Dr. Bobbie Green asked concerns against what?

Councilor Abeyta said concerns against liability if we have findings before the legal process has been established. The other portion that I have is within the policies and procedures we would need to look at under Section 3.5 is noninterference with administration. We have a significant portion within this including personnel matters. If this is to be entertained further whether I am not sure this is the right mechanism for it. I think there will be some issues that we would have to deal with within policies and procedures however that is under the purview of our City Manager to establish most of those policies and procedures so then we go back to having to do charter changes and issues so I think that is what I am saying that I think there is an issue when it works with that.

Dr. Bobbi Green said there was a young man at a gas station on August 3rd, 2021, named Presley Eze who was shot execution style in the back of the head by a Las Cruces Police Department Officer and I believe that the assumption on that officer is they treated him as if he was just another young black thug and it is quite the contrary.

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This young man was very well connected to the National NAACP and that is part of the reason that this investigation has taken us to the Department of Justice because of that particular case and who that young man was. He left a two-year-old son behind and he was basically killed execution style and that is part of the problem we are trying to deal with. We are not trying to violate any officers' rights. We are trying to keep the officers from violating the citizens rights and/or take their lives.

Mayor Miyagishima said usually when I have public comment and I ask that no pending litigation issues be brought up and if you could please you can use generalities, but I appreciate it if you didn't because that is still in pending litigation.

Peter Goodman said I will read the provision in the policy manual but from what you are saying it sounds like you are equating being able to investigate something and make a recommendation to the City Manager with interference and that would kind of negate the possibility of, any commissions doing anything. If advice were interference.

Councilor Abeyta said our advice with other boards isn't hiring and firing of city personnel. When we have the Quality of Life Department I am not giving advice on who to hire and fire. I am not giving advice on who to hire and fire on Utilities. I am not giving advice on who to hire and fire on any of those other boards. This is an entirely new function which therefore would address in a different way which is why I am bringing it up because I think it has crucial impact. The other structure that I had is of the education function within this policy and procedure. This is one where I am curious on who has developed programs on education since it seems like one of the duties of this board is to educate the public. Now what was a little concerning and was just mentioned off hand just now is that I didn't have this in my notes before but that there has been controversy even with how boards have educated the community that has led to issues too. I would be curious on what type of budget it is based on within this education, who makes the curriculum, who decides on the curriculum?

Peter Goodman said I am sorry we must have misspoken if we gave you the idea that it was organized in that fashion. That it was a school or had a curriculum or any such thing, rather there are controversies that come out and the public thinks oh that is terrible and in some cases I know some of them myself firsthand and the officer was correct and had to do certain things. The public doesn't know that. There might be policies that the Police Department comes up with. One would hope that after some initial reluctance on the part of the Police Department and perhaps the union they would work together on some of these issues but no it is not a school and I think the case that they are almost talking about is one member as could happen here and none of you of course but it could happen on a city council that one member would say something that the rest of the world didn't agree with and there would be a controversy, well that is what happened here. Somebody said something and there were consequences but it wasn't as part of any organized curriculum from what they told us.

Councilor Abeyta asked what is handed out? What is given to the public?

Peter Goodman asked how would we know that in advance?

Councilor Abeyta said that why I am asking because if we are going to put it in writing then we should probably know what it is that we are asking to do. If we are going to put it in an ordinance and then it becomes law, then I would like to know what I am putting into law.

Councilor Corran asked I am curious what the next steps for this particular ordinance would be? I think there are some possibilities, it sounds like it definitely needs to have further review from both internal city folks and sort of a feedback loop and some iterations happening. So, I think I would be curious to see where this goes. I would say if it went to the Public Safety Select Committee I would ask that those meetings be open meetings and the community folks be able to engage in that context but I think any other number of places are possible but I do think it also has to go through a few legal reads on our end. I have another process related question related specifically to some of the things that Daniel from the ACLU mentioned. I know that the police have their internal policies and procedures and I actually know that the use of force policy was updated most recently in 2021. I am curious what the typical process for updating internal police processes are and I think there have been some opportunities for us to have a conversation about how we can do that. That is one of my questions that I hope we can answer going forward. I am curious because it does sound like part of what you are proposing or suggesting might be an opportunity. Some of what I think you are talking about is related to accountability and disciplinary process to police and I do think that we might be functioning under not knowing what is happening right now as it exists though I would ask that we have a Work Session on the existing police processes and that includes a couple of things that we have outstanding, matrix on the disciplinary action, which I know that the Chief was working on and also understanding how the use of force cadre and Internal Affairs interface and could interface with either something as a hybrid model or with a civilian police oversight independent model. I would like to also ask that we hear from the police so that we understand those mechanisms of accountability that exists so that can also inform what we do next at another Work Session and my last action question is related to the OIR contract. I know that we are under a continuing kind of month to month contract related to that but it does sound like there is consensus around including two new aspects into our OIR contract. That is, one related to some type of community engagement, your model would include community engagement with a Civilian Police Oversight Board or other models that I think OIR has enacted. I would ask that when we revisit the OIR contract we also, the plan is to include use of force, randomly selected incidents of use of force but I would also ask that in addition to that sampling we include random sampling of use of force but also any deadly force use gets referred to when OIR as well so I hope that we can include that as a part of our contract when that happens so that all of these questions as OIR has come I have heard Dr. Goodman and Dr. Nissen have asked why didn't you include this incident that we are referring to. I hope that we can strengthen that in the contract so that all of those use of deadly force which may or may not result in death be included as part of the OIR contract.

Mayor Miyagishima asked all members of the board shall reside in Dona Ana County? Why not City of Las Cruces? Are you saying we can appoint county residents to a Las Cruces Citizens Review Board?

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Peter Goodman said that would certainly be my suggestion. I think there are some people who don't live within the city limits but who are prominent citizens or otherwise spend a lot of time in the city and have either expertise or experience of the police that would make them good members. I would not limit it to city.

Mayor Miyagishima said I think only Ad Hoc committees could allow county residents. These are committees that are not permanent. Permanent city committees need to be city residents.

Peter Goodman said if they have to be city residents, we have no problem with that.

Mayor Miyagishima asked the board shall have the power to investigate? Can you expand on that?

Peter Goodman said You have a situation that has resulted in somebody's death and it raises a lot of implications and it may be that the physical actions taken were appropriate but I would hope the board would investigate training and other matters without a specific incident like that and try to improve on what we have. There are fair issues as I mentioned earlier about use of a particular hold, about what justifies chasing somebody down and perhaps getting in a fight, it's tough some of these officers may be put in a position where they are chasing somebody who hasn't done anything all that bad but the rules say there is a warrant out and I have to get him and all of sudden there is a fist fight and they kill someone.

Mayor Miyagishima said one of you said you wouldn't be looking at personnel and there are a couple of things here, item I and J that says here the board shall hold public meetings and shall regularly report to the public on activities and other policing information that is determined to be in the public interest. I would think that if there was a situation, it's usually just one officer maybe two that is in the public interest so how would you not be able to know who that is? Or just the mere fact that it discloses who it is. Then it says the board will use an established discipline matrix and guidelines to recommend discipline for outcomes resulting in an investigation, complaints filed with the board against LCPD. We don't get involved in that and so for us to provide that type of authority to a board when we ourselves don't have and I am not saying that we need it. That is why we have Ifo here and him and his management team. Can you expand on that a little bit?

Peter Goodman said I will take a look at the provision. I think they should be able to do it. Certainly, there should be or could be restrictions on publicizing information about specific individuals before the city has made its decision and perhaps before the courts have but the investigation ought to begin before that. It doesn't have to all be public.

Mayor Miyagishima said let's just use a hypothetical, there is a situation that happened and earlier I thought I heard you say why does something take so long and you want that information out. Did you say that?

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Peter Goodman said yes, it ought not take a year and month and counting. I get some statement from somebody about this is alright and this is why, or we are charging this person or there is no criminal conduct for disciplining this person.

Mayor Miyagishima said it is very common for the city to go into protracted litigation that could take 2-3 years. It almost sounds like you want to see the information immediately and I don't think we can do that. Is that you are wanting?

Peter Goodman said I think you probably can do it. I have handled litigation the last many, many years.

Mayor Miyagishima asked what if that information gets leaked and now, they want to sue the board, your board and the city? Earlier I heard you all saying you wanted to reduce liability by the fact that you, someone and I see that happen years ago that is why I have been hesitant but who do you expect to pay for the liability, the claim for \$500,000 they are going to sue a board member for? We are not allowed to provide liability coverage for you.

Peter Goodman said that is certainly a reasonable question that you could not provide liability to the members. I am sure that question has been raised in other cities. I will try and find out how it has been solved.

Mayor Miyagishima said the information that I saw when our policy analyst gave none of them have the authority that you are asking. They are all advisory.

Peter Goodman said this is advisory too.

Mayor Miyagishima said I think it was Dr. Nissen who talked about the budget, it was \$50,000 and then \$100,000 but I didn't hear the part what OIR charges.

Dr. Earl Nissen asked right now we are contracting for \$75,000, right?

Mayor Miyagishima said they are going to want to charge us. Keep in mind they only come here every six months to make a presentation.

Dr. Earl Nissen said yes, it would probably go up.

Mayor Miyagishima said that is why I wanted to know what the price was. You didn't check the price of what OIR would charge extra with these other cities that they have the hybrid model?

Dr. Earl Nissen said even in Boulder they are charging by the hour. They have different kind of contractual arrangements but I think it was Eureka's budget was \$90,000 a year so when I said \$50,000 or \$100,000 it would depend on how many complaints. If we only have enough for a halftime person, then it would be \$50,000 I would be guessing.

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Mayor Miyagishima said I thought the \$100,000 was for the person that was going to be leading, this I didn't know that was for OIR.

Dr. Earl Nissen said that would be the person who was collecting all of the complaints independently away from the Police Department and the board and that person would be responsible for making sure that OIR gets all of the complaints. That is one of our issues here. We are not sure of that. This person who we would be paying let's say full time \$100,000 would have that responsibility and helping them with the investigations with involvement of the board and the Police Department. It would be like a liaison person.

Mayor Miyagishima said I am sure you are aware under Chief Dominguez this upcoming graduation in December will be the first of those officers he recruited with special bonuses \$10,000-\$20,000 if you have psychology background or sociology background. That was in response to some of concerns that they will all agree that police officers, they are very multi-talented but to be able to handle other situations that they are not trained in that. They have some training but to be able to do that, that is why the Chief is focusing on that. That is one item, the other and thanks to the Chief Smith and Dominguez and City Council really for funding Project LIGHT, which is now when you have a situation you will have people from the Fire Department as well as another person who is not police officer but has that training to hopefully defuse situations. You don't think that has shown what the city has tried to do, what various departments are trying to do to recognize the situation.

Peter Goodman said I think we think those are wonderful.

Mayor Miyagishima said they haven't been given a chance. They just started. March 6th, I think was the first day for Project LIGHT. We have a good investment in that program, so I think that is yet another reason why. It is not like we are sitting here and not doing anything.

Peter Goodman said if I may I think that Project LIGHT is modeled on what Portland has and Portland has the kind of board we are talking about as well. Obviously, you have your opinion and my response to what you are saying is that those are great things and you people should take credit for them but to me it is like saying well I swept my house so I don't need somebody to clean the windows. You have a red alert situation, and you are taking some steps but there are more that you reasonably could and should.

Councilor Bencomo said I would like to make a couple asks to you all of my colleagues and of course the City Manager on continuing this conversation. Since I have been on city council all I have known is for us to fully resource the Police Department. I think when PD asks for something this council has provided it. To me it makes sense that we get to ask for high standards and to me it is very clear that high clear rigorous use of force standards protect everybody involved. They protect constituents and they protect officers involved. I think we as a city should be training from the beginning on high standards and maintaining those high standards as their careers continue with the city police department. Not only do high standards of use of

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force lead to less injury or worse on both constituents and officers they lead to significantly less liability, public dollars being used for settlements. I really feel that there is a pathway forward and I hope there is an open and good faith conversation us, advocates, and PD around how we go about this. Like Councilor Corran said strengthening our use of force policy is necessary and I would like to continue having that conversation whether it is in another Work Session. I think often what I hear from advocates is a lack of data and transparency. The public feel often in the dark about whether it is in the immediate aftermath of either a use of force incident or in general what is happening with our Police Department. While there is obvious things that cannot be shared publicly the more we keep things behind closed doors the more mistrust issues and so I think public facing departments are important to cultivating public trust. Yes, I agree Mayor, I think Project LIGHT is so new and fresh that we have to give it an opportunity to thrive but that again that is a critical piece of the puzzle because when there is a fire we send fire fighters, when there is a medical emergency we send paramedics, when there is a mental health crisis we should send mental health professionals. Implanting and investing in alternate solutions is critical and I hope we continue doing that and I hope we continue to see that project expand in which ever form. Whether this happens at the next OIR report or sooner hopefully I personally want to see those conversations continue to happen. Councilor Corran and I can continue talking to the City Manager but I at least want a commitment that this conversation will continue because regardless of whether you fall on the spectrum that you agree with this particular solution or not the wider conversation around use of force and implementing high standards I think is necessary.

Councilor Flores said I just want to clarify that our Police Department does get extensive training, how do I know? I went to one of their training sessions and I happen to know the attorney out of Los Angeles that does the training who was a previous officer and they are given very clear parameters and in fact the fire department was there too. I just want you to know our police officers do get extensive training and Missy O'Linn the attorney who trained them is a previous police officer and it was quite detailed. Sitting there as a nonofficer it was exhausting and believe me I would never be a police officer. I just want you to know that it isn't as if our police officers and when you think of all the things that can go wrong and do go wrong, we are fortunate that more things don't go wrong. I would like to say that there has to be more psychological profiling assessments as to who can handle that job. I just want you to know folks it isn't as if the Police Department is having donuts somewhere and kind of just taking off willy-nilly and we have had very unfortunate situations without a doubt but there are so many hours that have to be fulfilled.

Mayor Miyagishima said you reminded me of something when some of us went to the training at the Community College. This was probably twelve years ago I was selected to go to the Citizens Academy for the FBI. It was six weeks, it was a great training. They concluded with this video. It was so realistic and very similar to the one at Dona Ana Community College but the FBI had their own. It was so realistic I could feel my heart pounding and I was trying to cover my partner and I tried to shoot him and I was shooting up into the tree. The difference is I knew I was going home that day. I knew it was a monitor but it was that realistic. I am so fortunate that they have accepted the challenge. This job of being a police officer, fire fighter, a first responder is so difficult. Everyday they are out and you don't know if they are coming home.

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Richard Barela, Member of the Public said I am having concerns about comments about profiling. That sounds like a defamation issue that could arise. You can create mental illness when people can create a mental illness in a person just by trying to outwit them when they are under stress from a crime that has been committed. That is my concern.

Loretta King, Member of the Public said I am a believer in communities' involvement in Police Department. I am a retired California Public Safety Dispatch Supervisor. I retired from an agency there. We are in a time when our police department is at issues with the changing of society. Oversight through our complaint system being able to identify problems before they happen is ultimately important. I think that we need to be vigilant. We need to avoid problems before we get them. We shouldn't be in these lawsuits or anything. We should be proactive in avoiding this. Allow the community to speak and to be heard.

Kenneth Davis, LCPD Detective said I am the current President of the Las Cruces Police Officers Association. I just want to come up here and let you all know that this is a topic that concerns us very highly and that were present here to see all the information that is presented today. Just so there is no assumption that we were not interested in this at all.

Mark O'Neill, Member of the Public said I have a little different model to bring up about an Oversight Committee. I don't like the word Oversight and I don't like to talk about monitoring the Police Department, investigating the Police Department. I like an idea of a committee that involves a couple of councilors, public safety person, maybe the person in charge of the mobile units that help assist the Police Department, a couple members of the city council, a couple of community members and two members from the Police Department including the Police Chief and his Deputy that does the training. A committee instead of calling it an Oversight Committee a group that is a solution to our problems so that we can have better policing. That is what we all want. We want the maximum safety for the city. We want better policing. We want less crime. We want less lawsuits. This committee could help with policy and procedures, not investigating. They cannot investigate ongoing litigation anyway.

Mayor Miyagishima said you will be happy to hear that Mayor Pro Tem Gandara chairs and we have a Safety Committee and Congressman Vasquez would also give input. A lot of the changes you have seen in law is because of working with the Police Department or Police Chief and such.

Jennifer Kreie, Member of the Public said I resent the fact that some of you are treating this like they presented something that you are going to vote up or down on. They were trying to come up with a possible solution. So, you are going to vote down, you ignored the intent of what they were doing. They were proposing something because the Public Safety Select Committee is private. It is closed. It is not transparent. So, let's have transparency. We all care about public safety, the safety of officers but we have got to communicate not obstruct.

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Jean Berlowitz, Member of the Public said I live in District 6 Las Cruces and following up on what Jenn said. I have had no role or involvement in the proposal that was put forward to you today and I don't know if that is the best solution as Council woman Bencomo suggested there are other ways to deal with this. I don't know if the next presentation from OIR will make me feel any better than the last one did which was kind of like the dance we had at the beginning of the meeting but transparency which is a word many people have used here today is the word that means something to me. I want to add one new word to it and that is because we have no transparency there is fear. I fear our police and I know many people do to and that is not positive for our city.

Rob Wood, Member of the Public asked how did we get to this point of considering a Citizen Oversight Committee of policing.? We got here because of people like Juan Garcia of the Coalition of Conservatives in Action who have been repeatedly pointing out at these council meetings for months that we have a council that wants the public to see criminals as a group that has been victims of something created by social injustice and a desire and they deserve rights that deny the police from performing their community safety purpose.

Michael, Member of the Public said we are giving a lot of attention to excessive force but I think we are not giving enough attention to the culture which enables these excessive and in smaller instances infuriates citizens and creates distrust. I don't think there will be any police reform until there is moral reform which means there has to be honesty at all levels of the legal system. Officer made five false charges against me, the City Manager agreed that I deserved an apology, asked me to write it for him, I specifically said I don't want anything that talks about hurt feelings and poor communications and my response was to get an apology about hurt feelings and communications. This is not the way to treat citizens, to trivialize their complaints and you omitted this information from an OIR report. A Citizens Review Board is going to get that information out in the street and we need to do that.

Paul Borunda, Member of the Public said I want to commend the people here to my right that are proposing solutions for our issues that we are facing not only in dealing with police but the whole subject of criminality that no one is addressing not even the Police Chief or the Las Cruces Police Department or the City Manager or the Mayor or the Council. You are going to have to face your voters if you continue to find ways or looking for excuses to not listen to what the people are saying. That is the problem here, you think you are too important that you don't have to listen to your citizens that vote for you.

4.2 NATURAL GAS AND ENERGY LINE OF BUSINESS STORY.

Adrienne Widmer, Utilities Director introduced the topic.

Ramiro Pereyra, Interim Deputy Director of Natural Gas and Energy gave the overhead presentation.

Mario Puentes, Gas Business Analyst continued the overhead presentation.

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Councilor Flores asked what does it mean then to have a fixed price if it goes all the way from \$32 down to \$5.90, if there is a fixed price why is there that variance?

Mario Puentes said what I am showing here is these are all the packages of gas that we have lined up on January and so both the PEAK and NMMEAA gas is not hedged so we are buying 96,100 dekatherms from PEAK at the market price \$32.77 and we are buying 46,000 at the market price of \$32.80 and then line 3 we are buying 153,574 at the market price Permian and that was the market price of the Permian Basin. The remaining ones we fixed those prices but it's a culmination or summation of all this costs that make up the rates. We pay PEAK \$3.1 million for its gas. To be clear we did not hedge the PEAK and NMMEAA gas. We do not have an instrument currently to hedge that gas. We are working on it, but we don't have a way to hedge that gas currently.

Adrienne Widmer continued the overhead presentation.

Domonique Rodriguez, Assistant Utilities Director continued the overhead presentation.

Adrienne Widmer continued the overhead presentation.

Councilor Bencomo said I did want to note that I am excited about the transition update. I am really looking forward to seeing that evolve. One of the things I did notice specifically mentioned in this scope and something that I care deeply about is ensuring that in whatever transition, however long it looks like that you don't lose staff. That staff remain a priority that transition bring people that they train people. I just want to make sure that the people who have worked in this industry for years are able to continue to do so if they want to and so for me that is something that is a critical piece that if you are doing interviews that I hope that you ask. On page 17 with the graph to me this is one of the biggest reasons, to me this is graph that kind of explains why we need to transition so badly. Why we need to find alternatives and prepare for alternatives because we are kind of beholden to this system in our folks saw this huge increase in their bills and it is time that we start doing that and we put urgencies behind policies and legislation whether it is at the state level or federal level that will help us find alternatives faster but I certainly think that we do it responsibly and don't leave anyone behind.

Councilor Abeyta said in regard to that \$10 million grant that we were able to receive and with that I know that we need to do some line replacement. Do we have an estimate of what that looks like, what the immediate need is for our lines already?

Adrienne Widmer said what is really great is that particular grant had specific projects associated with it. Ramiro's group did an excellent job and so they actually told them there were two projects that were cut and so the nice thing is that the rest of those that were cut from that were taking a look at it if you want to come up and chat a little bit more about it Ramiro, they are actually going through whatever their top priorities are. They are going through that to find out how the \$10 million works the best. It is

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through a priority process, and it is for modernizing it, for rehab, that kind of stuff. It is not for new.

Councilor Abeyta said thank you for that distinction. I know that has been a priority to make sure that we don't add new lines but I know how important it is to take care of the lines that we have and to make sure we have those correct pressures for safety. I just want to make sure that as we balance it that we also recognizing that while we do these lines that we are very much responsible for that safety.

4.3 GROUND AMBULANCE TRANSPORT UPDATE

Jason Smith, Fire Chief gave the overhead presentation.

Councilor Graham asked can you talk a little about nonemergent transport, the burden that can put on the system and how this new strategy might help to address that?

Chief Jason Smith asked you're referring to interfacility transport from hospital to hospital and hospital to home?

Councilor Graham said correct, or I am thinking to facility to hospitals, through maybe some of our senior care centers, rehabilitation centers so I am thinking more about facility to facility transport.

Chief Jason Smith said that is a concern because when units come out of service from the 911 system to facilitate those transfers it does reduce what we have available for 911. Conversely it does move people in and out of the hospital system. It could be freeing up a bed, a spot in the emergency room as patients shuffle through the hospital. One thing we were aware of when we issued the RFP is that there are facets of the RFP that speak to performance when it comes to IFT and some of the penalties that we put in place or proposed putting in place address the 911 performance. So, we are aware of the impact of that but when we look at the health care system in needing ground ambulance transport it's kind of a 30,000 foot loop that we have to have for it.

Councilor Graham asked is that something that which we could build under this?

Chief Jason Smith said under our settlement agreement IFT's are not a key feature of what we are looking to do at the city we are focused on 911 response. I would say that we have put the IFT as a sole provider in the RFP and proposed that as part of the contract because those revenues should reduce the cost of providing 911 service. We are hoping that will actually reduce any subsidy that is needed.

Councilor Graham asked you talked about public and community education, can you give us an idea of what that might look like?

Chief Jason Smith said when it comes to billing, we are going to update our tariff rate as well as the example of the billing. How do we get that word out to the public of you are now going to expect these bills from the city. We are kind of aware of that, this

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presentation, outreach at the time of call for service and using the internet and social media.

Councilor Bencomo asked who does oversight on ambulance standards? Who sets the standard for service?

Chief Jason Smith said the state has regulations that are NMAC that are fire based and EMS response as well at the Public Regulation Commission. You are required to have medical control, medical oversight so you have a physician who oversees your scope of practice but there is national standard as well and a State EMS Bureau that sets the level of care you can provide.

Councilor Flores asked when you bill individuals, insurance companies pay for that? When you bill do you say your carrier may be able to help you out with this?

Chief Jason Smith said a call for service and if we respond and the entire LCPD response or a squad, which is an ambulance or one of our engine trucks, they respond to the scene and they get patient information we are going to gather identifiers that we can as well as their insurance information whether that is a private insurer or CMS, Medicare/Medicaid and we will submit all of that once the report is complete to our billing company. It will go through the report and bill it out. They will use that insurance information as well as hospital information or contact the local hospital to get patient information so we can bill the insurance provider. That is the first step to figure out if the insurance provider what their portion is to pay. Anything that is residual you may have a copay or deductible that gets billed out to the individual.

Councilor Flores asked I know the presentation back in 2018 was contentious and so the contract is coming up for renewal in 2024, so do you see any bumps in the road or anticipate any hesitation on the part of the county?

Chief Jason Smith said no hesitation I think with the County. We have definitely moved from trying to find each other and understand the different points of view to issuing this RFP together and being collaborative in our approach. AMR has confirmed to extend their contract all the way to the end of year till January 1st when the new contract takes over.

Councilor Flores asked AMR contracts with the County?

Chief Jason Smith said they do currently.

Councilor Flores asked there is cross over sometimes?

Chief Jason Smith said yes there is.

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Councilor Flores said your dots go all the way down to Vado and Anthony. What are the automatic aid agreements? That is prospective, correct with the County, NMSU and Mesilla?

Chief Jason Smith said we are beginning to talk with the Chiefs that represent the County, Chief Cherry, Chief for NMSU and Chief for Mesilla. Talk to them about what type of calls we can respond to on an automatic basis if it is for CPR or a structure fire that way, we can extend our services and assist in those areas where it would make sense. Organ is really isolated from most access from the rest of the county. Our Fire Station 5, 6 and future 9 will be closer to help render aid so if they need help rather than having to make this request and call people it could be automatic through our computer aided dispatch to send the units that are needed. So, we are looking at trying to improve those relationships and go from a mutual aid agreement where we have to call and agree or it is just written and adopted automatic aid.

Councilor Flores asked if you don't have the automatic aid agreement then it sort of makes things harder to do and adds more time to the response?

Chief Jason Smith said that is correct, it adds more time it slows down the process. There is a request of permission so it does slow it down where we can have it as part of the CAD system.

Mayor Miyagishima asked would this service replace AMR?

Chief Jason Smith said we are working on reissuing an RFP. Nobody was excluded. No companies were excluded from that process. We are going to work with the top scoring bidder on negotiating.

Mayor Miyagishima asked if the city wins the bid?

Chief Jason Smith said we are not putting in a bid for the services. It was contracted out because it is for the entire county. What we did for that RFP is carved out a portion of the most critical call types that we want LCFD responding to only. CPR, stroke, chest pain, very acute trauma where it is level one highest priority trauma patient, we want a full LCFD response within the city and that is what is placed in the RFP. Currently under the mediation agreement we are providing over 4,000 transports a year because those units are delayed because we are waiting on scene for too long for AMR or it is a life or limb situation, and we are providing transport right away.

Mayor Miyagishima asked AMR could still possibly exist, both AMR and the city response?

Chief Jason Smith said yes. Any selected vendor in the future would co-exist with LCFD ambulance units.

Mayor Miyagishima said the reason why I bring this up is prior to Obama Care, the County has what they call Indigent Fund and it is about 1/16 of our gross receipts tax

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because we are county residents as well and it goes into a fund and these are old numbers but I wrote them down a long time ago back then it was \$4.5 million that they collect annually and I know they give \$1.3 million to AMR. If the city is going to be picking up a good portion of their territory, I would think that that they would need to reimburse some of that to the city. That is just my take \$1 million to local providers, \$1.3 to AMR and I have here distributed statewide. Typically for volunteer fire fighters house insurance, your personal homeowner's policy usually has a coverage of \$500 that is meant because some volunteer fire departments bill residents. The reason that I bring this up is earlier I heard Councilor Flores ask how will it be billed? I think if the bill comes from the Las Cruces Fire Department and if they live in the city and if they have in their homeowner's policy, I think that is \$500 that could be had from their home insurance.

5. ADJOURNMENT

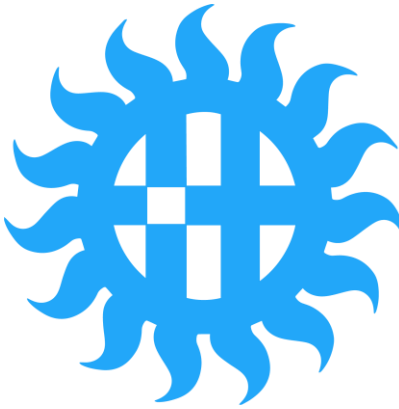
5.1

Councilor Tessa Abeyta moved, seconded by Councilor Johana Bencomo, to Adjourned at 4:53 p.m.

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

Mayor

City Clerk



MINUTES

Work Session

Monday, June 12, 2023 @ 1:00 PM
City Council Chambers, City Hall

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

ABSENT: Councilor Tessa Abeyta

1. PETS OF THE WEEK

1.1

Amy Defelix, ASCMV introduced the Pets of the Week.

2. JOBS OF THE WEEK

2.1

Giselle Palomares, New Mexico Workforce Connection presented the Jobs of the Week.

3. AGENDA ITEM

3.1 PROPOSED REDESIGN - LOHMAN & AMADOR CORRIDOR.

Antonio Lujan, Retired State Representative gave an overhead presentation.

Mayor Miyagishima said so what you're proposing is kind of shrinking the four lanes into three or are you just wanting to remove one of the lanes. I guess this is looking west so on the left are there some sidewalks there now? Is that all one lane and on the right where you have the ADA compliant sidewalks.

Antonio Lujan said there are some, they are not ADA compliant by any means.

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Mayor Ken Miyagishima said is it fair to say that the first 3 lanes the size are the same, it's just that the one to the far left is the one going to be used as for the median and the bike path.

Antonio Lujan said exactly right.

Mayor Miyagishima said ok.

Antonio Lujan said the size the size of the lanes and the width of the lanes will remain the same. I should also point out that there is a business establishment on Lohman and on the weekends back up traffic so you only have the access of 3 lanes that shows that it is feasible to do something like this and it wouldn't create such a safety hazard for pedestrians as well as other people moving around the neighborhood.

Councilor Bencomo said thank you Mr. Lujan. I appreciate you all coming and for the work Las Esperanza's has done to bring this proposal forward. I think there has been some questions in the public about if this was staff driven or council driven, but it was very much resident driven, and I think that is really beautiful. You had some statistics around the number of crashes was within a year or what was that statistics you presented I did not quite catch the length of time frame.

Antonio Lujan said I beg your pardon no that was for 2022.

Councilor Bencomo asked can you repeat them?

Antonio Lujan said yes for Lohman was 65 and for Amador 56.

Councilor Bencomo said I didn't quite catch it fast enough so I wanted you to repeat it and then I did I also think this is a good proposal I think I have been keeping track of all the pedestrian fatalities and accidents we have had in this city in the last couple of years and they're significant so anytime we can reduce and calm traffic I think that is important so I want to appreciate that. Given the amount of detail you have put into this I do want to ask you all how much how much flexibility or open you are to discussions and negotiations because for me it is important that our public works experts and engineers have because they have expertise and about these kind of things and I would like their input on it and am wondering if you all are saying yes we want this proposal and whatever it looks like between now and then that we're open to that.

Antonio Lujan said it's a proposal.

Councilor Bencomo said my question would be for Tony or David to start thinking about it since they came to us a few months ago if you all started looking at this already and what is the possibility and just if your team has thought about it, is my general question.

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Mayor Pro Tem Gandara said We have stayed in communication I know with each other, so I am aware of sort of the debating that was happening and how you really wanted to see this. I will say Catrina and I went with Ashleigh Curry and Scott Kaiser and looked at the not this particular area but the area at Walnut that we just completed and pointed out some issues I thought that made sense and we're getting ready to put that in writing for you, but we are always centered around pedestrian safety especially that there is a school so close which is Sierra Middle School. It has always been a safety issue. I get numerous complaints about drag racing and the noise and really quite frankly before the downtown has developed the way that it has the Mesquite Historic District area has had more business and commerce and kind of live/workspaces. So, I know that for instance the bakery would like to put some tables out there, but the traffic just abuts so close to the door it's a hazardous and unsafe to do that at this point, so I am grateful to the group. We've made some significant progress on what is the best course of action but I know the group is open to sitting down with traffic. I know last week or maybe a couple of weeks ago I sent an email over to David to say what would be the next steps knowing you were coming and doing the presentation. So of course, it would be helpful to know what the cost, if there are temporary things, we can do to start doing some small experiments would be very helpful so that the flow of traffic could have a better idea of what to experience in the event that we go down to three lanes. My question to you is this from Amador all the way to Solano?

Antonio Lujan said yes, it is councilor. The other thing I would like to mention is I have a lot of experience in planning projects with the city over the years. I also consider that this project needs to be time sensitive, and I have seen plenty of projects that have been shelved and they're not spoken of again and they die on the vine so to speak so I hope this does not happen to this project there is a lot of people who have invested in this, and the safety of our community is at stake.

Councilor Flores said it is very dangerous and I have often thought about that, and I agree with you that 3 lanes would definitely have a calming effect and the design of having some shrubbery and bike lane and traffic would flow and I definitely support this. So, did you run it by anybody at City Hall because the plan is done very well?

Antonio Lujan said no Councilor Flores, it is strictly a home-grown operation.

Councilor Flores said I am glad you are starting this process now I hope that the city see's that it is a very treacherous road without a doubt.

Mayor Miyagishima said the city in the 10 years have been looking at what we call road diets and to identify areas that they feel that are kind of large and because it is hard to cross the street and so you see that especially on University where you have the students trying to cross and a few other places that the city has implemented some type of things. I especially like the one on Nevada the street is still the same it's just the mind says there is something in the road there, so you slow down. I think this bodes well with the council's thought to look at areas that are somewhat dangerous. I have driven this street many times and it is not packed so I personally think that it could lose one lane and I think you can still move traffic quickly. I don't think we can

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just accommodate one business but the reason I say this is if we were to do this this bike lane and median, I don't know if it would help the problem, it might exacerbate the problem now you have what was 4 lanes is now going to be one lane tied into. That is a traffic hazard when you have cars on Lohman lined up just to turn into the restaurant.

David Sedillo said those are some of the considerations that we started looking at. At this point there are a lot of unanswered questions though there is a lot of conditions that are within this stretch between Solano and I believe Main Street, but the effects don't just stop there. You have the roadway that continues and ties into those so as you go basically further up or further east right there at Lohman and Amador you will have to also reconfigure or look at how that is going to go back and tie in because we can't have 4 lanes all of a sudden merging into 3 so that is going to extend the limits on both ends of there. Access is another item we will have to take a look at because you do have some properties that are in between the blocks that directly access onto Amador then again how are we going to take a look at those, how are those businesses still going to be able to make that connection. It can be done but now were introducing some other features that may or may not be an impediment. Again, we don't know what those things are until we study this.

Mayor Miyagishima said what I need to know if council feels there is enough support to at least let Public Works study this whenever they have a chance to bring it back for council to take a look at.

Councilor Bencomo said yes, I think this is something I would like to support and studying. I do however have a question about that process and how you prioritize. Right now, I imagine you have a whole list of roads you are studying some of them I have requested myself, so I am wondering what takes priority, just the process of how you get something on the list to study and honestly about how many other studies do you have in the City off the top of your head that is geared towards traffic calming and road diets.

David Sedillo said I don't have a specific number; I can get you those, but I can let you now the process we take so when we get these requests, we basically start putting them in line and we start stacking them. There are opportunities that we take a look, and we see that this is an immediate safety concern and immediate danger we will push that up to the front but typically as we get those requests, we basically put them in line. For a study this large we currently don't have the funding for it. If we were to do it there is going to quite a few things we basically remove off the work that we are currently doing and so again that is an option for council to do, just wanted to let you know that is one of the things we don't currently have but certainly if it is the will of the council and approved by administration at that point then we would be looking for funding sources to move forward.

Councilor Bencomo asked a project of this size what do you think the cost of this would be?

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David Sedillo said at this point in time we can't even ballpark it until we start at working out a scope until we take a look at that. I don't want to provide an estimate not knowing if we're going to capture everything we need to. Based on the proposal that is coming forward. We have looked at high level items but then again there are other items we need to take into consideration like existing utilities. We don't know everything that is underground not only ours but also private and lastly this is a 4-lane stretch. This is one of the major arterials that connects our east side to our west side so there was a mention that yes it doesn't really seem that packed but that is because we have the 4. Shrinking that down I can't tell if that's automatically going to make it as congested as Telshor and Lohman but there is that possibility. So, this is that gateway going east to west because we do have that stretch of the US70 and Lohman as those major corridors.

Councilor Flores said if you can get information to the City Manager about how many such projects you have on a list that either council has requested, or your staff has deemed necessary. I have been advocating for a study at Alameda and Hoagland right and that seems like a priority to me as well so I think they might be competing things so I would like to see David if you can get that data to us that would be great.

Mayor Pro Tem Gandara said I appreciate hearing kind of the competing demands of not really understanding what the scope is and the funding, but I want to remind us that on the dais we have heard some very staggering statistics and that should really prioritize this and bump it up to the top when we hear Lohman 65 accidents I don't even know if that meant fatalities and on Amador 56. Those should be really concerning to us, and I want to make this a priority. I hate for us to be reactionary, but I feel there is no other way to get the attention that it needs to push us to make things safer for our pedestrians, our bicyclist. This is an important issue I am sure all of us at different times get the kind of emails about the fatalities that just occurred on a bike and so for me David a question to you is the only other example that I have to lean on is the Alameda road dais that we did during Covid and we had a small group that really advocated for it and took a considerable amount of time. I feel like if it is going to take that much time then we take pieces of it and start experimenting with what we can do temporarily and then sort of moving then into whatever the long-term plan is going to look like. I would hate for us to just wait wait wait until it rises up to the top priority. Maybe we can hire someone else to do that sort of consultation assessment and I just don't want it to sit. I think there is enough advocacy here to really push this hearing the kind of numbers we just heard. So, David the question to you looking at that I'm thinking we can do some temporary things like I see all over the city that sort of helps mitigate some of the speeding and getting folks familiar with the different things we trying to institute. Is that something that you would consider?

David Sedillo said those are things we can certainly look at. Typically, some of those other things we have done have not been on major arterials. Those have been on residential streets those have been possibly on Alameda when we have done the road diets those are on collectors so yes we can take a look at those but we don't have an example to go specifically back to an arterial so that is going to be our challenge to look and see what we can do if this is something on the temporary point of view status view is how we can do that safely so again understanding that it is for all road users.

Mayor Pro Tem Gandara said I know in conversations with Martha about looking at a smaller sample size from what you're giving us I think there was some discussion about looking at that area Campo up to a certain street. Can you talk a little bit about that. I am not sure if she had explained that to you but that would be something we can start with.

Antonio Lujan said I would like to add two things that make me cause for concern one is that our area, our neighborhood, has become a traffic dumping ground for the rest of the community in terms of traffic because it going to disrupt traffic. Everyone else seems to find accommodations except for our neighborhood. Now I don't want to be defensive about this Mr. Mayor and councilors but with all due respect I see that our area is a traffic sacrifice area for the rest of the community, and I take issue with that. Other than attempting things incrementally I will do that, but I also urge that this is an immediate traffic problem, and it needs to be placed in priority.

Mayor Pro Tem Gandara said when we talk about complete streets, and having it be walkable and to my point earlier this particular area has more businesses walkable from the downtown we really need to consider this.

Councilor Flores said I agree with Mayor Pro Tem Gandara that this is definitely a priority and everything in our city is a priority, because it takes so long to get to something because other things can seem to get backed up as you stated Mr. Sedillo so if we were to prioritize this then other things get backed up and I also understand that we have to comply with Federal Highway Regulations that the State of New Mexico has adopted in terms of complying with those designs of streets and thorough ways. All that being said I am wondering is there any Federal Program or organizations that can contribute to safe streets or this sort of a project. What makes me think that is that I know that AARP has donated a lot of stuff to the City for the parks and parks area I'm wondering if there is any organization weather its private or governmental that can in anyway contribute to safe streets.

David Sedillo said there are grant opportunities I believe there was a safe street grant recently done. I am not sure if that is a grant that is going to be award on an annual basis. We have seen quite a few infrastructure bills come out that are addressing infrastructure needs and again those were awarded for again with a 5-year re-occurring opportunity so there are opportunities out there. Specifically if there are organizations not public, like private partnerships, I don't know how well that will tie into the corridor here however we could look at different funding sources again based on the amount or the scope of the corridor that is going to be quite a large bill looking at it right typically we see our normal reconstruction whether residential or some other areas at a large cost however we can take a look at these opportunities. Mr. Lujan did provide a list here of opportunities for funding resources and there is the DOT infrastructure funding I just mentioned, the New Mexico Capital Outlay Surface Transportation Block Grants, so there's many out there that can specifically be award to the project if applied for.

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Councilor Flores said right so it would be our different departments working to see if grant money is out there, funding sources out there because I think foundations might exist too for this sort of project, private donor. Anyway, I just want to ask if it was possible and maybe our respective departments can look into that to see if there is a way to move it along to expedite it and you also have to look to see if this is something that can really be realized to make sure it is all consistent with the laws that exist.

Councilor Bencomo said I hear you on feeling the area is sort of marginalized when it comes to traffic however, I do want to gently push back on that a little, given that because what I am hearing here is that a consensus that this a proposal that is good and important and that we want Public Works to work on it. However, I will note that it's a matter of context as well right because when I talk to constituents that live on Alameda and Hoagland, Hoagland feeds right into Mayfield, and the traffic gets insanely backed up there when school is in session it is really bad there for the neighbors in that area. They also feel it's an urgent matter and they also feel that should be a priority. I think we have to take context into context because when you are in that particular neighborhood it's urgent to you and it's important to you that your project is less or more that someone else's request. Even though I think what makes this more significant is that these are major arterial roads in our community that are huge connectors to, like David said east and west so what I am hearing here is yes, we agree with you that this is an important proposal. I just think I am also hearing there's things that need to be balanced out before we go re-striping the road and potentially cause un-intended harm. I just wanted to note that because it is incredibly important to you and not everyone gets time to come and present at Work Session about their community concern.

Antonio Lujan said I certainly hear what you're saying however I will question how many fatalities there has been on Hoagland as compared to Alameda & Lohman.

Councilor Bencomo said well I think what I would like to add to that is that you also have to take that into context because statistically I would assume that there are more major accidents on a major arterial then a collector and compare those given the context what kind of roads they are.

Mayor Miyagishima said the timing is very good for the upcoming legislature. I was just looking and listening to some of the comments made by the Director of Public Works Mr. Sedillo looks like it might need to start really as far back as Miranda Street because that is where Lohman and Amador kind of meet and then it starts curving around so if we are going to start a 3 lane it might have to start there and then maybe go to Solano. It may have to be just Lohman only because after listening to David's comments it would be tough to go from 4 lanes to three but if you're going east and going up Lohman then you stop at Solano there is way to say this is just for right turns only. That might help mitigate a little bit of the problem I don't know but we will leave that up to them. What I was thinking if there is a consensus to move forward for staff to at least come up with an idea of how much it's going to cost so we can get this amount done from the legislature, perhaps legislator Representative Rubio can support that and that's in time for the 2024 legislative session and let's just say

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hypothetically it cost \$250,000.00 to study. Then at least you have this amount so the City can go out and bid have some engineering firm come and take a look at it and see just exactly how much is going to cost because if I remember correctly this is also a State Highway because it's Lohman so that my help or hinder I don't know but it might also trigger in some other funds from the Department of Transportation so is that something that is acceptable to you?

Antonio Lujan said of course Mr. Mayor.

Councilor Corran said does this relate to the CIP and ICIP I'm not really sure how this appears on those if it does and I think that it seems like that should be our understanding of how we do things like this, it comes from those documents so I'm curious of what the status is in that and how we would change that status potentially given all the factors that folks have spoken about today.

David Sedillo said at this point in time this project is not on the CIP which was recently approved so what is on the CIP will be moving forward into the FY 2024 legislative session. For this to be eligible it will need to be placed on the CIP for the City to move forward and have those requisitions sent through. I don't know if this will be eligible at this time as all of those ICIP forms are actually being developed and submitted now to the State as far as the process goes, but we can always take a look and reach out to our lobbyist Larry Horan to see if they are any opportunities or if this will actually have to be approved on the CIP and then moved forward the following year.

Councilor Corran said thank you for that context I think just as far as how we make decisions that's a big variable in terms of what we have been saying and how we can move forward.

Mayor Miyagishima said I am smiling because I don't know if there is an actual policy that it has to be done that way. We will direct Ifo to work with his staff and figure it out whether it needs to go to ICIP first and get it on a list then bring it back put it on the list or if doesn't have to be and if it's not too late then that's something to do for the following year.

George Pearson, Member of the Public said so I have a couple of hats as President of the Alameda Depot Neighborhood Association we have had a meeting and we have approved this and so the neighborhood looks forward to this as President of Velo Cruces this is very much along our in our area and we would certainly endorse this. As far as the extent you had mentioned maybe down to Miranda, but we have to at least go down to Alameda. The City currently has a Transportation Project Fund with the State application for more than a million dollars to do a design work for bicycle facilities on El Paseo from University and extends all the way to Amador, so it makes sense that we need to connect these. So as far as the time frame Councilor Gandara remembers it took about 2 years to do the Alameda road diet so it's going to take 2 years to start thinking about this so this is not going to be a simple straight forward project, this is going to be a multi-year project and as far as the beginning of the fiscal year you funded a traffic planner, so maybe the traffic planner can be assigned this as one of his projects and just in general whenever you add bicycle facilities makes it

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safer for all modes of travel so this is a safety project. One of your comments was people driving the wrong way, maybe we should think about making it a two-way conversion, in the corridor maybe that's worth a study, not throw it out but at least consider it. I am not an engineer so I don't know about capacities and all that, but I do know a two-way conversion would slow down traffic and would make the businesses more viable because people would be going past those businesses potentially at a slower speed and have more contact.

Israel Chavez, Member of the Public said I just want to express my support for this project. I understand that is somewhat focused an area, but it is an area that folks have mentioned a lot of people use. Almost every National Study that has come out said additional lanes of traffic don't alleviate traffic they just provide another lane for traffic and so by reducing a major artery like this we are not going to see a crazy increase in traffic. What we will see is a reduction of fatalities and that effects everybody right because the people that have died on that street in the last 5 years not all of them lived in that neighborhood, in addition the people that do live there they would benefit by having a safer more walkable community. So, this isn't a safety issue, it's an equity issue about the folks. So, I would oppose restricting it to one because south of the two one ways we have a huge community of folks that are transit dependent, who are walking. We have low-income housing which is concentrated in that area we have a lot of bus infrastructure along these routes that would really benefit from this infrastructure, and you know in my experience when we have done major pedestrian dedicated projects like this across the State including Albuquerque what we've seen is an increase in walkability and the businesses while it may take a while the businesses end up doing better. I would encourage council to think about those folks not hyperbolically but literally lost their lives in this corridor and if you want to see speeding cars you can go around any night, that is not to say that there aren't other projects are worth funding.

3.2 GO BOND QUARTERLY UPDATE

David Sedillo, Public Works Director gave an overhead presentation.

Councilor Graham said you mentioned the design team is going to be meeting with end users. Will that include online personnel who will be living/working at the station?

Jason Smith, Fire Chief said yes.

Councilor Graham said our Fire Stations are unique among City buildings because it's also where people live and not just work so cool, I just like to have input in where I'd be sleeping or cooking.

Councilor Bencomo asked on the parks are you saying that these are the 2 projects that the \$1.98 will be able to cover or are these just the 2 that have been identified for now?

David Sedillo said these are the two that feel that we could possibly get achieved with the amount, again based on whatever cost we do have the La Llorona that may or

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may not be, but we wanted to include that just to say if there is additional funding then that money will move down to their second top rated project.

Councilor Corran said I am curious about the East Mesa Park I understand it's a little bit blurry but from the prior GO Bond to this GO Bond, but I'm curious is there a Phase opening plan and if so, is it on track to open soon or will things be useable before all these things come online, I'm hoping things might be able to be phased in.

David Sedillo said that has been a discussion that we've had ongoing one of the things we want to ensure is the public safety because it's still going to be a bit of work happening throughout these so we may have some facilities completed, however with additional installation of infrastructure like the lighting we will have to have that space again, to be able to do that, access in and out with construction workers moving back and forth between the site we don't feel that's very safe space for the public to be in and put them at risk so we keep evaluating. Once we get to the point that we can open an area safely we will do so but at this point in time the work that remains we are looking at holding that until we get to a spot that we feel comfortable enough that the public and the contractor are not in conflict.

4. ADJOURNMENT

4.1

Councilor Johana Bencomo moved, seconded by Councilor Becki Graham, to Adjourn at 2:14 p.m.

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

Mayor

City Clerk



City Council Action and Executive Summary

24-001

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1	☐ 2	☐ 3	☒ 4	☐ 5	☐ 6	☐ N/A
1st Reading:				Adopted:	July 3, 2023		
Drafter:	Andy Hume			Department:	City Manager's Office		
Program:	Airport			Line of Business:	Airport		
Title:	A RESOLUTION APPROVING THE LAS CRUCES INTERNATIONAL AIRPORT FISCAL YEAR 2024-2026 RATES AND FEES REPEALING AND REPLACING RESOLUTION 21-189 EFFECTIVE AS OF JULY 1, 2023.						

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

PURPOSE(S) OF ACTION:
Approve Las Cruces International Airport Rates and Fees.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
In June 2021, City Council adopted a rates and fees structure for the fiscal years of 2022-2024. This structure included the transition of the land lease rates over a three-year period, implementation of rates for the use of the airport for films, and adjustment to the rates for City-owned office and hangar space to better reflect market values.

Since then, Airport administration has monitored the rate and fees to continue to meet the following goals: establish a standardized approach for assessing rates for land, facility, and other leases; determine fees for various users for the use of Airport facilities; apply equitable rates and fees at a market level; and achieve compliance with Federal Aviation Administration Grant Assurances.

Based on these goals, Airport administration makes the following recommendations: 1) remove the transitional fee schedules; 2) include the option of leasing office space in the City-owned hangar at 8950 Zia; and 3) simplify the landing fee structure to better reflect industry standards and make it more equitable.

Aircraft Example w/ MLW (maximum landing weight)	Current Fee (Flat fee)	Proposed Fee (\$1.00 / 1,000 lbs. MLW)
King Air 350 (15,000 lbs.)	\$4.00	\$15.00
Challenger 600 (36,000 lbs.)	\$7.00	\$36.00
Boeing 737 (146,275 lbs.)	\$140.00	\$146.28

City Council is being requested to repeal the old rate and fee structure found in Resolution 21-189 and approve the Fiscal Year 2024-2026 Rates and Fees effective as of July 1, 2023 in accordance with Las Cruces Municipal Code Sec. 7.5-124.1.

SUPPORT INFORMATION:
[Exhibit "A"-LRU Rates and Fees FY2024-26](#)

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[Attachment "A"-LRU Rates and Fees FY2024-26 redline](#)

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 repeal Resolution 21-189 and approve the new rates and fees.
2. Vote "No"; This will retain the current rates and fees.
3. Vote to "Amend"; This will require further direction to staff.
4. Vote to "Table"; The current rates and fees would remain in effect.

RESOLUTION 24-001

A RESOLUTION APPROVING THE LAS CRUCES INTERNATIONAL AIRPORT FISCAL YEAR 2024-2026 RATES AND FEES REPEALING AND REPLACING RESOLUTION 21-189 EFFECTIVE AS OF JULY 1, 2023.

The City Council is informed that:

WHEREAS, the City owns and administers the Las Cruces International Airport (Airport) as a part of the national air transportation system for the benefit of our citizens and visitors; and

WHEREAS, the City desires to enhance the value of the Airport as a vibrant economic engine through orderly operations, maintenance, and growth; and

WHEREAS, enhancing the value of the Airport requires consistency and equity in the application of rates and fees; and

WHEREAS, Federal Aviation Administration Grant Assurance 24 requires the Airport to “maintain a fee and rental structure... which will make the airport as [financially] self-sustaining as possible under the circumstances existing at the particular airport...”; and

WHEREAS, the City desires to adjust the rates and charges at the Airport to as close to market value as economically feasible in order to achieve compliance with Grant Assurance 24.

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

(I)

THAT Resolution 21-189 is hereby repealed effective as of July 1, 2023.

(II)

THAT the Las Cruces International Airport Fiscal Year 2024-2026 Rates and Fees attached hereto as Exhibit "A", is hereby adopted and shall be effective as of July 1, 2023.

(III)

THAT City staff is hereby directed to review the land lease rate at least every three years beginning with the effective date of the adopted Rates and Fees.

(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

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APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



RATES AND FEES FISCAL YEARS 2024-2026

Approved Resolution 23-####, June 20, 2023

Effective July 1, 2023

Type	Amount
Vehicle Parking Space	
FBO/SASO/Non-Aeronautical	\$0.98 / month
Public Parking Short Term	\$31.00 / month
Public Parking Long Term	\$341.00 / year
Fuel Flowage	
City Owned Facility	\$0.08 / gallon
Non-City Owned Facility	\$0.05 / gallon
Specialized Aviation Service Operator (SASO)	
Airport-based (Sq. ft. based on hangar size)	\$0.08 / sq. ft. / year Minimum rate \$240 / year
Through-the-fence	\$100.00 / month
Land Lease	
One-time processing fee	\$250.00
Unimproved Land (no taxi lane/street access within 100 ft.)	\$0.12 / sq. ft. / year
Improved Land (w/ taxi lane or paved street access)	\$0.16 / sq. ft. / year
Facility Lease	
Hangar Lease for 725 White Lightning (SASO rate included)	\$3.84 / sq. ft. / year \$0.32 / sq. ft. / month
Hangar Lease for 8950 Zia Blvd. (SASO rate included)	\$4.80 / sq. ft. / year \$0.40 / sq. ft. / month
Office Space in 8990 Zia Blvd.	\$11.00 / sq. ft. / year Minimum rate \$85 / month
Office Space in 8960 Zia Blvd.	\$7.00 / sq. ft. / year Minimum rate \$75 /

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	month
Restaurant Space in 8960 Zia Blvd.	\$6.00 / sq. ft. / year
Terminal Building Counter Space	\$15.00 / sq. ft. / year
Operations, Storage Space, Baggage Claim Area	\$15.00 / sq. ft. / year
Kiosk Space in 8990 or 8960 Zia Blvd.	Office rate for respective building; Minimum rate \$100.00 / month
Airport Advertising (50" Television Display)	\$35.00 / month
Parking apron rented by an FBO	\$0.035 / sq. ft. / year
Parking apron rented by a SASO	\$0.07 / sq. ft. / year
Sunshade	
Daily	\$25.00 / day
Monthly	\$75.00 / month
Annual	\$825.00 / year
Non-Aeronautical Land or Facility Lease	Fair Market Value
Landing Fee – (Part 121, Part 135 and 91K Fractional only)	\$1.00 / 1,000 lbs MLW (maximum landing weight)
Tie Down / Aircraft Parking (commercial and non-commercial)	
Wingspan or rotor width ≥ 39 feet and ≤ 60 feet	
Daily	\$6.00 / day
Monthly	\$60.00 / month
Annual	\$600.00 / year
Wingspan or rotor width $\geq 60'$	
Daily	\$8.00 / day
Monthly	\$80.00 / month
Annual	\$800.00 / year
Key Card and RFID Tag	
Initial key card	No charge
Replacement card	
1 st time	\$15.00
2 or more times	\$30.00 / per time
RFID tag	\$20.00

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Film Production	
Permit Application	\$50.00
Filming	
Flat: Up to eight (8) hours per day (Monday-Friday, 6 am – 4 pm)	\$500.00 / per day
Hourly: Beyond eight (8) hours or outside of normal airport personnel hours	\$75.00 / hour
Operations Personnel	
Regular (Per City of Las Cruces Personnel Manual)	\$40.00 / hour
Overtime (Per City of Las Cruces Personnel Manual)	\$55.00 / hour Minimum two (2) hours
Clean up	Negotiated based on occurrence



RATES AND FEES

FISCAL YEARS ~~2022-2024~~2024-2026

Approved Resolution ~~21-18923-###~~, June ~~2120~~, 20212023

Effective July 1, ~~2021~~2023

Type	Amount
Vehicle Parking Space	
FBO/SASO/Non-Aeronautical	\$0.98 / month
Public Parking Short Term	\$31.00 / month
Public Parking Long Term	\$341.00 / year
Fuel Flowage	
City Owned Facility	\$0.08 / gallon
Non-City Owned Facility	\$0.05 / gallon
Specialized Aviation Service Operator (SASO)	
Airport-based (Sq. ft. based on hangar size)	
Beginning July 1, 2021	\$0.06 / sq. ft. / year Minimum rate \$192 / year
Beginning July 1, 2022	\$0.07 / sq. ft. / year Minimum rate \$216 / year
Beginning July 1, 2023	\$0.08 / sq. ft. / year Minimum rate \$240 / year
Through-the-fence	\$100.00 / month
Land Lease	
One-time processing fee	\$250.00
Unimproved Land (no taxi lane/street access within 100 ft.)	\$0.12 / sq. ft. / year
Improved Land (w/ taxi lane or paved street access)	
Beginning July 1, 2021	\$0.12 / sq. ft. / year
Beginning July 1, 2022	\$0.14 / sq. ft. / year
Beginning July 1, 2023	\$0.16 / sq. ft. / year
Facility Lease	
Hangar Lease for 725 White Lightning (SASO rate included)	\$3.84 / sq. ft. / year \$0.32 / sq. ft. / month
Hangar Lease for 8950 Zia Blvd. (SASO rate included)	\$4.80 / sq. ft. / year \$0.40 / sq. ft. / month
Office Space in 8990 Zia Blvd.	\$11.00 / sq. ft. / year Minimum rate \$85 / month

Office Space in 8960 <u>or 8950</u> Zia Blvd.	\$7.00 / sq. ft. / year Minimum rate \$75 / month
Restaurant Space in 8960 Zia Blvd.	\$6.00 / sq. ft. / year
Terminal Building Counter Space	\$15.00 / sq. ft. / year
Operations, Storage Space, Baggage Claim Area	\$15.00 / sq. ft. / year
Kiosk Space in 8990 or 8960 Zia Blvd.	Office rate for respective building; Minimum rate \$100.00 / month
Airport Advertising (50" Television Display)	\$35.00 / month
Parking apron rented by an FBO	\$0.035 / sq. ft. / year
Parking apron rented by a SASO	\$0.07 / sq. ft. / year
Sunshade	
Daily	\$25.00 / day
Monthly	\$75.00 / month
Annual	\$825.00 / year
Non-Aeronautical Land or Facility Lease	Fair Market Value
Landing Fee (Part 121, Part 135 and 91K Fractional only)	<u>\$1.00 / 1,000 lbs. MLW</u> (maximum landing weight)
Commercial Aircraft ≤ 18,500 lbs, no ARFF required	\$4.00 / landing
Commercial Aircraft > 18,500 lbs, ≤30 pax, no ARFF required	\$7.00 / landing
Commercial Aircraft > 30 passengers and/or ARFF required	
Landing Fee	\$140.00 / landing
Apron Use Fee	\$140.00 / landing
Fire Department Standby	\$140.00 / hour
Terminal Use Fee	\$140.00 / landing
Tie Down / Aircraft Parking (commercial and non-commercial aircraft)	
Wingspan or rotor width ≥ 39 feet and ≤ 60 feet	
Daily	\$6.00 / day
Monthly	\$60.00 / month
Annual	\$600.00 / year
Wingspan or rotor width ≥ 60'	
Daily	\$8.00 / day
Monthly	\$80.00 / month
Annual	\$800.00 / year
Key Card and RFID Tag	
Initial key card	No charge
Replacement card	

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1 st time	\$15.00
2 or more times	\$30.00 / per time
RFID tag	\$20.00
Film Production	
Permit Application	\$50.00
Filming	
Flat: Up to eight (8) hours per day (Monday-Friday, 6 am – 4 pm)	\$500.00 / per day
Hourly: Beyond eight (8) hours or outside of normal airport personnel hours	\$75.00 / hour
Operations Personnel	
Regular (Per City of Las Cruces Personnel Manual)	\$40.00 / hour
Overtime (Per City of Las Cruces Personnel Manual)	\$55.00 / hour Minimum two (2) hours
Clean up	Negotiated based on occurrence



City Council Action and Executive Summary

24-002

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	Adopted: July 3, 2023		
Drafter:	Alicia Hernandez	Department:	Financial Services
Program:	Procure to Pay	Line of Business:	Purchasing
Title:	A RESOLUTION TO AWARD CONTRACTS FOR ENVIRONMENTAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO DANIEL B STEPHENS & ASSOCIATES INC., PARKHILL, SOUDER, MILLER & ASSOCIATES, TERRACON CONSULTANTS INC., AND ZIA ENGINEERING & ENVIRONMENTAL CONSULTANTS LLC, IN AN AMOUNT NOT TO EXCEED \$500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR FOUR (4) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-036).		

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

PURPOSE(S) OF ACTION:
To award contracts for environmental engineering services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
On March 16, 2023, the Project Development Program of the Public Works Department requested proposals for environmental engineering services. Purchasing received five (5) proposals that were evaluated and scored by the Selection Advisory Committee (SAC). The SAC is recommending award to all five (5) rated firms as follows:

- 1. Daniel B Stephens & Associates Inc. – Albuquerque, New Mexico
- 2. Parkhill - Albuquerque, New Mexico
- 3. Miller Engineers, Inc. DBA Souder, Miller & Associates – Las Cruces, New Mexico
- 4. Terracon Consultants, Inc. – Las Cruces, New Mexico
- 5. Zia Engineering & Environmental Consultants, LLC - Las Cruces, New Mexico

These services are required to perform design functions that include, but are not limited, to the following: the design and preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management of indoor air quality and asbestos, testing and analysis of soil and groundwater for contaminants, environmental permitting, land use permitting, and NPDES & SWPPP compliance. The purpose of the environmental engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services.

These proposed service agreements will be used on an as-needed basis for a period of up to five (5) years, subject to annual renewals and approved budget appropriations. It is advantageous for the City to have a pre-qualified list of environmental engineers from which to select, in order to get budgeted projects completed. All departments from the City will be able to enter into individual Project Assignment Agreements with these

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engineering firms on an as-needed basis. The Public Works Department has numerous projects budgeted throughout upcoming fiscal years. There are also times when special funding (e.g. Legislative appropriations, New Mexico Department of Transportation, etc.) is made available to the City for specific projects. The funding sources often give strict timeframes within which improvements must be designed and constructed in order to secure the funding. By having a pre-qualified list of engineers, it will not be necessary to go through individual Requests for Proposals in order to contract the necessary work for each individual project. These agreements will allow Public Works to contract with any one of the five (5) pre-qualified firms. As a result, valuable time is saved in the design of each project and staff time can be used on other projects and in other capacities.

SUPPORT INFORMATION:

[Exhibit "A" 22-23-036 - Environmental Engineering Services - PSA - Daniel B. Stephens - CA Approved](#)

[Exhibit "B" 22-23-036 - Environmental Engineering Services - PSA - Parkhill - CA Approved](#)

[Exhibit "C" 22-23-036 - Environmental Engineering Services - PSA - Souder Miller - CA Approved](#)

[Exhibit "D" 22-23-036 - Environmental Engineering Services - PSA - Terracon - CA Approved](#)

[Exhibit "E" 22-23-036 - Environmental Engineering Services - PSA - Zia Engineering - CA Approved](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

SAC

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Various

AVAILABLE AMOUNT: Various

EXPENDITURE AMOUNT:
Various

Funding Source(s):

Accounts will be assigned on an as-needed basis as projects are identified. Environmental engineering services will be limited to approved budgets.

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and award contracts to the five (5) selected pre-qualified firms, to provide environmental engineering services for the City on an as-needed basis, to each firm for an amount up to \$500,000.00 annually, for the next four years subject to annual renewals and approved budget appropriations.
2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on City Council direction to staff.

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4. Vote to "Table"; this could delay awarding contracts for structural engineering services and prevent completion of budgeted projects.

RESOLUTION 24-002

A RESOLUTION TO AWARD CONTRACTS FOR ENVIRONMENTAL ENGINEERING SERVICES ON AN AS-NEEDED BASIS TO DANIEL B STEPHENS & ASSOCIATES INC., PARKHILL, SOUDER, MILLER & ASSOCIATES, TERRACON CONSULTANTS INC., AND ZIA ENGINEERING & ENVIRONMENTAL CONSULTANTS LLC, IN AN AMOUNT NOT TO EXCEED \$500,000.00 ANNUALLY FOR EACH, FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR FOUR (4) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-036).

The City Council is informed that:

WHEREAS, Project Development Section of the Public Works Department requested proposals for structural engineering services in March of 2023; and

WHEREAS, these services are required to perform design functions that include, but are not limited, to the following: design and preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management of indoor quality and asbestos, testing and analysis of soil and groundwater for contaminants, environmental permitting, land use permitting, and NPDES & SWPPP compliance; and

WHEREAS, the purpose of the environmental engineering services Request for Proposals is to pre-qualify multiple engineering firms that can provide these specialized engineering services; and

WHEREAS, these agreements will be used on an as-needed basis for a period of up to five (5) years, subject to annual renewals and approved budget appropriations; and

WHEREAS, the Purchasing Section received five (5) proposals that were evaluated and scored by the Selection Advisory Committee (SAC); and

WHEREAS, the SAC is recommending award to all five (5) rated firms as follows: Daniel B Stephens & Associates Inc., Parkhill, Miller Engineers, Inc. DBA Souder, Miller & Associates, Terracon Consultants Inc., and Zia Engineering & Environmental Consultants LLC.

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

(I)

THAT the contracts for structural engineering services are hereby awarded to Daniel B Stephens & Associates Inc., Parkhill, Miller Engineers, Inc. DBA Souder, Miller & Associates, Terracon Consultants Inc., and Zia Engineering & Environmental Consultants LLC, as shown in Exhibits "A" through "E", respectively, attached hereto and made part of this Resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES
PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Daniel B. Stephens & Associates, Inc., of 6020 Academy NE, Suite 100, Albuquerque, New Mexico, 87109, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Environmental Engineering Services on an as-needed basis via Project Assignment Agreement (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-036, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-036, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30 , 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR,

consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate
 - b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Kyle Arend, PE

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: Daniel B. Stephens & Associates, Inc.
 6020 Academy NE, Suite 100
 Albuquerque, NM 87109
 ATTENTION: James A. Kelsey, PG

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.

DANIEL B. STEPHENS &
ASSOCIATES, INC.

CITY OF LAS CRUCES

BY: _____
James A. Kelsey, PG
President

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 6/22/2023

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Engineer a detailed project description, including scope of work and any other special instructions needed by the Engineer to prepare items such as preliminary and final cost estimates, Microsoft Project scheduling, complete project plans and specifications, project reports, and other related engineering services. The preferred Engineers shall provide engineering services that may include but not be limited to, the following:
1. The design the preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management of indoor air quality and asbestos, testing and analysis of soil and groundwater for contaminants, environmental permitting, land use permitting, and NPDES & SWPPP compliance.
 2. Expert witness in a judicial and/or quasi-judicial setting.
 3. Project Management
 4. Construction Inspection.
- B. Project Assignment Agreements
A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Engineer proposing to do the work. The cost proposal may utilize one of the following pricing formats:
1. Lump Sum
 2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
 3. An alternative unit cost breakdown
- C. Deliverables
Each project contract will require a list of deliverables, timeline and method of payment. The Engineer may be required to supply to the City the following items, when specified and as requested on the Scope of Work for reach individual project.
1. Preliminary report containing schedule of work and cost estimate.
 2. Construction drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Engineering firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF format of the construction plans for Purchasing Section use.
 - a. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility

location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:

- Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey.
 - Equipment used to conduct the Survey.
 - Horizontal and vertical control marks used to tie the survey to the City approved control.
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used.
- b. "RECORD DRAWINGS" shall be clearly labeled on each sheet.
3. Computer modeling shall be provided to the City in appropriate electronic format, if applicable. It shall include the entire model, including changes and a text summary (report) of the analysis that includes assumptions, procedures, and results, and any graphics that clarify the analysis. The Engineering firm(s) shall verify the report format with the City. The computer modeling shall be provided using software approved by the City.
 4. Project reports.
 5. Any other item specified in the contract for that project.

Agenda Item #7.2.

COST PROPOSAL FOR ENVIRONMENTAL ENGINEERING SERVICES FOR THE CITY OF LAS CRUCES - RFP NO. 22-23-036

Attachment A

COST PROPOSAL FORM RFP 22-23-036 – Environmental Engineering Services (NOTE: This form shall not to be modified in any way)

Consulting Firm Daniel B. Stephens & Associates, Inc.

ITEM	DIRECT LABOR / CLASSIFICATION	HOURLY RATE*
1	Principal Engineer	\$ 270.00
2	Project Engineer/Project Manager	\$ 170.00
3	Senior Engineer	\$ 210.00
4	Design Engineer	\$ 145.00
5	Engineer Intern	\$ 125.00
6	Engineering Technician	\$ 115.00
7	Drafting Technician	\$ 106.00
8	Survey Crew**	\$ 275.00
9	Construction Inspector/Observer	\$ 112.00
10	Administrative/Clerical	\$ 110.00
11	Field Testing and Investigations	\$ 135.00
12	Subcontractor Cost Markup	PERCENT MARKUP (%) 10%
ITEM	MATERIALS / REIMBURSABLE EXPENSES	RATE
13	Travel Per Diem (per day) – Pre-Approval Required	City of Las Cruces Rate
14	Vehicle Mileage Rate (per mile)	Current IRS Rate
15	Reproduction Services Black and White Copies (per copy)	\$ 0.35
16	Color Copies (per copy)	\$ 0.95
17	Prints 24x36 (per sheet)	\$ 8.00
18	Mylars 24x36 (per sheet)	\$ 15.00
19	Photo Quality Plots (per plot)	\$ 8.00
20	Miscellaneous Any other costs incurred	Case by Case Basis

*Rates are to include all overhead costs and any and all assessment expenses

**Survey Crew Rates are to include GPS and Total Station Equipment

- Notes:
1. Detailed man hour Estimates are required for T&M contracts and are to utilize corresponding rates
 2. Rates in place at the time a project is contracted with the City will remain for the duration of the contract.

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



PROJECT ASSIGNMENT AGREEMENT

22-23-036 / ENVIRONMENTAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-036 dated _____, 20__ between the CITY and Daniel B. Stephens & Associates, Inc., ENGINEER, as amended and incorporated herein by reference, the City and Contractor hereby agree on this _____ day of _____, 20__, as follows:

- 1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-036 and ENGINEER proposal as set forth in ATTACHMENT A attached hereto.
- 2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the ENGINEER.
- 3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of **\$dollars.cents**, plus NMGR. Invoices issued by the ENGINEER shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

DANIEL B. STEPHENS & ASSOCIATES,
INC.

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-036
Environmental
Engineering
Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Parkhill, Smith & Cooper, Inc. d/b/a Parkhill, of 333 Rio Rancho Blvd. NE, Suite 400, Rio Rancho, New Mexico, 87124, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Environmental Engineering Services on an as-needed basis via Project Assignment Agreement (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-036, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-036, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30 , 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR,

consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate
 - b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Kyle Arend, PE

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: Parkhill, Smith & Cooper, Inc. d/b/a Parkhill
 333 Rio Rancho Blvd. NE, Suite 400
 Rio Rancho, NM 87124
 ATTENTION: Matthew W. Kingsley, PE

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.

PARKHILL, SMITH & COOPER, INC.,
d/b/a PARKHILL

CITY OF LAS CRUCES

BY: _____
Matthew W. Kingsley, PE
Principle-in-Charge

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

City Attorney  10/22/23

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Engineer a detailed project description, including scope of work and any other special instructions needed by the Engineer to prepare items such as preliminary and final cost estimates, Microsoft Project scheduling, complete project plans and specifications, project reports, and other related engineering services. The preferred Engineers shall provide engineering services that may include but not be limited to, the following:
1. The design the preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management of indoor air quality and asbestos, testing and analysis of soil and groundwater for contaminants, environmental permitting, land use permitting, and NPDES & SWPPP compliance.
 2. Expert witness in a judicial and/or quasi-judicial setting.
 3. Project Management
 4. Construction Inspection.
- B. Project Assignment Agreements
- A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Engineer proposing to do the work. The cost proposal may utilize one of the following pricing formats:
1. Lump Sum
 2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
 3. An alternative unit cost breakdown
- C. Deliverables
- Each project contract will require a list of deliverables, timeline and method of payment. The Engineer may be required to supply to the City the following items, when specified and as requested on the Scope of Work for reach individual project.
1. Preliminary report containing schedule of work and cost estimate.
 2. Construction drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Engineering firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF format of the construction plans for Purchasing Section use.
 - a. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility

location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:

- Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey.
 - Equipment used to conduct the Survey.
 - Horizontal and vertical control marks used to tie the survey to the City approved control.
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used.
- b. "RECORD DRAWINGS" shall be clearly labeled on each sheet.
3. Computer modeling shall be provided to the City in appropriate electronic format, if applicable. It shall include the entire model, including changes and a text summary (report) of the analysis that includes assumptions, procedures, and results, and any graphics that clarify the analysis. The Engineering firm(s) shall verify the report format with the City. The computer modeling shall be provided using software approved by the City.
 4. Project reports.
 5. Any other item specified in the contract for that project.

COST PROPOSAL FORM RFP 22-23-036 – Environmental Engineering Services
(NOTE: This form shall not to be modified in any way)

Consulting Firm Parkhill

ITEM	DIRECT LABOR / CLASSIFICATION	HOURLY RATE*
1	Principal Engineer	\$ 338.00
2	Project Engineer/Project Manager	\$ 263.00
3	Senior Engineer	\$ 283.00
4	Design Engineer	\$ 218.00
5	Engineer Intern	\$ 105.00
6	Engineering Technician	\$ 158.00
7	Drafting Technician	\$ 283.00
8	Survey Crew**	\$ 213.00
9	Construction Inspector/Observer	\$ 158.00
10	Administrative/Clerical	\$ 126.00
11	Field Testing and Investigations	\$ 158.00
12	Subcontractor Cost Markup	PERCENT MARKUP
		(%) 15
ITEM	MATERIALS / REIMBURSABLE EXPENSES	RATE
	Travel	
13	Per Diem (per day) – Pre-Approval Required	City of Las Cruces Rate
14	Vehicle Mileage Rate (per mile)	Current IRS Rate
	Reproduction Services	Included in Hourly
15	Black and White Copies (per copy)	\$ Rate
		Included in Hourly
16	Color Copies (per copy)	\$ Rate
		Included in Hourly
17	Prints 24x36 (per sheet)	\$ Rate
		Included in Hourly
18	Mylars 24x36 (per sheet)	\$ Rate
19	Photo Quality Plots (per plot)	\$
	Miscellaneous	
20	Any other costs incurred	Case by Case Basis

*Rates are to include all overhead costs and any and all assessment expenses

**Survey Crew Rates are to include GPS and Total Station Equipment

- Notes:
1. Detailed man hour Estimates are required for T&M contracts and are to utilize corresponding rates
 2. Rates in place at the time a project is contracted with the City will remain for the duration of the contract.

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-036 / ENVIRONMENTAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-036 dated _____, 20__ between the CITY and Parkhill, Smith & Cooper, Inc. d/b/a Parkhill, ENGINEER, as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

- 1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY’s RFP No. 22-23-036 and ENGINEER proposal as set forth in ATTACHMENT A attached hereto.
- 2. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.
- 3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of \$dollars.cents, plus NMGRT. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

PARKHILL, SMITH & COOPER, INC. d/b/a
PARKHILL

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. XXXXXXXX



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Miller Engineering, Inc., d/b/a Souder, Miller & Associates, of 3500 Sedona Hills Parkway, Las Cruces, New Mexico, 88011, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Environmental Engineering Services on an as-needed basis via Project Assignment Agreement (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-036, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

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The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-036, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

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CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

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3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
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4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Kyle Arend, PE

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Miller Engineering, Inc., d/b/a Souder, Miller & Associates
3500 Sedona Hills Parkway
Las Cruces, NM 88011
ATTENTION: Scott A. McKitrick, PG

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.

MILLER ENGINEERS, INC. d/b/a
SOUDER, MILLER & ASSOCIATES

CITY OF LAS CRUCES

BY: _____
Scott A. McKittrick, PG
Vice President

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 6/22/2023

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Engineer a detailed project description, including scope of work and any other special instructions needed by the Engineer to prepare items such as preliminary and final cost estimates, Microsoft Project scheduling, complete project plans and specifications, project reports, and other related engineering services. The preferred Engineers shall provide engineering services that may include but not be limited to, the following:
 - 1. The design the preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management of indoor air quality and asbestos, testing and analysis of soil and groundwater for contaminants, environmental permitting, land use permitting, and NPDES & SWPPP compliance.
 - 2. Expert witness in a judicial and/or quasi-judicial setting.
 - 3. Project Management
 - 4. Construction Inspection.
- B. Project Assignment Agreements

A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Engineer proposing to do the work. The cost proposal may utilize one of the following pricing formats:

 - 1. Lump Sum
 - 2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
 - 3. An alternative unit cost breakdown
- C. Deliverables

Each project contract will require a list of deliverables, timeline and method of payment. The Engineer may be required to supply to the City the following items, when specified and as requested on the Scope of Work for reach individual project.

 - 1. Preliminary report containing schedule of work and cost estimate.
 - 2. Construction drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Engineering firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF format of the construction plans for Purchasing Section use.
 - a. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility

location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:

- Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey.
 - Equipment used to conduct the Survey.
 - Horizontal and vertical control marks used to tie the survey to the City approved control.
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used.
- b. "RECORD DRAWINGS" shall be clearly labeled on each sheet.
3. Computer modeling shall be provided to the City in appropriate electronic format, if applicable. It shall include the entire model, including changes and a text summary (report) of the analysis that includes assumptions, procedures, and results, and any graphics that clarify the analysis. The Engineering firm(s) shall verify the report format with the City. The computer modeling shall be provided using software approved by the City.
 4. Project reports.
 5. Any other item specified in the contract for that project.

COST PROPOSAL FORM RFP 22-23-036 – Environmental Engineering Services
(NOTE: This form shall not to be modified in any way)

Consulting Firm _____

ITEM	DIRECT LABOR / CLASSIFICATION	HOURLY RATE*
1	Principal Engineer	\$ 240
2	Project Engineer/Project Manager	\$ 180
3	Senior Engineer	\$ 165
4	Design Engineer	\$ 150
5	Engineer Intern	\$ 110
6	Engineering Technician	\$ 100
7	Drafting Technician	\$ 80
8	Survey Crew**	\$ 300
9	Construction Inspector/Observer	\$ 100
10	Administrative/Clerical	\$ 80
11	Field Testing and Investigations	\$ 100
12	Subcontractor Cost Markup	PERCENT MARKUP (%) 10
ITEM	MATERIALS / REIMBURSABLE EXPENSES	RATE
	Travel	
13	Per Diem (per day) – Pre-Approval Required	City of Las Cruces Rate
14	Vehicle Mileage Rate (per mile)	Current IRS Rate
	Reproduction Services	
15	Black and White Copies (per copy)	\$ 0.05
16	Color Copies (per copy)	\$ 0.10
17	Prints 24x36 (per sheet)	\$ 3.75
18	Mylars 24x36 (per sheet)	\$ 7.00
19	Photo Quality Plots (per plot)	\$ 10.00
	Miscellaneous	
20	Any other costs incurred	Case by Case Basis

*Rates are to include all overhead costs and any and all assessment expenses

**Survey Crew Rates are to include GPS and Total Station Equipment

- Notes:
1. Detailed man hour Estimates are required for T&M contracts and are to utilize corresponding rates
 2. Rates in place at the time a project is contracted with the City will remain for the duration of the contract.

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-036 / ENVIRONMENTAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-036 dated _____, 20__ between the CITY and Miller Engineers, Inc. d/b/a Souder, Miller & Associates, ENGINEER, as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

- 1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-036 and ENGINEER proposal as set forth in ATTACHMENT A attached hereto.
- 2. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.
- 3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of \$dollars.cents, plus NMGR. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

MILLER ENGINEERS, INC., d/b/a SOUDER,
MILLER & ASSOCIATES

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. XXXXXXXX



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-036
Environmental
Engineering
Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Terracon Consultants, Inc., of 4450 Bataan Memorial E., Las Cruces, New Mexico, 88011, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Environmental Engineering Services on an as-needed basis via Project Assignment Agreement (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-036, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-036, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30 , 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR,

consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate
 - b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Kyle Arend, PE

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: Terracon Consultants, Inc.
 4450 Bataan Memorial E.
 Las Cruces, NM 88011
 ATTENTION: Ruben Solis-Hernandez, PE

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.

TERRACON CONSULTANTS, INC.

CITY OF LAS CRUCES

BY: _____
Ruben Solis-Hernandez, PE
Office Manager

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 6/22/2023

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Engineer a detailed project description, including scope of work and any other special instructions needed by the Engineer to prepare items such as preliminary and final cost estimates, Microsoft Project scheduling, complete project plans and specifications, project reports, and other related engineering services. The preferred Engineers shall provide engineering services that may include but not be limited to, the following:
1. The design the preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management of indoor air quality and asbestos, testing and analysis of soil and groundwater for contaminants, environmental permitting, land use permitting, and NPDES & SWPPP compliance.
 2. Expert witness in a judicial and/or quasi-judicial setting.
 3. Project Management
 4. Construction Inspection.
- B. Project Assignment Agreements
A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Engineer proposing to do the work. The cost proposal may utilize one of the following pricing formats:
1. Lump Sum
 2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
 3. An alternative unit cost breakdown
- C. Deliverables
Each project contract will require a list of deliverables, timeline and method of payment. The Engineer may be required to supply to the City the following items, when specified and as requested on the Scope of Work for reach individual project.
1. Preliminary report containing schedule of work and cost estimate.
 2. Construction drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Engineering firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF format of the construction plans for Purchasing Section use.
 - a. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility

location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:

- Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey.
 - Equipment used to conduct the Survey.
 - Horizontal and vertical control marks used to tie the survey to the City approved control.
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used.
- b. "RECORD DRAWINGS" shall be clearly labeled on each sheet.
3. Computer modeling shall be provided to the City in appropriate electronic format, if applicable. It shall include the entire model, including changes and a text summary (report) of the analysis that includes assumptions, procedures, and results, and any graphics that clarify the analysis. The Engineering firm(s) shall verify the report format with the City. The computer modeling shall be provided using software approved by the City.
 4. Project reports.
 5. Any other item specified in the contract for that project.

COST PROPOSAL FORM RFP 22-23-036 – Environmental Engineering Services
(NOTE: This form shall not to be modified in any way)

Consulting Firm Terracon Consultants, Inc.

ITEM	DIRECT LABOR / CLASSIFICATION	HOURLY RATE*
1	Principal Engineer	\$ 225
2	Project Engineer/Project Manager	\$ 150
3	Senior Engineer	\$ 195
4	Design Engineer	\$ 180
5	Engineer Intern	\$ 95
6	Engineering Technician	\$ 90
7	Drafting Technician	\$ 90
8	Survey Crew**	\$ At cost plus markup
9	Construction Inspector/Observer	\$ 110
10	Administrative/Clerical	\$ 75
11	Field Testing and Investigations	Case by case basis on \$ required evaluation
12	Subcontractor Cost Markup	PERCENT MARKUP (%) 15%
ITEM	MATERIALS / REIMBURSABLE EXPENSES	RATE
	Travel	
13	Per Diem (per day) – Pre-Approval Required	City of Las Cruces Rate
14	Vehicle Mileage Rate (per mile)	Current IRS Rate
	Reproduction Services	
15	Black and White Copies (per copy)	\$ At cost plus mark up
16	Color Copies (per copy)	\$ At cost plus mark up
17	Prints 24x36 (per sheet)	\$ At cost plus mark up
18	Mylars 24x36 (per sheet)	\$ At cost plus mark up
19	Photo Quality Plots (per plot)	\$
	Miscellaneous	
20	Any other costs incurred	Case by Case Basis

*Rates are to include all overhead costs and any and all assessment expenses

**Survey Crew Rates are to include GPS and Total Station Equipment

- Notes:
1. Detailed man hour Estimates are required for T&M contracts and are to utilize corresponding rates
 2. Rates in place at the time a project is contracted with the City will remain for the duration of the contract.

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



PROJECT ASSIGNMENT AGREEMENT

22-23-036 / ENVIRONMENTAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-036 dated _____, 20__ between the CITY and Terracon Consultants, Inc., ENGINEER, as amended and incorporated herein by reference, the City and Contractor hereby agree on this _____ day of _____, 20__, as follows:

- 1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY’s RFP No. 22-23-036 and ENGINEER proposal as set forth in ATTACHMENT A attached hereto.
- 2. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.
- 3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of \$dollars.cents, plus NMGR. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

TERRACON CONSULTANTS, INC.

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. XXXXXXXX



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Zia Engineering & Environmental Consultants, LLC, of 755 S. Telshor Blvd. Suite Q-201, Las Cruces, New Mexico, 88011, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Environmental Engineering Services on an as-needed basis via Project Assignment Agreement (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-036, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-036, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30 , 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR,

consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate
 - b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between

New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Kyle Arend, PE

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: Zia Engineering & Environmental Consultants, LLC
 755 S. Telshor Blvd., Suite Q-201
 Las Cruces, NM 88011
 ATTENTION: Edward H. Martinez, PE

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.

ZIA ENGINEERING &
ENVIRONMENTAL CONSULTANTS,
LLC

CITY OF LAS CRUCES

BY: _____
Edward H. Martinez, PE
President & CEO

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 6/22/2023

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Engineer a detailed project description, including scope of work and any other special instructions needed by the Engineer to prepare items such as preliminary and final cost estimates, Microsoft Project scheduling, complete project plans and specifications, project reports, and other related engineering services. The preferred Engineers shall provide engineering services that may include but not be limited to, the following:
 - 1. The design the preparation of solid waste studies, landfill system design and analysis, environmental surveys, assessments, monitoring and management of indoor air quality and asbestos, testing and analysis of soil and groundwater for contaminants, environmental permitting, land use permitting, and NPDES & SWPPP compliance.
 - 2. Expert witness in a judicial and/or quasi-judicial setting.
 - 3. Project Management
 - 4. Construction Inspection.
- B. Project Assignment Agreements
 - A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Engineer proposing to do the work. The cost proposal may utilize one of the following pricing formats:
 - 1. Lump Sum
 - 2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
 - 3. An alternative unit cost breakdown
- C. Deliverables
 - Each project contract will require a list of deliverables, timeline and method of payment. The Engineer may be required to supply to the City the following items, when specified and as requested on the Scope of Work for reach individual project.
 - 1. Preliminary report containing schedule of work and cost estimate.
 - 2. Construction drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Engineering firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF format of the construction plans for Purchasing Section use.
 - a. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility

location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:

- Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey.
 - Equipment used to conduct the Survey.
 - Horizontal and vertical control marks used to tie the survey to the City approved control.
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used.
- b. "RECORD DRAWINGS" shall be clearly labeled on each sheet.
3. Computer modeling shall be provided to the City in appropriate electronic format, if applicable. It shall include the entire model, including changes and a text summary (report) of the analysis that includes assumptions, procedures, and results, and any graphics that clarify the analysis. The Engineering firm(s) shall verify the report format with the City. The computer modeling shall be provided using software approved by the City.
 4. Project reports.
 5. Any other item specified in the contract for that project.

COST PROPOSAL FORM RFP 22-23-036 – Environmental Engineering Services
(NOTE: This form shall not to be modified in any way)

Consulting Firm _____

ITEM	DIRECT LABOR / CLASSIFICATION	HOURLY RATE*
1	Principal Engineer	\$ 140.00
2	Project Engineer/Project Manager	\$ 104.00
3	Senior Engineer	\$ 117.00
4	Design Engineer	\$ 87.00
5	Engineer Intern	\$ 75.00
6	Engineering Technician	\$ 82.00
7	Drafting Technician	\$ 63.00
8	Survey Crew**	\$ Subcontracted
9	Construction Inspector/Observer	\$ 86.00
10	Administrative/Clerical	\$ 59.00
11	Field Testing and Investigations	\$ 146.00
12	Subcontractor Cost Markup	PERCENT MARKUP
		(%) 15
ITEM	MATERIALS / REIMBURSABLE EXPENSES	RATE
13	Travel	
	Per Diem (per day) – Pre-Approval Required	City of Las Cruces Rate
14		
	Vehicle Mileage Rate (per mile)	Current IRS Rate
15	Reproduction Services	
	Black and White Copies (per copy)	\$ 0.15
16		
	Color Copies (per copy)	\$ 0.25
17		
	Prints 24x36 (per sheet)	\$ 3.00
18		
	Mylars 24x36 (per sheet)	\$ 9.50
19		
	Photo Quality Plots (per plot)	\$ 32.50
20	Miscellaneous	
	Any other costs incurred	Case by Case Basis

*Rates are to include all overhead costs and any and all assessment expenses

**Survey Crew Rates are to include GPS and Total Station Equipment

- Notes:
1. Detailed man hour Estimates are required for T&M contracts and are to utilize corresponding rates
 2. Rates in place at the time a project is contracted with the City will remain for the duration of the contract.

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-036 / ENVIRONMENTAL ENGINEERING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-036 dated _____, 20__ between the CITY and Zia Engineering & Environmental Consultants, LLC, ENGINEER, as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

1. In a satisfactory and proper manner, the ENGINEER shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-036 and ENGINEER proposal as set forth in ATTACHMENT A attached hereto.
2. The estimated completion date is number days after a Notice to Proceed is issued by the CITY to the ENGINEER.
3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of \$dollars.cents, plus NMGR. Invoices issued by the ENGINEER shall be made monthly / upon completion of project with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

ZIA ENGINEERING & ENVIRONMENTAL
CONSULTANTS, LLC

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. XXXXXXXX



City Council Action and Executive Summary

**3042; Council
Bill 23-036**

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A			
1st Reading:	June 20, 2023	Adopted:	July 3, 2023	
Drafter:	Elizabeth Teeters	Department:	Economic Development	
Program:	Business Development	Line of Business:	Business Development	
Title:	AN ORDINANCE APPROVING INVESTMENT FUNDS OF \$150,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN (LEDA), AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND VARIOUS QUALIFYING BUSINESSES THAT HAVE SUFFERED CATASTROPHIC INCIDENTS.			

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

PURPOSE(S) OF ACTION:

To approve a Local Economic Development Act (LEDA) project for various businesses that have suffered from catastrophic situations.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

During the 2023 New Mexico Legislative Session, Senator Carrie Hamblen designated \$150,000 of "Junior Money" funds to be used for businesses that have suffered catastrophic incidents and need immediate relief. These funds are being administered by the City of Las Cruces Economic Development Department through its Local Economic Development Act (LEDA) Program.

According to the City's LEDA Plan that is being adopted on June 20, 2023, a "Catastrophic Incident" is defined as, "a sudden and devastating event that can cause significant harm or damage to a business and its assets. Such incidents can result from natural disasters like floods, earthquakes, or tornadoes, human-made events like fires, explosions, or acts of terrorism, or technological failures like equipment malfunctions, power outages, or cyber-attacks. These incidents can lead to significant operational disruptions, loss of critical data, and financial losses. In the case of equipment failure or malfunction, catastrophic incidents can cause significant downtime, increased maintenance costs, or even lead to equipment loss or destruction."

If this proposed Ordinance is approved, the City will enter into a Project Participation Agreement (PPA) with each business that completes an application (Attachment "A") and qualifies under the defined parameters of a catastrophic incident, subject to the LEDA requirements and the adopted LEDA Plan by the City.

A separate resolution will be brought to City Council for a budget adjustment for the City.

SUPPORT INFORMATION:

[Exhibit "A" - CAT Public Participation Agreement](#)

[Attachment "A" - CAT Funds Application](#)

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

Economic Development 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", this will approve the Ordinance and authorize the City to provide local LEDA funding through Junior Money designated to assist businesses who suffer from catastrophic incidents.
2. Vote "No", this will not approve the Ordinance and authorize the City to provide local LEDA funding through Junior Money designated to assist businesses who suffer from catastrophic incidents.
3. Vote to "Amend", this could delay the Ordinance and would require City Council to provide direction to staff.
4. Vote to "Table", this would delay the Ordinance and require City Council to provide direction to staff.

ORDINANCE 3042; COUNCIL BILL 23-036

AN ORDINANCE APPROVING INVESTMENT FUNDS OF \$150,000 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN (LEDA), AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND VARIOUS QUALIFYING BUSINESSES THAT HAVE SUFFERED CATASTROPHIC INCIDENTS.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) adopted an updated Local Economic Development Act (LEDA) Plan in 2023 to encourage economic development; and

WHEREAS, during the 2023 New Mexico Legislative Session, Senator Carrie Hamblen designated \$150,000 of Junior Money Funds to be used for businesses that have suffered catastrophic incidents and need immediate relief; and

WHEREAS, these funds are being administered by the City of Las Cruces Economic Development Department through their LEDA Program; and

WHEREAS, according to the City's LEDA Plan as adopted on June 20, 2023, a "Catastrophic Incident" is defined as, "a sudden and devastating event that can cause significant harm or damage to a business and its assets. Such incidents can result from natural disasters like floods, earthquakes, or tornadoes, human-made events like fires, explosions, or acts of terrorism, or technological failures like equipment malfunctions, power outages, or cyber-attacks. These incidents can lead to significant operational disruptions, loss of critical data, and financial losses. In the case of equipment failure or malfunction, catastrophic incidents can cause significant downtime, increased maintenance costs, or even lead to equipment loss or destruction."

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

(I)

THAT the City hereby enters into a Project Participation Agreement, as shown in Exhibit "A" attached hereto and made part of this Ordinance, with each business that fills out an application and qualifies under the defined parameters of a catastrophic incident, subject to the LEDA requirements and the adopted LEDA Plan by the City.

(II)

THAT the City Manager is hereby authorized to sign the Agreements as references in this Ordinance on the City's behalf.

(III)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



**PROJECT PARTICIPATION AGREEMENT
BETWEEN THE CITY OF LAS CRUCES AND
GRANTEE OF CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT ACT
(LEDA) CATROSTROPHIC FUNDS**

THIS AGREEMENT (“Agreement”) is made and entered into on this day _____ of _____, 2023 by and between the City of Las Cruces (the “City”), a New Mexico municipal corporation and political subdivision of the State of New Mexico, and _____ (“Grantee”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, this LEDA grant for City of Las Cruces registered businesses was made possible funding granted through State of New Mexico Junior Bill funds; and,

WHEREAS, this grant is made available to eligible Las Cruces businesses who meet the qualifications for funding under Article 1. Local Economic Development ACT (LEDA) of the Las Cruces Municipal Code; and,

WHEREAS, the Program directly benefits the City through the stabilization of a critical element of the City’s Gross Receipts Tax base and related employment of City residents; and

WHEREAS, Grantee has submitted an application (the “Application”) for a grant under this Agreement and meets all of the requirements set forth in the Application, set forth as Attachment A; and

WHEREAS, City is granting to Grantee, and Grantee is accepting, funds from this appropriation in accordance with the terms and conditions of this Agreement (the “Grant”);

NOW, THEREFORE, in consideration of the covenants contained herein, the parties agree as follows:

1. **PURPOSE.** The purpose of this Agreement is to certify that the Grantee meets and shall continue to meet, the specified requirements, and any underlying legal requirements, set forth in the Application incorporated by reference in and made a part of this Agreement in Attachment A.
2. **SCOPE.** The Grantee agrees that the use of the Grant must be spent in accordance with all applicable federal, state, and local laws, regulations, policies, and guidelines set forth in Attachment A, incorporated herein by reference. The Grant shall be spent prior to the expiration of this Agreement.

3. **TERM.** This Agreement shall be effective as of the date the Grant is awarded by the City and shall continue to be effective for 365 days after Catastrophic LEDA funds have been dispersed to the sub-Recipient.

4. **TERMINATION AND AMENDMENT.**

- (a) Early termination of this Agreement will occur due to:
 - i. Violation of the terms, representations or certifications made in this Agreement.
 - ii. Suspected mishandling of Grant, including but not limited to fraud, waste, abuse, and conflicts of interest.
- (b) The City may terminate this Agreement at any time, in which case Grantee shall be required to reimburse the full Grant amount back to the City, The City may affect an Early Termination of this Agreement for convenience by providing Grantee with a minimum of fifteen (15) days' advance, written notice of Early Termination.
- (c) In the event that Grantee violates any provision of the Application or this Agreement, Grantee shall repay the City an amount equal to the amount of the Grant.
- (d) Grantee hereby waives any rights to assert an impairment of contract claim against the City in the event of Early Termination of this Agreement by the City.
- (e) This Agreement shall not be amended except by written instrument executed by the Parties.
- (f) The City shall not be liable for payment of any extra services not described in the Scope of Services.

5. **RECORDS AND AUDITS.** Grantee agrees to submit the following reporting:

- (a) Grantee shall maintain records indicating dates, length of time, costs incurred, invoices, and services rendered in fulfillment of this Agreement. The City has the right to inspect and audit billings before and after payment and contest any billing or portion thereof.
- (b) Failure of Grantee to provide requested documents or information within ten (10) working days, when requested in writing by the City, shall constitute a breach of this Agreement and shall be grounds for immediate termination.
- (c) Recovery or payment of a Grant award under this Agreement does not foreclose the City's right to recover excessive or illegal payments.
- (d) Subject to applicable federal and state law, records will be made available to the City Manager or their designee during regular business hours, upon request, and will be retained for seven (7) years after the termination of this Agreement or as otherwise required by State or local law, whichever term is greater.

6. **COMPENSATION.** City of Las Cruces shall pay Grantee \$_____ in accordance with this Agreement.

7. **APPROPRIATIONS.** The terms of this Agreement are contingent on sufficient appropriations and authorizations of the City Council for the performance of this Agreement. If sufficient appropriations or authorizations are not made by the City Council, this Agreement shall terminate upon written notice provided by the City to Grantee. The City's decision as to whether sufficient appropriations or authorizations exist shall be accepted by Grantee and shall be final.

8. **CONDITIONS AND RESTRICTIONS.** Grantee shall follow these general conditions and restrictions:
- (a) Grant must be spent in accordance with all applicable federal and state laws, regulations, policies, and guidelines, including, but not limited to Article IX, Section 14 of the Constitution of the State of New Mexico (the "Anti-Donation Clause").
 - (b) Grantee shall not at any time convert any property acquired or developed with proceeds of the Grant to uses other than those specified in the Application.
 - (c) Grantee shall comply with all federal and state laws and rules and regulations pertaining to equal employment opportunity. Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Grant, be denied benefits, or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
9. **REPRESENTATIONS AND WARRANTIES.** Grantee represents and warrants that:
- (a) Grantee has the legal authority to receive and expend the Grant's funds.
 - (b) This Agreement has been duly authorized by Grantee, the person executing this Agreement has authority to do so, and, once executed by Grantee, this Agreement shall constitute a binding obligation of Grantee, enforceable according to its terms.
 - (c) This Agreement and Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to Grantee, Grantee's charter (if applicable), or any judgment or decree to which it is subject.
 - (d) City may require Grantee to operate continuously for one year following the date of award of the Grant. If Grantee ceases to operate within the 365-day period, the Grantee may require to pay the City, not later than fifteen (15) days following cessation of operations, an amount equal to the amount of the Grant. Temporary cessation of operations (i) during holiday periods or as a result of maintenance or renovation or other similar circumstances, in each case not exceeding thirty (30) consecutive days or (ii) as a result of force majeure, shall not constitute a failure by the Grantee to comply with this Section. In the event of a permitted temporary cessation of operations, the Grantee shall use its best efforts to resume operations.
 - (e) No funds have been paid nor will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of the City in connection with the awarding of any contract, grant, loan, cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any City's contract, grant, loan, or cooperative agreement.
10. **CONFIDENTIALITY.** Any confidential information provided to or developed by the City in the performance of this Agreement shall be kept confidential and shall not be revealed or made available to any person or entity by Grantee without the prior written approval of the City

Manager or their designee, subject to the requirements of disclosure of records under IPRA or other applicable laws.

11. COMPLIANCE WITH LAWS AND POLICIES; CONFLICT OF INTEREST

- (a) In the performance of their obligations herein, the parties shall obey and abide by all applicable federal and state laws, rules and regulations, and with all applicable city ordinances, policies and procedures.
- (b) Grantee hereby covenants, warrants and represents that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of this Agreement. Without limiting the generality of the foregoing, Grantee shall comply with all applicable legal or regulatory provisions concerning conflicts of interest.
- (c) Both parties shall abide by all applicable federal and state laws, rules, regulations, and executive orders pertaining to equal employment opportunity; pursuant thereto, shall assure that no person shall, on the grounds of race, color, national origin, sex, age, gender identification, sexual orientation, or disability, be excluded from employment with, participation in, be denied the benefits of or be otherwise subjected to discrimination under, any program or activity performed under this Agreement; and to promptly take appropriate steps to correct any deficiency that may be found to occur in compliance with such laws and rules. The City does not unlawfully discriminate against any employee or applicant for employment because of race, age, religion, color, national origin, ancestry, sex, physical or mental handicap or medical condition, gender identification, or sexual orientation provided the individual is qualified to perform the work available. This policy of nondiscrimination applies not only to initial recruitment and selection of employees, but it is also an integral part of the overall City operation. It applies to all matters of compensation, benefits, promotions, transfers, layoffs, training, and all other terms and conditions of employment. Grantee agrees to abide by the aforementioned policy, in its entirety, in the execution and fulfillment of this Agreement.

12. RELEASE; INDEMNITY. The City of Las Cruces shall be not be responsible for the use of Grant funds, or other actions by Grantee in connection with this Agreement. Grantee shall indemnify and defend the City and hold the City harmless for and from any and every claim, action, liability, loss, damage or suit, arising from the fault of the Grantee in performing or omitting to perform the Agreement. No party shall be responsible for liability incurred as the result of the other party's acts or omissions. Grantee or its officials, agents, and employees is solely responsible for the liability arising from personal injury, including death, or damage to property arising from the acts or failure to act pursuant to this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

13. FORCE MAJEURE. Neither the City nor Grantee shall be liable for any delay in the performance of this Agreement, nor for any other breach, nor for any loss or damage arising

from uncontrollable forces such as fire, theft, storm, war, or any other force majeure that could not have been reasonably avoided by exercise of due diligence.

14. **NOTICES.** All notices required or permitted herein shall be sufficient if made in writing and mailed, faxed, or e-mailed to the other party as follows:

The City of Las Cruces:
Elizabeth Teeters
Director of Economic Development
City of Las Cruces
700 N Main
Las Cruces, NM 88001
Phone: 575-541-3476
Email: eteeters@las-cruces.org

Grantee: _____
Name: _____
Title: _____
Email address: _____
Phone number: _____

15. **SEVERABILITY, WAIVER, MERGER AND AMENDMENT.** If any term or portion of this Agreement shall be deemed invalid or unenforceable, the remainder of this Agreement shall not be affected. No waiver by either party of any breach hereunder shall be construed as a waiver of any other breach. This Agreement represents the entire agreement of the parties with regard to the matters addressed herein, and all prior agreements and understandings are merged into this Agreement. This Agreement shall not be altered or amended except by written instrument executed by both parties.
16. **THIRD PARTIES.** Nothing in this Agreement, express or implied, is intended to confer any rights, remedies, claims, or interests upon a person not a named party to this Agreement.
17. **COOPERATION AND DISPUTE RESOLUTION.** The parties agree that, to the extent compatible with the separate and independent management of each, they will maintain effective liaison and close cooperation. If a dispute arises related to the obligations or performance of either party under this Agreement, representatives of the parties will meet in good faith to resolve the dispute. Nothing in this agreement constitutes a waiver of any party’s right to seek judicial relief.
18. **BENCHMARKS.** Applicant understands that by signing this agreement, they are agreeing to the benchmark(s) listed in this agreement to be eligible to receive LEDA funding.

- a. List benchmarks.

19. **SECURITY.** This agreement serves as an indenture for security purposes, and the qualifying entity pledges financial and material participation and cooperation to guarantee the qualifying entity's performance pursuant to this agreement. In the event that the benchmarks outlined in this agreement have not been reached within one year from the date of disbursement of funds, the Grantee shall be responsible for returning the funds to the City.

- a) The benchmarks for progress and achievement listed in section 18 BENCHMARKS, outline the specific performance targets, timelines, and measurable outcomes.
- b) The Grantee shall diligently work towards meeting the established benchmarks and shall provide regular progress reports to the City on a mutually agreed-upon schedule.
- c) If the Grantee fails to meet the agreed-upon benchmarks within the designated timeframe, the City reserves the right to request the return of the disbursed funds.
- d) The Grantee shall initiate the return of funds within thirty (30) days of the City's written notice requesting the return of funds due to the failure to meet the established benchmarks.
- e) Upon the return of funds, the City may require an audit or documentation to verify the amount being returned.
- f) The Grantee shall bear any associated costs or fees related to the return of funds, including but not limited to transaction fees or legal expenses.
- g) Any disputes arising from the return of funds shall be resolved through negotiations and mediation between the City and the Grantee, with the aim of reaching an amicable resolution.
- h) This section shall survive the termination or expiration of this MOU and shall continue to be binding until the return of funds.

IN WITNESS WHEREOF, the Parties have executed this Agreement, on the date(s) hereinafter indicated.

CITY OF LAS CRUCES

By: _____ Date: _____
Ifo Pili, City Manager

Approved as to form:

_____ Date: _____
Jocelyn A. Garrison, Acting City Attorney

GRANTEE

By: _____ Date: _____
(Type or Print Name)
Business Name: _____
Grantee Physical Address: _____
Grantee Email Address: _____
Grantee Phone Number: _____
Signature of Official with Authority to Bind Grantee: _____

ATTACHMENT A - LOCAL LEDA APPLICATION

Attached is a copy of the application you submitted.

ATTACHMENT B- REPORT SAMPLE AT 180 DAYS

At 90 days after this Agreement, Grantee shall submit to the City a report outlining the use and results of the LEDA funds (the "Report") including:

1. Number of full-time equivalent employees at the time of receipt of the LEDA funds.

2. Number of full-time equivalent employees at the time of the Report.
3. Detailed explanation of expenditures of the Grant (max 1-page, double space, 12-size font).

ATTACHMENT C- REPORT SAMPLE AT 365 DAYS

At 365 days after this Agreement, Grantee shall submit to the City the Report including:

1. Number of full-time equivalent employees at the time of the Report.

**City of Las Cruces Application for
Catastrophic Local Economic Development Act Project Assistance**

The undersigned, on behalf of the entity named as:

hereby applies to the City of Las Cruces, New Mexico, for project participation in the form of land, buildings or infrastructure pursuant to the Local Economic Development Act (5-10-1 to 5-10-13 NMSA 1978) and pursuant to the regulations of the City.

The attached Initial Project Financing Questionnaire has been completed to the best of our ability, and the information contained therein, and on any attachments thereto, represent a reasonable comprehensive outline of the Project and the financing requested in connection therewith.

Preliminary official action and review of our project is hereby requested.

The undersigned warrants that he or she is authorized to submit this application on behalf of the applicant and is filling out the form and telling the truth to the best of their ability.

DATE: _____ APPLICANT: _____

BY: _____
(Authorized Officer/Representative)

APPLICATION FOR CATASTROPHIC LEDA ECONOMIC DEVELOPMENT ASSISTANCE

Instructions: The purpose of this application is to present to the City of Las Cruces’ City Council a reasonable comprehensive outline of the project (“Project”) for which financing is being requested. Please address each item, using “None” or “Not Applicable” where necessary.

1. General Information

- a. Legal name and address of applicant

Click or tap here to enter text.

- b. Give both the precise and complete legal description and address or identification of location

Click or tap here to enter text.

- c. State of Incorporation and type of corporation

Click or tap here to enter text.

- d. Are you a current City of Las Cruces vendor? Do you have a currently City Business License?

Click or tap here to enter text.

- e. Contact information

Name(s):	Click or tap here to enter text.
Physical address:	Click or tap here to enter text.
Mailing address:	Click or tap here to enter text.
Phone:	Click or tap here to enter text.
Fax:	Click or tap here to enter text.
Email address:	Click or tap here to enter text.
Web site address:	Click or tap here to enter text.

- f. EIN of business and Principal Tax ID Number

Click or tap here to enter text.

- g. Name, address, city, state, zip of Corporation Principles

Click or tap here to enter text.

PROJECT INFORMATION

1. Incident Description

Please attach a description of the incident and the impact to the business including the following:

- a. A description of the damage
- b. Total estimated cost of repairs
- c. The potential impact to the business
- d. If a total shut down of the business is necessary, what are the:
 - 1) Anticipated number of days to be shut down.
 - 2) Anticipated losses in revenue due to shut down.

2. Project Description

Please attach a description of the damage and required repairs that includes the following:

- e. Describe the necessary repairs.
- f. A timeline of construction/repairs including start and estimated completion date.

3. Employment

Please attach the following information on permanent employment:

- a. Current employment levels at facility before damage, if applicable.
- b. The number of employees that will be impacted by the damage and potential shut down of business.
- c. Anticipated employee wages lost due to shut down or damage.
- d. Projected full-time employment after project is completed.
- e. Breakdown of employment (e.g. # of managerial, administrative, support, etc.), benefits, life insurance, educational assistance, etc., and percent paid for each benefit)

4. Financial Arrangements

Please include the following financial arrangements:

- a. If Applicant has applied to any other source for financing with respect to the Project, please give details.
- b. If applicable, explain how the remainder of the required repairs will be paid for if the Catastrophic LEDA funding will not cover the entire cost.

5. Financial Statements

- a. Please provide Small Business Development Center tax returns for the past three years.
- b. A complete financial analysis will be completed by Small Business Development Center on behalf of the City of Las Cruces. You will be provided the information on who to contact to complete that analysis.

6. Use of funds/Total amount requested

- c. Provide a total amount that covers the cost of repairs as well as loss of wages and revenue.



City Council Action and Executive Summary

23-135

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	Adopted: July 3, 2023		
Drafter:	Robert Nunez	Department:	Parks & Rec
Program:	Department-Wide	Line of Business:	Various Lines of Business
Title:	A RESOLUTION APPROVING THE PARKS AND RECREATION DEPARTMENT 2023/2024 FEES AND CHARGES/FACILITY USE POLICY REPLACING AND REPEALING RESOLUTION 19-145.		

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

PURPOSE(S) OF ACTION:

Approve Parks and Recreation Fees and Charges/Facility Use Policy.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Over the past year, City staff has reviewed the Parks and Recreation Fees and Charges/Facility Use Policy. The policy is intended to establish a standardized approach to assessing fees for the use of City facilities, parks, and participation in recreation programs; for determining which users or groups should pay at what percentage; to keep all fees at a fair market level in order to encourage participation; to strive for a degree of cost recovery; and to lessen the burden on the City and the General Fund.

City Council established a target for cost recovery for recreation programs at as follows:

- Minimal Cost Recovery (0 - 20%) Program examples: Therapeutic, Special Events, Out of School Time programs
- Partial Cost Recovery (70 - 85%) Program examples: Youth Classes or Athletics
- Partial Cost Recovery (33%) Program examples: Aquatics
- Full Cost Recovery (100%) Program examples: Adult classes, Adult Recreation, and Adult Athletics

The policy and fee structure is developed with the goal of achieving the set cost recovery. The proposed fee structure will only increase revenues slightly above current revenues, pending approval of this fee schedule.

The Parks and Recreation Advisory Board reviewed the proposed policy at their regular meeting on April 20, 2023, and sent forward a recommendation to City Council for approval.

City Council is being requested to repeal Resolution 19-145, which approved the 2019/2020 Fees and Charges/Facility Use Policy and approve the 2023/2024 Fees and Charges/Facility Use Policy in accordance with Municipal Code Sec. 20-29.(d)1.

SUPPORT INFORMATION:

- [Exhibit A - Fees Charges 7.3.23 FINAL](#)
- [Attachment "A" - 04-20-23 PRAB Draft Minutes](#)
- [Attachment "B" - 2019-2020 to 23-24 Redline Fees & Charges](#)

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan

COMMITTEE/BOARD REVIEW:

Parks & Rec

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 approve the Parks and Recreation Department 2023/2024 Fees and Charges/Facility Use Policy.
2. Vote "No"; this will not approve the Resolution, nor the Parks and Recreation 2023/2024 Fees and Charges/Facility Use Policy and the Parks and Recreation Department may not achieve cost recovery rates.
3. Vote to "Amend"; this could delay the Resolution and would require further direction to City staff.
4. Vote to "Table"; this could delay the Resolution and would require further direction to City staff.

RESOLUTION 23-135

A RESOLUTION APPROVING THE PARKS AND RECREATION DEPARTMENT 2023/2024 FEES AND CHARGES/FACILITY USE POLICY REPLACING AND REPEALING RESOLUTION 19-145.

The City Council is informed that:

WHEREAS, the City of Las Cruces Parks and Recreation Department is requesting to repeal Resolution 19-145; and

WHEREAS, the Department continues to receive and solicit input from community members to refine our overall process; and

WHEREAS the policy is intended to establish a standardized approach to assessing fees for the use of City facilities and recreation programs; and

WHEREAS, City Council established a target for cost recovery for the various programs and activities; and

WHEREAS, the policy was developed in an effort to achieve the cost recovery targets set by City Council; and

WHEREAS, the Parks and Recreation Advisory Board reviewed the policy at their regular meeting on April 20, 2023, and sent forward a recommendation to City Council for approval.

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

(I)

THAT Resolution 19-145 is hereby repealed.

(II)

THAT the Parks and Recreation 2023/2024 Fees and Charges/Facility Use Policy attached hereto as Exhibit "A", is hereby adopted.

(III)

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

DONE AND APPROVED this day of

Agenda Item #8.1.

APPROVED

ATTEST:

Moved by: Becky Corran

Seconded by: Tessa Abeyta

AYES

NAYS

CITY OF LAS CRUCES PARKS AND RECREATION DEPARTMENT FEES & CHARGES/FACILITY USE POLICY

INTRODUCTION

The City of Las Cruces Parks and Recreation Department has the responsibility to establish policy for recovering costs for using the City's parks, recreation facilities and taking part in various recreation programs. This policy is meant to be a guide to Administration, the Parks and Recreation Advisory Board, and the City Council, in developing a fair and consistent fee schedule.

AUTHORITY

The authority to establish appropriate fees and facility use on an annual basis rests with the City Council. The Parks and Recreation Advisory Board shall act in an advisory capacity to the Parks and Recreation Department and to the City Council in the establishment of the policy.

FACILITATION

The Parks and Recreation Section shall develop fees and recommend appropriate uses of parks facilities and participation in recreation programs. The fee will be reviewed annually by staff, the Parks and Recreation Advisory Board, and ultimately approved by the City Council with the adoption of each annual budget.

PURPOSE OF POLICY

The policy is intended to establish a standardized approach to assessing fees for the use of City facilities, parks and participation in recreation programs; for determining which users or groups should pay at what percentage; to keep all fees at a fair market level in order to encourage participation; to strive for a degree of cost recovery; and to lessen the burden on the City and the General Fund.

USER FEES

User fees are established by the City Council. All applicable fees and/or deposits must be paid by cash, credit card, check, or money order, made payable to the order of the City of Las Cruces, a minimum of ten business working days prior to the approved event.

CATEGORIES OF COST RECOVERY

1. MINIMAL COST RECOVERY

Small percentage of direct program costs. Normally 0-20 percent of direct cost:

Program Examples:

- Therapeutic Art
- Special Events
- Aquatics
- Out of School Time Programming (OST)
- Therapeutic Dances

2. PARTIAL COST RECOVERY *

Recreation programs will strive to recover 85 percent of direct program cost.

Program Examples:

- Youth Classes
- Youth Athletics

3. FULL COST RECOVERY *

Recreation programs will strive to recover 100 percent of direct program costs.

Program Examples:

- Adult Recreation
- Adult Classes
- Adult Athletics

** **NOTE:** Addressed in Resolution No. 93-264*

TARGETED COST RECOVERY

Targeted cost recovery for recreation programs is 85-100 percent of direct costs, 33 percent for Aquatics, 85 percent for Youth (not to go below 75 percent), and 100 percent recovery for adult programs and special recreation programs.

DEFINITIONS DIRECT COST

Costs directly associated with providing activities and/or services required for program functionality. Examples: cost for instructor/leader, supplies, materials, building rental, advertising, etc.

FACILITIES

Existing City Parks and Recreation Facilities including recreation centers, tennis and other playing courts, sports fields, swimming pools, and parks. Examples are, but not limited to, the following:

- | | |
|---------------------------------|--|
| ▪ Meerscheidt Recreation Center | ▪ Triviz Multi-Purpose Path |
| ▪ East Mesa Recreation Center | ▪ La Llorona Park |
| ▪ Volleyball Court | ▪ Apodaca Softball/Baseball Fields |
| ▪ Soccer Complexes | ▪ Ron Galla T-Ball Fields |
| ▪ Maag Complex | ▪ Frank O'Brien Papen Community Center |
| ▪ Regional Aquatic Center (RAC) | |

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- Tennis Courts
- Public Pools/Metro Verde Splash Pad/Interactive Fountain
- Harty Complex
- Paz Complex
- Lions Park
- Young Park
- Four Hills Park
- Pioneer Women's Park
- A. Fielder Memorial Safe Haven
- Plaza de Las Cruces
- Archery Range/Remote Control Airport
- WIA Building
- Butterfield Shooting Range

PROGRAMMING HOURS OF OPERATION

In order to provide the most efficient and effective use of Parks and Recreation staff, facilities, and programs, the City of Las Cruces Parks and Recreation Department reserves the authority to change facility hours of operation in accordance with recreation programming. At designated facilities, City of Las Cruces Parks and Recreation staff will be on site only during scheduled recreation programming hours. Any change in programming hours of operation at a designated facility will be posted in advance. Facility hours may be further adjusted based on staffing levels, budget constraints and/or public demands.

SPONSORSHIP OF GROUPS

Groups that meet all criteria as set forth by the Parks and Recreation Advisory Board may be co-sponsored and/or supplementary funded by the City of Las Cruces: (Group sponsorship subject to change).

PARKS AND RECREATION DEPARTMENT GUIDELINES FOR THE DISTRIBUTION OF CITY STIPENDS

Purpose: To provide guidelines and criteria for the distribution of City funding/stipends to local recreational youth leagues or organizations/associations. The funding is intended to be used to lower the cost of participation for local youth participants. This partial funding is to be used to assist with the operational costs of the program/activity. The youth league or organization/association must provide proof of financial need and community benefit.

Well established, financially sound youth/adult leagues, organizations/associations, tournament/traveling teams, and non-local residents will not qualify.

REFUND POLICY

The Parks and Recreation Department will refund fees for the following only:

1. Department cancellation of activity due to low registration.
2. Department cancellation of activity due to inclement weather.
3. Department cancellation of activity due to mechanical malfunctions.
4. Inability of class or league to proceed with activity.

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5. A 25 percent service charge assessed prior to the second game or class with no refund to be granted after the second class or game.
6. In cases of emergency, i.e., death or illness, rental fee paid in advance to secure the rental will be refunded. A 25 percent service charge will be assessed to all cancellations other than emergencies of rentals of facilities and parks.

RETURNED CHECK POLICY

There will be a \$30.00 service charge on all returned checks as per the City's Finance Department.

PAYMENT PLAN

The Parks and Recreation Department is offering a payment plan to individuals who are unable to pay the full program amount at time of registration. Each individual will be reviewed on a case-by-case basis and a suitable payment plan must be agreed upon by both the individual and the City of Las Cruces. Scholarships may be available through the generous donations of citizens of Las Cruces in accordance with scholarship policy.

Installment/Payment Plan – The department will offer an installment payment plan in order to help accommodate participants and ensure that all citizens have access to programs. Installment/Payment Plan must be approved by a Recreation Program Manager. Payment(s) arrangements must be made prior to participation in any program. Plans may include monthly/quarterly payment plans. The department may request proof of inability to pay or financial hardship and may deny installment payment plan requests. If payment is not received, prior to service delivery, then services may be terminated immediately.

YOUTH SCHOLARSHIP PROGRAM

The City of Las Cruces Parks & Recreation Department will offer program scholarships for qualified children for the fiscal year (July 1 – June 30) or as funds are available. Participation in leisure, recreational, and fitness activities has proven to provide safe, healthy activities, help reduce health risks and issues, and strengthen family and community relations. To instill the value of these benefits, the City of Las Cruces is willing to subsidize program fees for eligible individuals who qualify based on residency, total household income and number of dependents. A strong sense of ownership and pride is developed when the scholarship recipient contributes to the cost of the program.

Applicant(s) may receive a scholarship in the amount \$120.00 per fiscal year (July 1 – June 30) per dependent. A maximum of \$240.00 per household may be approved per fiscal year. A minimum 50% of program fees must be paid by applicant before scholarship can be utilized. No other discounts may be applied.

Example of approved/exempt programs:

Approved programs: Athletics (*basketball, baseball, football, volleyball, soccer, cheer, etc.*), After School, Camps, Gymnastics, Swim Lesson, Summer Program

Exempt programs: Fitness Classes, Rentals, Equipment Fees, Special Events, Pass Cards, Daily Pool entry

TRANSFER POLICY

City Parks and Recreation Program transfers are permitted on a space available basis.

AGE CATEGORIES FOR RECREATION PROGRAMS

- Infant 0-2 years of age
- Youth 3-17 years of age
- Adult 18-59 years of age
- Senior 60 and over

SENIORS

The Parks and Recreation Department defines a senior as any individual who is 60 years of age and over. The senior population will be given a 50% discount off of all fees required to participate in our programs with an ID card. Discount does not apply to league participation.

RECREATION FACILITY AGE LIMITS

It is recommended that all children under the age of 18 be under the direct supervision of an adult 18 or older, however the Parks and Recreation Department shall use the information below as a guide for regular open hours at all facilities (pool rules differ):

1. Ages 1-7. Allowed admittance to the facilities (recreation/community) centers under direct supervision of an adult 18 or older, but never allowed in the weight room or group fitness classes. This age group must be accompanied by an adult at all times.
2. Ages 8-11. Must be accompanied by an adult 18 or older in the facilities. This age group is not allowed in the weight room or group fitness classes. Allowed use of the racquetball courts with an adult 18 or older.
3. Ages 12-14. This age group will be allowed access to most areas of the facilities without an adult, except for the weight room (14 and older will be allowed in the weight room with supervision of an adult; some group fitness classes, but not spinning). They will also be allowed use of the racquetball courts without an adult.
4. Ages 15-17. This age group may participate in all group fitness classes. They will be permitted in the weight room (parent/legal guardian must sign a waiver) only under the direct supervision of an adult 18 or older.
5. Ages 18 and over. This age group will be allowed full access to facilities.
6. In swimming pool facilities children ages 8 and under must be accompanied by an adult in the water unless child has passed a designated swim test.

FAMILY DEFINITIONS

Husband, wife, and children, including natural, adopted, foster and stepchildren, living within the same household, also, persons who are not married, including children, who are living in the same household.

ORGANIZATION AQUATIC FEE

1. The Organization or Agency must be non-profit and show financial need:
 - a. Verification of non-profit and low-income status (prior year's tax filing)
 - b. Letter of Incorporation from State of New Mexico
2. The Organization or Agency must be located within Dona Ana County.
3. Member or clients of the Organization or Agency must reside within the same building.
4. Submit a letter to the Parks and Recreation Director or designee with above documentation requesting discounted punch card or swimming pool pass.

RESTORATIVE POOL/WEIGHTROOM PROGRAM

The City of Las Cruces Parks and Recreation Department is offering use of the aquatic features and Warm Water Pool at the Las Cruces Regional Aquatic Center at a reduced fee for qualifying individuals. Individuals with medical conditions that would benefit from water exercise to enhance, restore, and maintain a person's functional abilities may qualify. Conditions can be acute, transient, or chronic. Individuals and their care-provider(s) will be charged an admission fee of \$1.00 per person to use the Aquatic Center's amenities for one hour during any fitness swim session. Individuals participating in this program may be accompanied by their care-provider(s) at an admission fee of \$1.00. This is a non-renewable six-month program and does not apply to fitness classes.

Both the participant and care-provider(s) must pay for each session of use at the facility. A doctor's note validating the need for the use of the facility specifying the need for water, land therapy, must be provided at the time of registration.

FREE SWIM

City staff has the authority to offer free swim session admission on a weekly basis for everyone (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations).

SCHOOL DISTRICT YEAR-END PARTIES

Schools may schedule the Las Cruces Regional Aquatic Facility for end-of-the-year school parties, not to exceed a maximum of 80 students as availability allows (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations). Adults/Students who plan to swim will pay the daily rate.

FACILITY USE/RENTALS (RECREATION CENTERS)

Facilities refer to East Mesa, Frank O'Brien Papen Center, Meerscheidt Center, A Fielder Memorial Safe Haven, Regional Aquatic Center, WIA building or any other Parks and Recreation facilities. In consideration of the payment of the rental fee and the agreement with the Renter to comply with the Contract, the City of Las Cruces agrees to make space indicated available to the Renter for the dates and times set forth and make available the equipment requested. By signing the Contract, the Renter agrees to the following:

I. Payment

A. Reservations:

- Facility reservations are taken on a first-come, first-served basis. Deadline for arrangements and payment is ten business days prior to the date of usage. Otherwise, the reservation will be terminated.
- Group sports in the gymnasium reservations are taken on a first-come, first-served basis.
- Rentals cannot be used to conduct private business for personal gain unless approved by Parks & Recreation Director.

B. The Renter is responsible for loss or damage to CLC property. If, after inspection, room/facility is not left in a satisfactory condition, clean-up/damage fees will be assessed.

C. Rental Fee: To secure reservation, one hundred percent (100%) of the rental fee is due at the time of the completion of this Contract.

D. Request for Changes: Any requests for changes to this Contract must be agreed upon in writing between the Renter and the City of Las Cruces staff. Requests must be completed no later than two (2) weeks prior to event or by mutual agreement.

E. Cancellation/Refund: If reservation is cancelled by Renter, the City of Las Cruces will retain a 25% cancellation fee. The exceptions to this are injury, illness or in case of emergency or extenuating circumstances.

II. Set-Up, Supervision, Caterers, Decorations, Equipment, Clean-Up, and Closing of Facility

A. Set-Up: Access to the facility for setting up, including caterers set-up, will be during the hours on the face of the Contract ONLY.

The City of Las Cruces provides certain items for use to Renter and/or Caterer such as tables, chairs, and equipment within the facility(s). We do not provide linens, silver, or tableware. The City of Las Cruces staff's sole responsibility is to supervise the facility, the equipment and supply the above listed rental items for space being rented, along with trash cans and liners. The City of Las Cruces will not be responsible for moving, set-up and break-down, including stacking of tables, chairs, and other equipment used during the event.

B. Supervision: Any individual at this event under the age of 18 must be supervised at all times. Any area of the facility that is not under Contract is off limits. Only activities

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conductive to the facility will be allowed. If required, security services must be present for the duration of the event. Parking is permitted at the facility. Please obey all posted signs.

- C. Caterers: Caterers must have proper licenses and liability insurance coverage. The City of Las Cruces requires that a copy of the Caterer's Certificate of Insurance be made available when final payment is received for catered event.
- D. Decorations: The renter shall not (a) cause or permit the facility to be injured, marred, or in any manner defaced or changed; (b) place any nails, tacks, screws or other fasteners into any part of the facility; (c) place or permit to be placed, signs on painted walls in any part of the facility. No decorations such as posters, pictures or banners are to be fastened to walls, woodwork, or curtains inside or out.
- E. Equipment: All equipment not owned by the City of Las Cruces and being used by Renter/Caterer must be removed at the conclusion of the event. The City of Las Cruces is not responsible for any lost, stolen, or damaged property.
- F. Clean-Up: At the conclusion of any event the facility must be returned to its pre-event condition. All City of Las Cruces equipment must be returned to the original designated areas. All food, beverages, equipment and rented supplies must be removed from the premises immediately after each use of the facility(s) AND NO LATER THAN THE EXIT TIME STATED ON THE FACE OF THIS CONTRACT. Any catering areas used must be cleaned and left in "as found or better" condition. All trash must be removed from the building and placed in an appropriate dumpster. All floors must be swept and/or vacuumed after use of space. Renter will give floors a light mop where needed. Renter must immediately take care of any major spills. If renter is unable to remove spills, the City of Las Cruces will have area(s) professionally cleaned at the renter's expense.

III. Alcohol, Drugs and Tobacco

- A. Alcohol: No alcohol or liquor is allowed on City property without prior City Manager approval.
- B. Drugs: No illegal drugs are allowed on City property.
- C. Smoking: No smoking or vaping, including e-cigarettes, is permitted inside any facility. Any person smoking must be at least 50 feet away from any facility entrance.
- D. ANY VIOLATION OF THESE RULES MAY CAUSE THE EVENT TO BE TERMINATED.

IV. Destruction and Damage

- A. Damage: If anyone damages the facility(s) during the rental period, the Renter shall be liable for all necessary repairs.
- B. Destruction: If the City of Las Cruces facility(s) are destroyed or damaged by fire or any other cause or unforeseen occurrence that shall make the fulfillment of the Agreement impossible, then the rental contract shall terminate, and payments will be returned and Renter waives all rights to any claims against the City of Las Cruces.

V. Facility Use

- A. Compliance: Renter agrees that any use of City of Las Cruces facility(s) must comply with all statutes, ordinances, rules, and regulations issued by Federal, State and Municipal governments, including all rules of the Las Cruces Police and Fire Departments. When requested, the Renter shall provide Liability insurance naming the City of Las Cruces, its employees and agents as additionally insured with the limits of \$1,000,000. If the City is to be named as additional insured, the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured.
- B. License & Payments: Renter agrees to obtain or collect and to pay and deliver to the proper governmental agency or regulating authority, any and all license fees, permits, royalties and taxes required in connection with the use of the facility(s).
- C. Hazardous Materials: Renter agrees not to bring on to the premises any material, substance, equipment, or object which is likely to endanger the life of, cause bodily injury to any person or property or which is likely to constitute a hazard.

VI. Responsibility and Indemnity

- A. Conduct: The conduct of all event participants while on City of Las Cruces property shall be the responsibility of the Renter. The Renter also accepts all responsibility for any injury to person(s) or property, or loss of or damage to property or theft of personal property on City of Las Cruces premises during the rental period or resulting therefrom. Failure by any individual or group to follow all applicable rules and regulations will be cause for eviction. The City of Las Cruces retains the right to evict objectionable persons from the premises. Repeated violations may result in denial of future reservation requests.
- B. Indemnity: The Renter shall release, indemnify, keep and save harmless the City of Las Cruces, its agents, officers or employees from any and all responsibility or liability for any and all damages or injury of any kind or nature whatever (including death) to all persons, whether agents or employees of the Renter or persons attending the event for which the premises have been leased, and to all property damage proximately caused by, incident to, resulting from, arising out of, occurring in connection with, the use of the Renter of the premises. The provisions of this section shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses, including reasonable attorney's fees.

VII. Security

- A. Building Security: Different uses of the facility(s) may entail different requirements concerning security. The City of Las Cruces is not responsible for any items left in the facility(s). The Renter will take the necessary precautions to protect personal property and to maintain order during event. ONE PROFESSIONAL SECURITY GUARD PER FIFTY (50) PARTICIPANTS MAY BE REQUIRED. Receipted confirmation of professional security services obtained must be presented at time of final payment.

CONTRACTS TO CONDUCT CITY PROGRAMMING

If the City contracts with any organization to conduct a city-sponsored program, it is the City's responsibility to ensure such activities are carried out by the contractor in compliance with the requirements of the Americans with Disability Act. The following language shall be included in all such contracts entered into by the City.

The Contractor shall ensure that all programs, services, and activities are accessible to and useable by persons with disabilities in accordance with the Americans with Disabilities Act; including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing or cognitive disabilities, integrated seating, and the provision of reasonable modifications and/or accommodations and to maintain, and provide to the City upon request, a record of all such requests received, granted and/or denied and the reason for any denials.

PERMITTING PROCEDURE

1. Requests for exclusive use of a city-owned park/recreation facility or portion thereof by any individual, group or organization must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.

(Note: Requests for park/recreation facility areas with bathroom facilities, bathroom facilities will remain available for general public use, and not specifically for permitter. Bathrooms are regularly maintained and stocked on daily schedule. If restrooms are inoperable, signage will be placed at restroom and permitter will be notified.)
2. Requests for use of City-owned parking lots adjacent to City-owned parks and recreation facilities must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.
3. Requests for use of the city-owned parking lots surrounding Main Street Downtown (Main Street from Picacho Street to Lohman Avenue) must be submitted in writing to Parks and Recreation Department ten business days in advance of the requested date. Uses that compete with established businesses or the Farmers and Crafts Market are prohibited. Because of the proximity to businesses on Main Street Downtown, use of these parking areas shall only be permitted from 7:00 p.m. to 10:00 p.m., Monday through Saturday, or from 9:00 a.m. to 10:00 p.m., Sundays. (Permitting is now being done by Parks & Recreation).
4. Requests for the use of water holding structures like, but not limited to: Las Cruces Dam and Tee Time will need the prior approval of the Public Works Department before a Park/Facility application can be approved and permitted.
5. Permits for exclusive use of City-owned parks, recreation facilities or parking areas will be issued for a period not less than four hours for the established fee, with the following considerations:

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- a. Permit requests for all parks, pavilions, gazebos, and shelters will be rented for an established fee and time period.
- b. The proposed use will not unreasonably interfere with general public enjoyment of a facility.
- c. The proposed activity is not anticipated to incite violence, crime, or disorderly conduct.
- d. The proposed activity will not entail unusual expense (overtime scheduling) or risk to the City.
- e. The facility or portion thereof requested has not previously been reserved.
- f. The facility requested is suitable for the activity proposed.
- g. The proposed activity will not interfere with the promotion of public health, welfare, and safety of the citizens of Las Cruces.
- h. All appropriate paperwork has been completed in full and accepted by the Departments.
- i. The individual, group or organization ensures the permitted facility will be left in a clean and acceptable condition.
- j. Requests for use of the following parks, but not limited to Apodaca Park, Desert Trails Park, Johnson Park, Klein Park, Women's Pioneer Park, Veterans Memorial Park, and Young Park will require a deposit fee of \$250.00. This payment is non-refundable and will be applied to your overall rental fee.

NON-DISCRIMINATION COMPLIANCE

Facility users will not discriminate against any person in access to or participation in any program contemplated by this policy, or in any facility used in connection therewith, on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, age or disability in employment or the provision of services. Facility users will ensure that all programs, services and activities are accessible to an useable by persons with disabilities in accordance with the Americans with Disabilities Act, including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing, and other impairments, integrated seating and the provision of reasonable modifications and/or accommodations and shall adhere to the City of Las Cruces Communication Policy (if portable toilets are going to be provided, accessible units must also be provided at each bank of standard units).

INSURANCE

The City requires that users of City-owned facilities for special requests, one-time events, athletic leagues, tournament play, and recreational programs provide proof of liability insurance to cover such use of the facilities, with the City of Las Cruces named as an additional insured on the policy, if staff determines that such insurance is necessary. If the City is to be named as

additional insured, then the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured. This proof of insurance will be forwarded to the Parks and Recreation Department upon approval of permit. The amount of this insurance shall coincide with the limitations of the *New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et seq.* If Insurance is not received, event will be cancelled.

SPECIAL EVENTS REQUESTS

Special Event requests must be submitted a minimum of 30 days in advance by filling out a Facility/Park Use Permit Application and turning it into the Department.

The following information /documentation must be submitted along with the Facility/Park Use Permit Application:

1. On annual basis 30 days prior to a special event, submit a detailed financial statement covering funds received and expended for the event's previous year event or program. The City of Las Cruces may also require and audit at the organization's expense in cases where the City of Las Cruces provides funding or direct support.
2. 10 business days prior to a Special Event, submit proof of insurance for the upcoming event for the required amount. If insurance is not submitted, permit will be cancelled.

SPORTS FIELD REQUESTS

Sport field requests for tournament play may be submitted at the November League Meeting, the Wednesday the week before Thanksgiving, for the coming year up to January 15. Sport field requests for league play may be submitted any time after January 15. (If you are a new requestor, sports field requests will be reviewed on a case-by-case basis depending on field availability.)

1. On annual basis 30 days prior to a Sports Event, submit a detailed financial statement covering funds received and expended for the event or league operations to include local, state, regional or national tournaments for the previous year event. The City of Las Cruces may also require an audit at the organization's expense in cases where the City of Las Cruces provides funding or direct support.
2. Tournaments will not be approved if they are in association with league play. For example, submitting a permit for tournament play in order to complete league play will not be approved (masking permits as tournaments to finish league play).
3. If you are a new league (not established) or you are an organization not in "good standing", a 50% payment will be due upfront once permit has been approved. This payment is nonrefundable and will be applied to your overall rental fee. The remaining balance must be paid within one (1) week after the event. All tournaments will require a \$250.00 deposit upon approval of permit.
4. 30 days prior to a sporting event, submit proof of insurance for the upcoming event for the required amount.

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5. All Organizations, Leagues, and Field Users (including point of contact and league office) that do not reside within City limits will have to pay a Non-Resident Fee and will require a \$250.00 deposit upon approval of permit. This payment is non-refundable and will be applied to your overall rental fee. A post office box will not be allowed as proof of local resident.
6. All organizations will be responsible for collection of event camping fees at tournaments.

Definitions:

- a. **Tournaments** - A tournament will be classified as a tournament if it carries a minimum of fifteen (15) teams which includes local and outside area participants or leagues. Tournaments must be sanctioned by the local, state, or national sports sanctioning body.
- b. **Established Organizations/Leagues** - An organization/league which has utilized City of Las Cruces facilities as an organization/league for three (3) or more years.
- c. **Outside League or Organization** - A team, league, or entity outside the immediate umbrella of an established league or organization which is requesting field use to hold a tournament. For example, this could be a team or organization from another association, city, or state.
- d. **Good Standing** – An established league or organization that has paid field request fees within the two (2) weeks, after being invoiced after the event. They should have also submitted their insurance requirements thirty (30) days prior to the event and followed permitting guidelines outlined in this policy on a consistent basis. Period of “good standing” = three (3) years or more.

SPORTS FIELD PRACTICE RESERVATIONS

Parks will issue a reservation for a fee to ensure that all City-owned ball fields are made available on an equitable basis to individuals and organizations. This policy applies to all leagues and organizations wanting to use City athletic fields for practice.

Application Process

- Reservations are taken on a first come, first served basis at the Parks and Recreation Administration office located at 1501 East Hadley. Reservations will only be taken during normal business hours: **Monday-Thursday 8 am-5 pm.**
- Reservations will only be taken for the following week only and in person. Teams may not reserve more than two practices per week. One individual may reserve one field for a maximum of two times per week.
- Cancellations for practice times will only be honored due to inclement weather and must be submitted within 24 hours of the cancellation. Practices cancelled by individual will not be refunded.
- Practice fields availability may be limited due to permit reservations, fields blocked for construction and field prep.

Requirements

- All teams will need to be covered by the respective leagues insurance for the amount of one million in liability insurance with the City of Las Cruces attached to the policy

with an endorsement. If team is not covered, a waiver will need to be signed by all users.

- All teams are responsible for policing the area for litter and making sure that the area is clean at all times. If it is determined by the City of Las Cruces Parks and Recreation Department that deterioration of the fields or abuse is present, all practice requests will be ceased at that time.
- Teams will be responsible for monitoring and conducting themselves in a safe manner.

PARKS AND RECREATION ADVISORY BOARD AUTHORITY OVER LEAGUES/ORGANIZATIONS THAT UTILIZE CITY FIELDS AND/OR FACILITIES

Purpose: To provide guidance to local recreational youth/adult leagues or organizations that utilize City fields and/or facilities. To provide an independent, non-biased committee that has the authority to review league/organization procedures, act as an appellate body for player/coach/parent/spectator suspensions, review financial records and recommend (or require) changes to league/organization operations.

Resolution No. (12-072)

FISHING

Fishing will be allowed at Young Park Pond in accordance with New Mexico Game and Fish regulations.

SWIMMING

Swimming is allowed at Laabs Pool, East Mesa Bataan Memorial Pool, Regional Aquatic Center and Las Cruces Natatorium. No swimming is allowed in the Young Park Pond. Splash pads and interactive fountains are not bodies of water in which swimming can be conducted. All posted rules must be followed for safety purposes.

CARNIVALS AND AMUSEMENTS

Requests for conducting Circuses, Carnivals/Amusement Parks and similar businesses must be submitted to the Community Development Department's Permitting Office. If approved, these businesses must then apply for a Park Permit if the activity is conducted at a Parks and Recreation area or facility.

ROLLER SKATING, ROLLERBLADING, SKATEBOARDING, REMOTE CONTROL TRACK, ARCHERY, REMOTE CONTROL AIRPLANES, DRONES

The City of Las Cruces may designate and restrict areas and facilities for these purposes.

GOLFING

No hitting of golf balls allowed on any City Park facility as per *LCMC, Section 20-36*, with the exception of City golf programming.

MOBILE CONCESSIONS/VENDING

Any individual, group, business entity or organization engaged in the sale of food, beverage, or any other merchandise at a public park, Plaza de Las Cruces or public space within the City limits must obtain a permit from the Parks and Recreation Department. Applicant is responsible and required to meet all applicable city, state and health department laws and regulations, including acquiring all necessary permits for food and beverage preparation. All such permits must be provided to the City prior for the issuance of a permit from the Parks and Recreation Department.

I. REQUIREMENTS:

The Parks & Recreation Department reserves the right to permit if vendors are able to provide the following:

1. **BUSINESS LICENSE:** Provide a copy of the required Business license and Registration permit from the City of Las Cruces Business Registration Office.
2. **FOOD SERVICE PERMIT:** Provide a copy of the required permit(s) from the State of New Mexico Health Department.
3. **LIABILITY INSURANCE WITH ENDORSMENT:** Applicant is required to provide the City a copy of proof of liability insurance coverage in the minimum amount of one million dollars (\$1,000,000) per occurrence, naming the City of Las Cruces as an additional insured with an endorsement page.
4. **FEES:** Vendor agrees to pay the City of Las Cruces \$60 monthly fee. Permits will **ONLY** be issued on a quarterly basis or fraction thereof. Payment shall be made to the City of Las Cruces in full in order to receive a permit for each quarter.
5. TAXATION CERTIFICATE MUST BE ON FILE.

All concession/vendors, to include mobile vendors, must be in good standing at all times. Good standing will be defined as no complaints, regular payment of required fees, and all appropriate documentation on file. The Parks and Recreation Department staff has the right to deny concession/vending permits based on non-compliance. The City may develop a request for proposal to operate all City concession stands on park property.

SPECIAL USE PERMITS (TO INCLUDE, BUT NOT LIMITED TO, MODEL AIRPLANES/MODEL ROCKETS/METAL DETECTING), AND REMOTE-CONTROL CARS

Model Airplanes/rockets, metal detecting, and remote-control cars are recognized as legitimate recreation activities when they are conducted in ways that do not damage the natural and cultural resources of City of Las Cruces park facilities.

A Facility Use Permit is required to use any city park for these activities. Use of metal detectors is limited to park areas only and not in ball field areas. To obtain a Park/Facility use Permit visit the Parks and Recreation Administrative Office at 1501 E. Hadley.

INFLATABLE/PORTABLE PLAY EQUIPMENT

The City of Las Cruces allows inflatable play equipment at designated sites in Young Park, Pioneer Park, Apodaca Park, and Klein Park. Any business that operates/leases party and or event equipment, i.e. jumping balloons, dunk tanks, sporting equipment, etc., in a City park/facility is required to provide proof of general liability insurance in the amount of three million dollars (\$3,000,000) per occurrence, with the City of Las Cruces named as an additional insured with an endorsement page.

The amount of the insurance shall coincide with the limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1. This proof of insurance must be forwarded to the Parks and Recreation Department for record keeping. Uninsured businesses may be held personally responsible for injury or damages caused by any uninsured or unauthorized inflatable or portable play equipment.

VEHICLES AND DRIVING IN CITY PARKS

Driving or parking vehicles on the grass or landscaping located in a City park or on City property is prohibited except during events for which a permit has been granted. Driving on park property results in damage to both turf and irrigation sprinkler systems and can result in costly repairs. Items should be hand carried from the street or parking lot to the interior of a park. This is also true for local businesses that offer tents or other large items for party rentals or other activities. In addition, no parking is allowed on the grass surrounding soccer fields and softball/baseball fields. This section does not apply to City vehicles, emergency vehicles or public utility service vehicles.

WELLNESS PROGRAM

The City of Las Cruces has expanded the current workplace Wellness Program by recognizing the value of improving the health and well-being of its employees. The program *is designed to improve employee morale, loyalty, and productivity. Employees have been provided access to physical fitness classes, the weight room and cardio rooms, nutrition classes, diabetes checks, health fairs, sports, and golf opportunities.* Staff will continue to seek ways to increase the benefits for City of Las Cruces employees and their family members.

COMMUNITY GARDENING

The City of Las Cruces offers local citizens use of public property for community gardening activities. Gardeners are encouraged to plant vegetables and other annual plants. All gardening participants must be registered annually. All current gardeners can register for one plot from January 3 until January 31. New gardeners can register for any available plots from February 1 until February 28. Beginning March 1, registered gardeners can request a second plot if available. Registration is accepted at the Parks and Recreation Department, 1501 E. Hadley. Garden plots will be rented on a first-come, first- served basis and for an established fee and time period. Garden sites are:

- Jardin de Esperanza – 341 E. Picacho
- Gomez Community Garden – 2250 S. Espina
- Munson Community Garden – 975 S. Mesquite (program garden)
- Sage Community Garden – 6121 Reynolds Dr.

MEMORIAL TREE AND BENCH PROGRAM

The City of Las Cruces offers a Memorial Tree and Bench Program. The Memorial Tree and Bench Program is a wonderful way for all to celebrate, honor or memorialize a special individual or group. With the purchase of a new tree or park bench, the City of Las Cruces Parks and Recreation Department will work with the donor to assure the planting or installing of a new tree or bench in a park, public space, or along a walking trail. In addition, this unique living memorial will also contribute to the beautification of public spaces for countless generations to enjoy.

WALK OF HONOR BRICK PAVERS

The City of Las Cruces offers the opportunity to purchase personalized quarry tile brick pavers to be used in the construction of a walk of honor for veterans within the City's Veterans Memorial Park on Roadrunner Parkway. Bricks may be purchased at the Parks and Recreation Department for an established fee. Bricks will be ordered quarterly (every three months).

PARK OPENING AND CLOSING HOURS

1. City parks may be open from sunrise to sunset, except for emergencies, permitted special events and in parks where hours are posted differently from those operating under the normal operating time. *Refer to LCMC, Chapter 20, PARKS AND RECREATION ARTICLE II. RULES FOR USE OF PARKS, Section 20-28.*
2. Unidad Park and Butterfield Shooting Range hours of operation are sunrise to sunset. Note: Butterfield Shooting Range will be closed Thursday morning until 3:00 p.m. for maintenance.
3. Splash pad hours will be consistent with similar facilities.
4. Individuals shall not be allowed in any City park during closing times unless authorized by permit.
5. The City Manager has the authority to change opening and closing hours of City parks.
6. Parks and Recreation Department employees or Police employees are not restricted by the opening and closing hours when in performance of their duties.
7. For further information regarding park operations, please *refer to LCMC, Chapter 20, Section 20-28*, available in the City Clerk's Office.

PET OWNER'S RESPONSIBILITIES

The City of Las Cruces requires by *LCMC, Chapter 1, Section #7-4.a* that all pet owners clean up after their pet while they visit our parks and facilities.

In addition, dog owners must have their dogs under their control and on a lead not longer than twelve (12) feet; off leash recreation is provided at the "Off Leash Dog Park":

- 1600 E. Hadley (South of Meerscheidt Recreation Center)
- 3551 Bataan Memorial (North of Animal Service Center)
- 855 Amador Ave. (within Burn Lake Park)

Pet owners will be restricted from bringing their pets to athletic complexes, unless designated as a service animal.

MERCHANDISING, ADVERTISING AND SIGNS

1. Individuals, groups, or organizations, while utilizing City-owned parks and/or facilities, are prohibited from the following unless authorized by the Departments in writing:
 - a. Calling to the public attention an article or service for sale or hire.
 - b. Posting or erecting any sign on City-owned property unless authorized by the City Sign Code.
 - c. Collection of money by an individual, group, or organization from the public for services and/or merchandise where all or some of such monies will be disbursed to an entity, individual, group or organization, will only be authorized by permit. Applicable park rental fees may apply.
2. The Parks and Recreation Department has created advertising opportunities that will develop partnerships with our local business community to increase the visibility of their respective businesses and to ensure the sustainability of offering quality/affordable programs to the citizens of Las Cruces.
 - a. Advertisements will be offered through personalized display opportunities at designated Parks and Recreation facilities.
 - b. Fees will be established as per City Council Approval.

EXCEPTIONS

There may be requests that are exceptions to this policy. These requests will be reviewed on a case-by-case basis and may require Parks and Recreation Advisory Board, City Manager, or City Council approval.

CITY FEE POLICIES (as established by City Council)

1. Park Facility Fee Waiver for Military Services at Veterans Memorial Park.
2. Official City Sponsored or co-sponsored events as approved by City Council.

**CITY OF LAS CRUCES
PARKS AND RECREATION PROGRAMS AND FACILITIES
2023/2024 FEES & CHARGES/FACILITY USE SCHEDULE**

I. GENERAL RECREATION PROGRAMS

General Instructions:

Program	Session	Fees/Charges
Fitness/Circuit Training	1 class	\$2.00
Fitness Punch Card	30 visits	\$60.00
60+ Fitness Punch Card	30 visits	\$30.00
MRC Activity Punch Card (not for rentals)	34 visits	\$30.00
Indoor Cycling	1 class	\$2.00
Adult Dance	8 classes	\$40.00
Racquetball Court Rental Pass	6 visits	\$20.00
Racquetball	1 hour/court	\$ 4.00
Pickleball Court Rental (MPR)	1 hour/court	\$10.00
Open Pickleball Session	Per Session	\$2.00
Pickleball Net Rental (for onsite use only)	Per Net	\$10.00
Racquetball Court Rental	1 hour/court	\$10.00
Racquetball/Pickle ball Racquet Rental	1 racquet	\$ 1.00
Teen Dance	1 admission	\$ 3.00
Teen Splash	1 admission	\$ 3.00
Water Cycle Class	1 class	\$ 5.00
Water Fitness Class	1 class	\$ 2.00
Water Fitness Class Punch Card	30 visits	\$60.00
Weight Room – Meerscheidt	Daily Fee	\$ 1.00
Weight Room – Regional Aquatic Center	Daily Fee	\$ 2.00
Weight Room – Regional Aquatic Center	30 visits	\$60.00
Therapeutic Program Dance	1 admission	\$ 2.00
Fitness Classes/Lap Swim	1 hour	\$ 2.00
Shower Fee	1 each	\$ 1.00
Activity ID Card Reprint Fee	ALL	\$ 5.00
Towel Fee	1 each	\$ 1.00
Copy Fee	Per copy	\$ 0.50
Open Session Basketball/Volleyball/Skate	Daily Fee	\$ 1.00
Specialty Camps	Half Day	\$50.00
	Full Day	\$100.00
Locker Rental	Daily	\$0.50
Locker Rental	Weekly	\$2.50
Locker Rental	Monthly	\$10.00
Locker Rental	Yearly	\$120.00
After School Program (Registration will be accepted based on availability)	Per Semester (Fall/Spring)	\$100.00
Summer Recreation Program	Per Session	\$40.00
Spring/Fall/Winter Camp	Per Session	\$20.00

Therapeutic Recreation Programming – Private Entities

A programming fee will be charged for Therapeutic Recreation Program administered activities held at any private entity. The Therapeutic Recreation programming fee will be a minimum of 25 cents per participant/care provider per activity. This fee may vary based on the activity, allowing for a wide range of diversity in venues and opportunities for program participants. The Therapeutic Recreation Program will work with care providing agencies, care providers and participant families to set activity programming fees for more costly and expansive activities. This programming fee will provide a minimal cost recovery and help off-set direct expenses incurred for the facilitation and delivery of such activities.

Sports League Program:

Program	Session	Fees/Charges
Adult Volleyball*	9 games	\$250.00
Adult Basketball*	9 games	\$465.00
Camp Daily Drop-in Fee		\$20.00
Racquetball League	12 games	\$12.00
Basketball Coaches Certif.	1 year	\$30.00
Officiating Clinic	1 year	\$30.00
Youth Sports Leagues (City) - with Jersey**	8 games	\$50.00/child
Youth Sports Leagues (City)- without Jersey**		\$40.00/child
Sports Tournament – Adult (City)*		\$200.00
Sports Tournament – Youth (City)**		\$150.00
Non-Traditional Sports Tournaments – Adult*		\$ 75-\$200
Non-Traditional Sports Tournaments – Youth**		\$50-150.00
Cheer – with Jersey	8 classes	\$50.00
Cheer – without Jersey		\$40.00
Coach Rental Card		\$5.00 per player

* Adult Leagues run at 100 percent recovery of direct cost.

**Youth Leagues run at 85 percent recovery of direct cost.

Pilot Program Process:

The Parks and Recreation Department will have the authority to research and pursue new and innovative services by utilizing new and creative programming or single event activities for all ages and abilities. Staff will set fees based on Council's direction concerning rates of recovery.

Special Events:

Program	Session	Fees/Charges
Youth Running Events/Late Fee	1 race	\$15.00/\$25.00
Adult Running Events/Late Fee	1 race	\$20.00/\$25.00
Running Event Series	3 5K races	\$30.00
Duathlon/Duathlon Late Fee	1 race	\$30.00/\$35.00

- II. SWIMMING** (In the event of pool closures and capacity, open recreation and swim time will be split into two equal sessions. All swimming pools will have split sessions during summer months (Memorial Weekend thru Labor Day).

Community Education Classes:

Program	Session	Fees/Charges
First Aid	4 hrs.	\$55.00
CPR-PR		\$75.00
Recertification (CPR-PR or First Aid)	One time	\$50.00
Recertification (Lifeguard Skills)	One time	\$90.00
Home Swimming Pool/Spa Water Safety	1.5 hours	\$30.00
Open Water Safety	1.5 hours	\$30.00
Home Swimming/Water Safety/Open Water	3 hours	\$50.00

- ***Fees subject to current Red Cross pricing***

Daily Fees:

East Mesa/Laabs Outdoor Swimming Pools:

	Age Group	Fees/Charges
Infant	0-2 years	Free
Youth	3-17 years	\$2.00
Adult	18-59 years	\$2.00
Senior	60+ years	\$1.00
Child Watch Fee (Parent/Guardian)	N/A	\$1.00

Las Cruces Natatorium (50 Meter Community Pool) Fees

Activity	3 – 17 yrs. old	18 – 59 yrs. old	60+
Lap Swim	\$2.00	\$2.00	\$1.00
Fitness Swim	\$2.00	\$2.00	\$1.00
Open Swim	\$1.00	\$4.00	\$2.00

Las Cruces Regional Aquatic Center:

	Age Group	Fees/Charges
Infant	0-2 years	Free
Youth	3-17 years	\$3.00
Adult	18-59 years	\$4.00
Senior	60+ years	\$3.00
Child Watch Fee (Parent/Guardian 18+)	N/A	\$1.00

Gift certificates are available for purchase at all swimming pool facilities.

Las Cruces Natatorium Meet & Practice Fees & Amenities

Amenity/Fee	Fees/Charges		
	Non-Profit	Commercial	Non-Residential
25 yd/meter lane for practice	\$ 11.00	\$ 50.00	\$ 17.00
50-meter lane for practice	\$ 13.00	\$ 50.00	\$ 26.00
Swim Meet per hour (scoreboard included)	\$175.00	\$700.00	\$220.00
Starting System per meet	\$ 25.00	\$100.00	\$ 30.00
Dolphin Timers each per meet	\$ 15.00	\$ 60.00	\$ 20.00
Operation Fee for Timing System	\$ 30.00 (per operator)	\$ 30.00 (per operator)	\$ 30.00 (per operator)
Swim Meet Spectator Fee	\$ 3.00	\$ 3.00	\$ 3.00
Touch Pads Each	\$ 15.00	\$ 60.00	\$ 20.00
Swim Meet – Timing System per meet	\$500.00	\$500.00	\$500.00
School Swim Team per lane	\$ 11.00	\$ 11.00	\$ 11.00
Staff Fee (Salary/Labor	\$18.00 (2 Lifeguards Reg.) \$20.00 (1 H. Guard) \$16.00 Attendee (2)	\$18.00 (2 Lifeguards Reg.) \$20.00 (1 H. Guard) \$16.00 Attendee (2)	\$18.00 (2 Lifeguards Reg.) \$20.00 (1 H. Guard) \$16.00 Attendee (2)

Rentals will be based on overall demand (public use) and safety window of opportunity (amount of daylight). Swim Team Rentals as per agreement.

Holidays/Maintenance Closures:

Swimming pools may be closed on City observed holidays with the exception of Memorial Day, Fourth of July, and Labor Day.

LAS CRUCES REGIONAL AQUATIC CENTER

Special Events:

Program	Session	Fees/Charges
Aquatic Special Event	1 event	\$5.00 per participant

Swimming Lessons:

Program	Levels	Fees/Charges
Infant/Toddler/Preschool/ Level 1 & 2	Beginner	\$45.00/8 classes
	Levels 3 & 4 (Intermediate)	\$60.00/8 classes
	Levels 5, 6 & 7 (Advanced)	\$60.00/8 classes
Lifeguarding (includes books or pocket mask)		\$200.00/30 hours
Lifeguarding Instructor (LGI) Does not include books		\$200.00/26 hours
Water Safety Instructor (WSI) Minimum age 16 years. Does not include books		\$200.00/15 hours
Be A Guard WSIA & Guard Start (Working at Pools) Minimum age 15 years. Must have passed Level 3		\$95.00/15 hours

Lifeguard Training fee is refundable upon successful completion of certification process and upon hire with the City of Las Cruces (completion of 90 days of service).

Rentals: (Fitness Room) – Weekday operations only.

Amount of Group	Fees/Charges
Fitness Room	\$20.00/hr

Rentals: (Party Area)

Area	Fees/Charges
Party Room/Wet *	\$100.00/3 hours
Private Use-190 Maximum Capacity, Includes Guards/fees, Friday, Saturday, Sunday only	\$400/2 hrs

III. FACILITIES RENTAL

Community Gardens *

	Fees/Charges
Jardin de Esperanza	\$15.00/plot
Gomez Community Garden	\$15.00/plot
Sage Community Garden	\$15.00/plot

*Munson Garden (program)

Meerscheidt, Frank O'Brien Papen Center, East Mesa, A. Fielder Memorial Safe Haven, and WIA Building (weekend rates only and/or after normal business hours):

Rental Area	Fees/Charges
WIA Building	\$40.00/hr
East Mesa Multi-Purpose Room Team Rental	\$10.00/hr
Multi-Purpose Room/or Dining Room	\$40.00/hr
Classroom	\$30.00/hr
Auditorium (Frank O'Brien Papen Community Center only)	\$60.00/hr
Gym Rentals (Meerscheidt Rec Center only)	\$40.00/hr
Sand Volleyball Courts includes use of commercial net system – setup & teardown (Meerscheidt Rec Center Only)	\$40.00 per 2hr time period per court
Sand Volleyball Courts (per day) includes non- commercial net only (Meerscheidt Rec Center Only)	\$40.00/day per court
Meerscheidt Facility (Entire building-Indoor)	\$100.00/hour

Frank O'Brien Papen (weekday operations only):

Rental Area	Fees/Charges
Classroom	\$15.00/hr
Dining Room (Kitchen not included)	\$30.00/hr
Auditorium (Frank O'Brien Papen Community Center only)	\$40.00/hr
Game Room Rental – includes use of equipment	40.00/hr

Meerscheidt Recreation Center (weekday operations only and during normal business hours):

Rental Area	Fees/Charges
Multi-Purpose Room Team Rental	\$10.00/hr
Team Practice/Rental Card	\$50.00/6 sessions \$70.00/8 sessions
Gymnasium – Half Court	\$10.00/hr
Gymnasium – Full Court	\$20.00/hr
Sand Volleyball Courts – includes non-commercial net only	\$10.00 per court

City approved professional security guard services by the renter at a ratio of one guard for every 50 guests (licensed/bonded).

In an effort to reduce staff overtime costs, no rentals will be offered on City Holidays. The primary

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focus for Meerscheidt Recreation Center will be sports-related activities and programs; and Frank O'Brien Papen Center will be recreational programming, activities, and private rentals. East Mesa & A. Fielder Memorial Safe Haven will primarily be for youth programming.

IV. FUNDRAISING RENTALS

- a. Nonprofit organizations that are holding an event / tournament that are not Co-Sponsored by the City of Las Cruces will incur fees.
- b. Non-profit / for profit fundraising exclusive use events of an entire park may be assessed a flat fee rate of \$1,250.
- c. Car shows with exclusive use of park lawn areas will be assessed a flat fee rate of \$500 in addition to the rental fees assessed.
- d. All rentals requesting exclusive use of park areas will be assessed a fee of \$50 per four hours per section of the park requested. An additional \$50 fee will be assessed for electrical service and water service. Additional electric panels will need to be coordinated and approved through the City's Facility section. A separate fee will be assessed.

V. MERCHANDISE

Merchandise	Amount Requested	Fees/Charges
Program/Event T-Shirts		
Short Sleeve	Each	\$15.00
Long Sleeve T-Shirts	Each	\$20.00
Sweatshirts	Each	\$25.00
Swim Pant Fee/Youth	Each	\$1.00
Goggles	Each	\$10.00
Towels	Each	\$10.00
Earplugs	Each	\$3.00
Nose Clips	Each	\$3.00
Headphones	Each	\$3.00
Pickleball Ball	Each	\$1.00
Swim Cap (Latex)	Each	\$3.00
Swim Cap (Silicone)	Each	\$5.00
Ziggy Plush	Each	\$10.00

VI. MEMORIAL TREES, BENCHES, WALK OF HONOR BRICKS

Item	Fees/Charges
Tree	\$500.00 per tree
Bench with Plaque	Range of \$2,200.00 – \$2,500.00
Bench without Plaque	\$1,800.00
Walk of Honor Memorial Brick	\$ 35.00 per brick

VII. PARK PERMIT FEE

Facility Requests	Number of Hours/Day Fee	Fees/Charges
Park area/section	4	\$ 50.00
Trail area		\$ 2.00 per/participant
Facility Requests	Number of Hours/Day Fee	Fees/Charges
Parking Lot Fees – half lot	4	\$100.00
Parking Lot Fees – entire lot All parking lot rentals will require a Traffic Control Plan (TCP) for the Event from Public Works	4	\$200.00

VIII. SPORTS LEAGUES (PER FIELD/COURT/GAME FEE)

Sport/Age Group	Fees/Charges	
	Resident	Non-Resident
Recreational Youth Baseball/Softball/Soccer/Football (Local – 17 years and under)	\$0	\$0
Select Youth Baseball/Softball/Soccer/Football (Non-Local* – 17 years and under)	\$10.00	\$20.00
Adult Baseball/Softball	\$25.00	\$50.00
Adult Football/Soccer	\$20.00	\$40.00
Senior Softball/Baseball (Local)	\$12.50	\$25.00
Adult Tournaments (up to 12 hours)		
4 Field Complex	\$600.00	\$1,200.00
3 Field Complex	\$450.00	\$900.00
Single fields	\$150.00	\$300.00
High Noon #1 – 5	\$500.00	\$1,000.00
Burn Lake	\$300.00	\$600.00
Provencio Van Dame	\$300.00	\$600.00
Soldados	\$200.00	\$400.00
Apodaca Baseball	\$200.00	\$400.00
Youth Tournaments (up to 12 hours)		
4 Field Complex	\$200.00	\$400.00
3 Field Complex	\$150.00	\$300.00
Single fields	\$50.00	\$100.00
High Noon #1 – 5	\$250.00	\$500.00
Burn Lake	\$150.00	\$300.00
Provencio Van Dame	\$150.00	\$300.00
Soldados	\$100.00	\$200.00
Apodaca Baseball	\$100.00	\$200.00
Field Service Fee Per Game/Per Field (Complete Service)	\$ 80.00	\$160.00
Field Service Fee Per Field/Per Game (Touch Up)	\$ 24.00	\$48.00

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Sport/Age Group	Fees/Charges	
	Resident	Non-Resident
Service Fees for: Pedestrian Barricades, Temporary Fences, or Goal Transportation	\$250.00 each per set up	\$500.00 each per set up
Practice Field Fees: Practice space can be reserved for the following fields as available: Paz, Maag, Apodaca Baseball, Apodaca Softball, Burn Lake Provencio/Van Dame.	\$10.00 per hr (max 2 hrs per day, max 2 days per week	\$20.00 per hr (max 2 hrs per day, max 2 days per week
Tennis Camp, Pickleball, Handball Court Fee (Youth)	\$1.00 per court/per 4 hrs	\$2.00 per court/per 4 hrs

Tennis Camp, Pickleball, Handball Court Fee (Adult)	\$5.00 per court/per 4 hrs	\$10.00 per court/per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Youth) all courts	\$25.00 per 4 hrs	\$50.00 per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Adult) all courts	\$50.00 per 4 hrs	\$100.00 Per 4 hrs

NOTE: Facility Change Fee: Set up \$1,000.00, Tear Down \$1,000.00

Non-Traditional Sports/Groups	Fees/Charges	
	Resident	Non-Resident
Camping Fees: RV/Trailer Tents	\$10.00 per night \$5.00 per night	\$20.00 per night \$10.00 per night
Yearly Fee for League/Season BMX Horseshoe Courts (Entire) Horseshoe Courts (Single Court) Skate Park	\$1,000.00 \$100.00 per 4 hrs \$5.00 per 4 hrs \$100.00 per 4 hrs	\$2,000.00 \$200.00 per 4 hrs \$10.00 per 4 hrs \$200.00 per 4 hrs

IX. DOWNTOWN AREA FEES

AREA	Duration	Fee	Duration	Fee
North Section MSD / free general public	4 hours	\$ 0	12 hours	\$ 0
North Section MSD / rental	4 hours	\$50	12 hours	\$150
Middle Section MSD / free general public	4 hours	\$ 0	12 hours	\$ 0
Middle Section MSD / rental	4 hours	\$50	12 hours	\$150
South Section MSD / free general public	4 hours	\$ 0	12 hours	\$ 0
South Section MSD / rental	4 hours	\$50	12 hours	\$150
Parking lot/space Concession/Vendor	Month	\$60	Quarter	\$150
Parking lot reservation	4 hours	\$50	12 hours	\$150
La Placita/rental	4 hours	\$50	12 hours	\$150

MOBILE CONCESSION/VENDING FEES

Mobile Concessions	Fees/Charges
Parks and Recreational Facility	\$150 Qtr.
Parking Lots	\$60 Monthly

Service is defined as the ability to access electricity. (Not all facilities have this capability).



Parks and Recreation Advisory Board

April 20, 2023

The Parks and Recreation Advisory Board held a meeting on April 20, 2023, at 6:05 p.m. at City Hall Council Chambers, 700 N. Main, Las Cruces, NM.

Members Present:

Cassie McClure - District 1
Kenneth Coppedge – District 2
Aracely Tellez – District 3
Stan Engle - District 4
Laura Haas - District 6
Fred Raish – At large member

Members Absent:

Eric Montgomery - District 5

Others Present:

Robert Nunez, Interim Director, Parks and Recreation
Phillip Catanach, Recreation Deputy Director, Parks & Recreation
Hazel Nevarez, Senior Office Manager, Parks & Recreation
Claudia Chavez, Interim Deputy Director Youth Services, Parks & Recreation
Franco Granillo, Parks Deputy Director, Parks & Recreation
Catherine Mathews, Landscape Architect, Parks & Recreation
Greg Shervanick, Public
Becky Baum, Recording Secretary, RC Creations, LLC
Cathy Gonzales, Parks & Recreation Parks & Recreation Staff Member
Terik Montgomery, Parks & Recreation Staff Member
Jasmyn Rios, Parks & Recreation Staff Member
Yvonne Rios, Parks & Recreation Staff Member
Karla Munoz, Parks & Recreation Staff Member
Kathy Hollett, Public
Karina Herrera, Parks & Recreation Staff Member
Amanda Curry, Public

The Parks and Recreation Advisory Board Meeting of April 20, 2023, at City Hall Council Chambers, 700 N. Main, Las Cruces, NM was brought to order at 6:05 p.m. by Chair McClure and recognized the meeting as having a legal quorum.

1. Introduction:

Board Members introduced themselves and stated the district they represent.
Attending staff introduced themselves.

2. Conflict of Interest:

There was no conflict of interest.

3. Approval of the Agenda:

Board Member Raish moved to approve the Parks and Recreation Advisory Board Meeting Agenda for April 20, 2023, seconded by Vice-Chair Engle. Motion carried unanimously.

4. Approval of Minutes - February 16, 2023:

Board Member Haas moved to approve the Parks and Recreation Advisory Board Meeting Minutes February 16, 2023, seconded by Board Member Tellez. Motion carried unanimously.

5. Approval of Minutes - March 16, 2023:

Vice-Chair Engle moved to approve the Parks and Recreation Advisory Board Meeting Minutes March 16, 2023 as amended by Hazel, where date of approved minutes on page 2, line 12 was changed from Minutes November 17, 2022 to Work Session minutes January 19, 2023, seconded by Board Member Haas. Motion carried unanimously.

6. Public Participation:

There was none.

7. Action Items:

7.1 Parks & Recreation 2023-2024 Fees and Charges/Facility Use Policy - Robert Nunez:

This policy did not go before City Council immediately after being presented to this Board at the end of last year. It has now been updated and will hopefully be on the Council agenda sometime next month. There was no change to the introduction. This is the Board's recommended policy to determine user fees, different types of cost recovery, and various internal policies and City policies regarding scholarships, fee waivers, payment plans, programming, and permitting.

The categories of cost recovery are: Minimum Cost Recovery which is normally 0-20% of direct program cost such as out-of-school programs,

therapeutic programs, special events, and aquatics; Partial Cost Recovery include youth classes and athletics; Full Cost Recovery include any adult programming. The policy includes definitions of Direct Cost, a list Parks and Rec's facilities, and programming/hours of operation. There are guidelines for sponsorship of groups and Department guidelines for the distribution of City stipends to local recreational youth leagues or organizations/associations. This funding is to help lower the cost of participation for youth members. Currently \$10,000 is budgeted for this and only one club has recently applied for aid. The established clubs have become self-sustaining recently, as they have not applied for aid in some time. The policy includes a refund policy, returned check policy, payment plan guidelines, and the youth scholarship program. The scholarship program runs from July 1 through June 30 and uses funds received from unsolicited private donations. A household can receive up to \$240; individuals can receive up to \$120. Sponsored youth are required to pay 50% of the program fees. Scholarships cannot be used to pay for fitness classes, rentals, equipment fees, special events, pass cards, and daily entry to the pool facility. Families who desire scholarships must fill out an application and provide proof of income and residence. Parks and Rec follows State guidelines for income analysis. The policy includes a transfer policy, age categories, seniors, recreation facility age limits, family definitions, organization aquatic fee, restorative pool, weight room program, free swim dates, school district year-end parties, and facility use rental guidelines for all the recreational centers.

One new item there is "rentals cannot be used to conduct private business for personal gain unless approved by Parks and Recreation Director." There are contracts to conduct City programming, permitting procedures, which includes the new permit rule "to request for the use of water-holding structures like but not limited to Las Cruces Dam and Tee time will need prior approval by the Public Works Department before park facility application can be approved." Those two locations are under the authority of Public Works and the Army Corps of Engineers. Also updates was the request for use of parks: Request for use of the following parks but not limited to Apodaca Park, Desert Trails Park, Johnson Park, Klein Park, Women's Pioneer Park, Veterans Memorial Park, and Young Park will require a deposit/fee of \$250. This payment is nonrefundable and will be applied to your overall rental fee." The policy also lays out nondiscrimination compliance, insurance; the City of Las Cruces requires anyone renting the park and using jumping balloons to carry additional liability insurance with the City listed as additional insured. There are guidelines for sports field requests: If you are not established or in good standing, a 50% payment will be due up front once a permit has been approved. This payment is nonrefundable and will be applied to your overall rental. The remaining balance must be paid within one week after the event. All tournaments require a \$250 deposit upon approval of permitting. All organizations, leagues, and field users including point-of-contact and league office that do not reside within City limits will have to pay a non-resident fee

1 and will require a \$250 deposit upon approval of permit. This payment is
2 nonrefundable and will be applied to your overall rental fee. A Post Office box
3 will not be allowed as proof of local residence. All organizations will be
4 responsible for collection of event camping fees at tournaments.

5
6 Parks and Recreation Advisory Board authority over leagues and
7 organizations that utilize City fields and/or facilities: The purpose of this is to
8 provide guidance to local recreational youth, adult leagues, or organizations
9 that utilize City fields and/or facilities, to provide an independent, non-biased
10 committee that has the authority to review league/organization procedures, act
11 as an appellant body for players, coaches, parents, spectators, suspensions,
12 review financial records and recommend or require changes to league
13 organizational operations. This is per Resolution 12-072. There have been
14 coaches and parents come in, as all leagues are required to have standard
15 operating procedures regarding behavior and actions of fans, league officers,
16 parents, teams, everyone who is in attendance, and there have been
17 suspensions coming all the way up to the Board. Complaints start at the level
18 of the section that they are under, then the level of the Director, and if it is
19 unable to be resolved it is brought before the Parks and Rec Advisory Board
20 to be heard. Parks and Rec Advisory Board has the final say in these
21 situations. Board Member Coppedge asked about renting soccer fields and
22 that information is further down in the policy.

23
24 There are requirements listed for fishing, swimming, carnivals and
25 amusements, roller skating/rollerblading/skateboarding, golfing, mobile
26 concessions/vending, special use permits, inflatable/portable play equipment,
27 vehicles driving in City parks, the wellness program, the community gardening
28 program including that all participants must be registered annually and all
29 current gardeners can register for one plot from January 3rd through January
30 31st and new gardeners can register for available plots from February 1st
31 through 28th and beginning March 1st registered gardeners can request a
32 second plot if available. There was a high demand for plots last year so Parks
33 and Rec wants to try to provide enough. Parks and Rec has added the
34 Memorial Tree and Bench Program for people to purchase a new tree for \$500
35 each, and a park bench with a plaque for \$2,200 up to \$2,500 or without a
36 plaque starting at \$1,800 dedicated to the person or group of their choice. A
37 Walk of Honor brick paver would be \$35. The list includes park hours and
38 rules for park use. Pet owners' responsibilities are listed and the locations of
39 the dog parks. The rules are listed for merchandising, advertising, and signs
40 with exceptions, and City fee policies as established by City Council.

41
42 A fitness punch card with 30 visits should be increased to \$60, the gymnastics
43 program is being discontinued due to lack of instructors and will hopefully be
44 reinstated later if an instructor can be found, open pickleball sessions is \$2 per
45 session, pickleball net rental for on-site use only is \$10 per net, the Water
46 Cycle Class is \$5 per class, the Water Fitness punch card is increased to \$60,

1 the Aquatic Weight Room is also increased to \$60 for 30 visits. The After
2 School Program fee schedule was \$400 per semester; during the pandemic
3 those fees were removed. Now that the pandemic is officially listed as over,
4 the fees will be \$100 per semester. Summer Recreation Program fees will be
5 requested to be set at \$40 and the Spring Camp and Fall Camp at \$20 per
6 session. Pre- and post-program fees will be eliminated, the Life Center Angel
7 Care building has been sold to a private business and so is no longer part of
8 the Therapeutic Recreational Program, for youth sports leagues and cheer
9 with jersey is \$50, without jersey is \$40, coach rental card is \$5 per player, and
10 with the pilot programming process the Department will be able to improve
11 their research and innovation for new programming.
12

13 The fees will be set at the time of implementation with City Council's approval.
14 Special events fees remain the same. For the swimming program the fees
15 have been adjusted. First aid will be \$55, CPR will be \$75, recertification will
16 be \$50, lifeguard skills recertification will be \$90, home swimming pool/spa
17 water safety will be \$30, open water safety will be \$30, home swimming water
18 safety/open water will be \$50. Daily fees remain the same for the swimming
19 pools. There will no longer be punch cards at Frenger, East Mesa, and Laabs.
20 Rentals have been scratched. Natatorium meet and practice fees for nonprofit,
21 commercial, and non-residential have been thoroughly researched and are:
22 Nonprofit \$11, commercial \$50 per 25-yard lane for practice, and non-
23 residential is \$17. A 50-meter lane is \$13 for nonprofit, \$50 for commercial,
24 and \$26 for non-residential. Swim meets: Nonprofit \$175 per hour without
25 scoreboard, \$700 for commercial, and \$220 for non-residential. Starting
26 system per meet: Nonprofit \$25, commercial \$100, and non-residential \$30.
27 Dolphin timers, each per meet: Nonprofit \$15, commercial \$60, and non-
28 residential \$20. Operation fee for timing system will be \$30 per operator
29 across the board. Swim meet spectator fee will be \$3 across the board. Touch
30 pads: Nonprofit \$15, commercial \$60, and \$20 for non-residential. Swim
31 meets timing system will be \$500 across the board. School swim teams per
32 lane is \$11 across the board.
33

34 There is also a breakdown of staff fees for required personnel such as
35 lifeguards. Aquatic special events will be \$5 per participant. Punch cards and
36 private lessons are not offered. Swim lessons, not including books, for
37 lifeguarding and water safety instructor, minimum age of 16, are \$200. The
38 new system will have a debit card for daily use, as the punch cards did not
39 work as well as hoped. The debit cards can be used for everything, where the
40 punch cards were specific to each facility. The City will need to hire more
41 lifeguards to be able to keep the facilities open for the hours desired. Fitness
42 room rent is \$20 per hour, party area/party room is \$100 per three hours. East
43 Mesa Multipurpose Room team rental is \$10 per hour. The gymnastics rental
44 package has been scratched. Meerscheidt Recreation Facility, entire building
45 indoors is \$100 per hour. The Frank O'Brien Papen Community Center dining
46 room is \$30 per hour and the auditorium is \$40 per hour. The Meerscheidt

1 Recreation Center team practice rental card allows use of the Multipurpose
2 Room and either gymnasium is six sessions for \$50 or eight sessions for \$70.
3 Fundraising rentals will need to be coordinated and approved with additional
4 electric panels through the City's Facilities Section and a separate fee will be
5 assessed. Merchandise has been raised to \$15, \$20, and \$25. Pickleballs
6 are \$1 each. The Ziggy plush is \$10. Park permit fees for organized groups
7 to use facilities: Trails are \$2 per participant, parking lot fee is \$100 per half
8 lot for four hours or the entire lot for \$200, sports leagues per field/court game
9 fees have been adjusted also, and priority and lower rent is given to local
10 leagues.

11
12 Pedestrian barricades, temporary fence, or goal transportation for soccer
13 goals are \$250 per setup for residents and \$500 for non-residents. Practice
14 field hourly fees are being adjusted for residents and non-residents and will be
15 for a maximum of two hours per day and two days per week. Pickleball and
16 handball court fees and tournament fees have been adjusted for residents and
17 non-residents. Facility change fees for setup and tear-down are \$1,000 each
18 time if Parks and Rec is requested to take care of that. Sports groups, camping
19 fees, RV trailers, tents have a resident and non-resident fee. BMX fees,
20 horseshoes, and skate part rentals have been adjusted for residents and non-
21 residents. There is an added vendor fee of \$60 quarterly and \$150 for a
22 concession space and parking spot on the Downtown area. The mobile
23 concession and vending fees are \$150 per quarter. These price increases are
24 not based on a percentage but rather staff salaries and research and
25 comparison with other cities' facilities to keep prices competitive and still
26 recover costs.

27
28 As a municipality, Las Cruces is required to set some type of fee on most of
29 the programs. Through policy and with the help of City Council, the youth
30 programs are subsidized and supported to keep prices down while the cost
31 recovery is achieved through the adult programming. The process for renting
32 facilities is posted on the Parks and Rec website and can be included in this
33 Policy. Restrooms are open while the parks are open and the Parks and Rec
34 crews keep them up. The Young Park south restroom is kept locked except
35 for huge events because renters who rent the southwest corner of the park
36 complain when people not in their own party use that restroom, so it is easier
37 to just keep that restroom locked. Restrooms are repaired as soon as possible
38 when they break because the port-a-potty vendor is under contract and using
39 that service would go over contract just to replace a broken restroom
40 temporarily. Staff can look into adding restroom use into the Policy. Posted
41 park hours used to be 5:00 a.m. to 11:00 p.m. but there were many issues
42 happening after dark, so park hours were changed to 5:00 a.m. to 9:00 p.m. in
43 the summer and 6:00 a.m. to 7:00 p.m. in the winter. Now, park hours are
44 simply sunrise to sunset and the Department is working on updating the
45 signage and website. This allows Codes and Police to send away people who
46 may be causing problems outside of posted hours.

Board Member Coppedge moved to table this item until the meeting of May 18, 2023, seconded by Board Member Raish.

This Policy is already in the queue for City Council in May. Staff could easily add the language requested and send out the updated document by e-mail for review so that it can still go to City Council in May. The motion to table died.

Board Member Coppedge moved to approve the Parks & Recreation 2023-2024 Fees And Charges/Facility Use with language added regarding bathroom use and field rental process, seconded by Board Member Haas. Motion carried unanimously by acclamation.

8. Discussion Items:

8.1 Organ Mountains Pickleball Club - Jeff Anderson:

Jeff Anderson is the new President of the Organ Mountains Pickleball Club. The club has been around for about three years and has roughly 250 members and about 500 people on the e-mail list. They use City facilities all the time and are very pleased to work with Parks and Rec. The club is a nonprofit group and offers free youth lessons, broken into age groups of 3rd and 4th grade, 5th and 6th grade, and 7th and 8th grade. They also offer free beginning adult lessons. The club works with the Parkinson's Support Group of Southern New Mexico and the patients get great benefits from the exercise. There was a very successful tournament at Apodaca Park this year. The club raised \$3,000 for Soles4Souls to provide shoes for local children and \$3,000 for La Casa to help victims of domestic violence. Tournaments at Apodaca Park on Fridays and Saturdays are very well-attended. The club sponsored the Aaron Gifford Annual Pickleball Tournament at Lions Park three weeks ago and it was very successful. Ms. Hunter runs that tournament and she reported that it earned \$30,000 for City of Hope to help get veterans off the street and for Mission 22 which is a veterans' mental health organization. There are beautiful new courts being built on the East Mesa and the club is eagerly awaiting their opening. The club has a website and Mr. Anderson invites everyone to visit Organ Mountains Pickleball there.

8.2 Farmers Market Update - Cassie McClure:

Board Member McClure attended the Farmers Market last month to chat with attendees. She was very impressed with the sign for her booth. There were many people asking questions in Spanish and she suggests that the subcommittee should discuss how to market services in Spanish. Board Member Engle also attended and there were many comments to him about trails, wayfinding, and bicycle path infrastructure. Board Member Haas was impressed with the amount of literature that was provided for her to pass out at

1 Franco Granillo commented that Robert Nunez and everyone have been very
2 helpful with unrealistic expectations from the public and thanks them for all the daily
3 assistance they provide, and hopes he is as helpful to them as they are to him.
4 Board Member Engle spoke to his Council representative regarding how much
5 maintenance is required to keep up the new equipment being installed. Mr. Granillo
6 concurred and mentioned that replacing a vandalized slide will cost \$14,000 which
7 has to be taken from something else to do it.
8

9 Robert Nunez mentioned that FY 24 budget is going to a work session next week
10 and Parks and Rec staff will be attending to answer questions regarding the ask for
11 FY 24 and hoping the request is approved. Board Members and Parks and Rec
12 team were thanked for all their hard work. The CAPRA accreditation application
13 has been submitted as of almost two weeks ago. The core team will be available
14 to answer questions. The review team for Las Cruces consists of a person from
15 Washington State, one from Texas, and one from Florida working on Las Cruces'
16 application over the next ten weeks. If all goes well, the review team will be here in
17 mid-June for a site visit. They may also wish to talk to Board Members.
18

19 **10. Board Member Comments:**
20

21 Board Member Engle also thanks Parks and Rec staff for their hard work. His son
22 is enjoying the splash pad Downtown occasionally and riding the free
23 RoadRUNNER Transit to parks on the weekends. Board Member Engle's son is
24 signed up for Little Sluggers and staff was able to help him get the applications done
25 on RecTrack. He was very thankful for the help. Board Member Engle also thanks
26 the Board for their hard work.
27

28 Board Member Raish thanks staff for all their hard work.
29

30 Chair McClure thanks staff for their hard work.
31

32 **11. Adjournment:**
33

34 Vice-Chair Engle moved to adjourn, seconded by Board Member Haas.
35
36
37
38
39

40 _____
Chairperson

CITY OF LAS CRUCES
PARKS AND RECREATION DEPARTMENT
~~2019-2020~~ FEES & CHARGES/FACILITY USE POLICY

INTRODUCTION

The City of Las Cruces Parks and Recreation Department has the responsibility to establish policy for recovering costs for using the City's parks, recreation facilities and taking part in various recreation programs. This policy is meant to be a guide to Administration, the Parks and Recreation Advisory Board, and the City Council, in developing a fair and consistent fee schedule.

AUTHORITY

The authority to establish appropriate fees and facility use on an annual basis rests with the City Council. The Parks and Recreation Advisory Board shall act in an advisory capacity to the Parks and Recreation Department and to the City Council in the establishment of the policy.

FACILITATION

The Parks and Recreation Section shall develop fees and recommend appropriate uses of parks facilities and participation in recreation programs. The fee will be reviewed annually by staff, the Parks and Recreation Advisory Board, and ultimately approved by the City Council with the adoption of each annual budget.

PURPOSE OF POLICY

The policy is intended to establish a standardized approach to assessing fees for the use of City facilities, parks and participation in recreation programs; for determining which users or groups should pay at what percentage; to keep all fees at a fair market level in order to encourage participation; to strive for a degree of cost recovery; and to lessen the burden on the City and the General Fund.

USER FEES

User fees are established by the City Council. All applicable fees and/or deposits must be paid by cash, credit card, check, or money order, made payable to the order of the City of Las Cruces, a minimum of ten business working days prior to the approved event.

CATEGORIES OF COST RECOVERY

1. MINIMAL COST RECOVERY

Small percentage of direct program costs. Normally 0-20 percent of direct cost:

Program Examples:

- Therapeutic Art
- Special Events
- Aquatics
- Out of School Time Programming (OST)
- ~~Teen Programming~~
- ~~Summer Recreation~~
- Therapeutic Dances
- ~~Safe Haven~~

2. PARTIAL COST RECOVERY *

Recreation programs will strive to recover 85 percent of direct program cost.

Program Examples:

- Youth Classes
- Youth Athletics

3. FULL COST RECOVERY *

Recreation programs will strive to recover 100 percent of direct program costs.

Program Examples:

- Adult Recreation
- Adult Classes
- Adult Athletics

** NOTE: Addressed in Resolution No. 93-264*

TARGETED COST RECOVERY

Targeted cost recovery for recreation programs is 85-100 percent of direct costs, 33 percent for Aquatics, 85 percent for Youth (not to go below 75 percent), and 100 percent recovery for adult programs and special recreation programs.

DEFINITIONS DIRECT COST

Costs directly associated with providing activities and/or services required for program functionality. Examples: cost for instructor/leader, supplies, materials, building rental, advertising, etc.

FACILITIES

Existing City Parks and Recreation Facilities including recreation centers, tennis and other playing courts, sports fields, swimming pools, and parks. Examples are, but not limited to, the following:

- | | |
|---------------------------------|--|
| ▪ Meerscheidt Recreation Center | ▪ Triviz Multi-Purpose Path |
| ▪ East Mesa Recreation Center | ▪ La Llorona Park |
| ▪ Volleyball Court | ▪ Veterans Memorial Park |
| ▪ Soccer Complexes | ▪ Apodaca Softball/Baseball Fields |
| ▪ Maag Complex | ▪ Ron Galla T-Ball Fields |
| ▪ Regional Aquatic Center (RAC) | ▪ Frank O'Brien Papen Community Center |

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- Tennis Courts
- Public Pools/Metro Verde Splash Pad/Interactive Fountain
- Harty Complex
- Paz Complex
- Lions Park
- Young Park
- Four Hills Park
- Pioneer Women's Park
- A. Fielder Memorial Safe Haven
- Plaza de Las Cruces
- Archery Range/Remote Control Airport
- WIA Building
- Butterfield Shooting Range

PROGRAMMING HOURS OF OPERATION

In order to provide the most efficient and effective use of Parks and Recreation staff, facilities, and programs, the City of Las Cruces Parks and Recreation Department reserves the authority to change facility hours of operation in accordance with recreation programming. At designated facilities, City of Las Cruces Parks and Recreation staff will be on site only during scheduled recreation programming hours. Any change in programming hours of operation at a designated facility will be posted in advance. Facility hours may be further adjusted based on staffing levels, budget constraints and/or public demands.

SPONSORSHIP OF GROUPS

Groups that meet all criteria as set forth by the Parks and Recreation Advisory Board may be co-sponsored and/or supplementary funded by the City of Las Cruces: (Group sponsorship subject to change).

PARKS AND RECREATION DEPARTMENT GUIDELINES FOR THE DISTRIBUTION OF CITY STIPENDS

Purpose: To provide guidelines and criteria for the distribution of City funding/stipends to local recreational youth leagues or organizations/associations. The funding is intended to be used to lower the cost of participation for local youth participants. This partial funding is to be used to assist with the operational costs of the program/activity. The youth league or organization/association must provide proof of financial need and community benefit.

Well established, financially sound youth/adult leagues, organizations/associations, tournament/traveling teams, and non-local residents will not qualify.

REFUND POLICY

The Parks and Recreation Department will refund fees for the following only:

1. Department cancellation of activity due to low registration.
2. Department cancellation of activity due to inclement weather.
3. Department cancellation of activity due to mechanical malfunctions.
4. Inability of class or league to proceed with activity.

5. A 25 percent service charge assessed prior to the second game or class with no refund to be granted after the second class or game.
6. In cases of emergency, i.e., death or illness, rental fee paid in advance to secure the rental will be refunded. A 25 percent service charge will be assessed to all cancellations other than emergencies of rentals of facilities and parks.

RETURNED CHECK POLICY

There will be a \$30.00 service charge on all returned checks as per the City's Finance Department.

PAYMENT PLAN

The Parks and Recreation Department is offering a payment plan to individuals who are unable to pay the full program amount at time of registration. Each individual will be reviewed on a case-by-case basis and a suitable payment plan must be agreed upon by both the individual and the City of Las Cruces. Scholarships may be available through the generous donations of citizens of Las Cruces in accordance with scholarship policy.

Installment/Payment Plan – The department will offer an installment payment plan in order to help accommodate participants and ensure that all citizens have access to programs. Installment/Payment Plan must be approved by a Recreation Program Manager. Payment(s) arrangements must be made prior to participation in any program. Plans may include monthly/quarterly payment plans. The department may request proof of inability to pay or financial hardship and may deny installment payment plan requests. If payment is not received, prior to service delivery, then services may be terminated immediately.

Youth Scholarship Program

The City of Las Cruces Parks & Recreation Department will offer program scholarships for qualified children for the fiscal year (July 1 – June 30) or as funds are available. Participation in leisure, recreational, and fitness activities has proven to provide safe, healthy activities, help reduce health risks and issues, and strengthen family and community relations. To instill the value of these benefits, the City of Las Cruces is willing to subsidize program fees for eligible individuals who qualify based on residency, total household income and number of dependents. A strong sense of ownership and pride is developed when the scholarship recipient contributes to the cost of the program.

Applicant(s) may receive a scholarship in the amount \$120.00 per fiscal year (July 1 – June 30) per dependent. A maximum of \$240.00 per household may be approved per fiscal year. A minimum 50% of program fees must be paid by applicant before scholarship can be utilized. No other discounts may be applied.

Example of approved/exempt programs:

Approved programs: Athletics (*basketball, baseball, football, volleyball, soccer, cheer, etc.*), After School, Camps, Gymnastics, Swim Lesson, Summer Program

Exempt programs: Fitness Classes, Rentals, Equipment Fees, Special Events, Pass Cards, Daily Pool entry

TRANSFER POLICY

City Parks and Recreation Program transfers are permitted on a space available basis.

AGE CATEGORIES FOR RECREATION PROGRAMS

- Infant 0-2 years of age
- Youth 3-17 years of age
- Adult 18-59 years of age
- Senior 60 and over

SENIORS

The Parks and Recreation Department defines a senior as any individual who is 60 years of age and over. The senior population will be given a 50% discount off of all fees required to participate in our programs with an ID card. Discount does not apply to league participation.

RECREATION FACILITY AGE LIMITS

It is recommended that all children under the age of 18 be under the direct supervision of an adult 18 or older, however the Parks and Recreation Department shall use the information below as a guide for regular open hours at all facilities (pool rules differ):

1. Ages 1-7. Allowed admittance to the facilities (recreation/community) centers under direct supervision of an adult 18 or older, but never allowed in the weight room or group fitness classes. This age group must be accompanied by an adult at all times.
2. Ages 8-11. Must be accompanied by an adult 18 or older in the facilities. This age group is not allowed in the weight room or group fitness classes. Allowed use of the racquetball courts with an adult 18 or older.
3. Ages 12-14. This age group will be allowed access to most areas of the facilities without an adult, except for the weight room (14 and older will be allowed in the weight room with supervision of an adult; some group fitness classes, but not spinning). They will also be allowed use of the racquetball courts without an adult.
4. Ages 15-17. This age group may participate in all group fitness classes. They will be permitted in the weight room (parent/legal guardian must sign a waiver) only under the direct supervision of an adult 18 or older.
5. Ages 18 and over. This age group will be allowed full access to facilities.
6. In swimming pool facilities children ages 8 and under must be accompanied by an adult in the water unless child has passed a designated swim test.

FAMILY DEFINITIONS

Husband, wife and children, including natural, adopted, foster and step-children, living within the same household, also, persons who are not married, including children, who are living in the same household.

ORGANIZATION AQUATIC FEE

1. The Organization or Agency must be non-profit and show financial need:
 - a. Verification of non-profit and low-income status (prior year's tax filing)
 - b. Letter of Incorporation from State of New Mexico
2. The Organization or Agency must be located within Dona Ana County.
3. Member or clients of the Organization or Agency must reside within the same building.
4. Submit a letter to the Parks and Recreation Director or designee with above documentation requesting discounted punch card or swimming pool pass.
- ~~5. Approved non-profit agencies will receive a 50 percent discount on the appropriate 30 punch card rate. For Profit agencies will be charged current rates. For Profit/Non-Profit agencies will adhere to the following:~~
 - ~~a. 1-10 clients—at least one supervisor required and actively supervising in water.~~
 - ~~b. 11-20 clients—at least 2 supervisors required with one actively supervising in water.~~
 - ~~c. 21-30 clients—at least 1 supervisor to 10 clients required.~~

RESTORATIVE POOL/WEIGHTROOM PROGRAM

The City of Las Cruces Parks and Recreation Department is offering use of the aquatic features and Warm Water Pool at the Las Cruces Regional Aquatic Center at a reduced fee for qualifying individuals. Individuals with medical conditions that would benefit from water exercise to enhance, restore, and maintain a person's functional abilities may qualify. Conditions can be acute, transient, or chronic. Individuals and their care-provider(s) will be charged an admission fee of \$1.00 per person to use the Aquatic Center's amenities for one hour during any ~~open~~ **fitness** swim session. Individuals participating in this program may be accompanied by their care-provider(s) at an admission fee of \$1.00. This ~~program~~ is a **non-renewable** six-month program and does not apply to fitness classes.

Both the participant and care-provider(s) must pay for each session of use at the facility. A doctor's note validating the need for the use of the facility specifying the need for water, land therapy, must be provided at the time of registration.

FREE SWIM

City staff has the authority to offer free swim session admission on a weekly basis for everyone (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations).

SCHOOL DISTRICT YEAR-END PARTIES

Schools may schedule ~~Frenger Pool~~ or the Las Cruces Regional Aquatic Facility for end-of-the-year school parties, not to exceed a maximum of 80 students as availability allows (not to exceed capacity based on New Mexico Environment Department Public Swimming Pool Regulations). Adults/Students who plan to swim will pay the daily rate.

FACILITY USE/RENTALS (RECREATION CENTERS)

Facilities refer to East Mesa, Frank O'Brien Papen Center, Meerscheidt Center, A Fielder Memorial Safe Haven, Regional Aquatic Center, WIA building or any other Parks and Recreation facilities. In consideration of the payment of the rental fee and the agreement with the Renter to comply with the Contract, the City of Las Cruces agrees to make space indicated available to the Renter for the dates and times set forth and make available the equipment requested. By signing the Contract, the Renter agrees to the following:

I. Payment

A. Reservations:

- Facility reservations are taken on a first-come, first-served basis. Deadline for arrangements and payment is ten business days prior to the date of usage. Otherwise, the reservation will be terminated.
- Group sports in the gymnasium reservations are taken on a first-come, first-served basis.
- **Rentals cannot be used to conduct private business for personal gain unless approved by Parks & Recreation Director.**

B. The Renter is responsible for loss or damage to CLC property. If, after inspection, room/facility is not left in a satisfactory condition, clean-up/damage fees will be assessed.

C. Rental Fee: To secure reservation, one hundred percent (100%) of the rental fee is due at the time of the completion of this Contract.

D. Request for Changes: Any requests for changes to this Contract must be agreed upon in writing between the Renter and the City of Las Cruces staff. Requests must be completed no later than two (2) weeks prior to event or by mutual agreement.

E. Cancellation/Refund: If reservation is cancelled by Renter, the City of Las Cruces will retain a 25% cancellation fee. The exceptions to this are injury, illness or in case of emergency or extenuating circumstances.

II. Set-Up, Supervision, Caterers, Decorations, Equipment, Clean-Up and Closing of Facility

A. Set-Up: Access to the facility for setting up, including caterers set-up, will be during the hours on the face of the Contract ONLY.

The City of Las Cruces provides certain items for use to Renter and/or Caterer such as

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tables, chairs, and equipment within the facility(s). We do not provide linens, silver, or tableware. The City of Las Cruces staff's sole responsibility is to supervise the facility, the equipment and supply the above listed rental items for space being rented, along with trash cans and liners. The City of Las Cruces will not be responsible for moving, set-up and break-down, including stacking of tables, chairs, and other equipment used during the event.

- B. Supervision: Any individual at this event under the age of 18 must be supervised at all times. Any area of the facility that is not under Contract is off limits. Only activities conducive to the facility will be allowed. If required, security services must be present for the duration of the event. Parking is permitted at the facility. Please obey all posted signs.
- C. Caterers: Caterers must have proper licenses and liability insurance coverage. The City of Las Cruces requires that a copy of the Caterer's Certificate of Insurance be made available when final payment is received for catered event.
- D. Decorations: The renter shall not (a) cause or permit the facility to be injured, marred, or in any manner defaced or changed; (b) place any nails, tacks, screws or other fasteners into any part of the facility; (c) place or permit to be placed, signs on painted walls in any part of the facility. No decorations such as posters, pictures or banners are to be fastened to walls, woodwork or curtains inside or out.
- E. Equipment: All equipment not owned by the City of Las Cruces and being used by Renter/Caterer must be removed at the conclusion of the event. The City of Las Cruces is not responsible for any lost, stolen or damaged property.
- F. Clean-Up: At the conclusion of any event the facility must be returned to its pre-event condition. All City of Las Cruces equipment must be returned to the original designated areas. All food, beverages, equipment and rented supplies must be removed from the premises immediately after each use of the facility(s) AND NO LATER THAN THE EXIT TIME STATED ON THE FACE OF THIS CONTRACT. Any catering areas used must be cleaned and left in "as found or better" condition. All trash must be removed from the building and placed in an appropriate dumpster. All floors must be swept and/or vacuumed after use of space. Renter will give floors a light mop where needed. Renter must immediately take care of any major spills. If renter is unable to remove spills, the City of Las Cruces will have area(s) professionally cleaned at the renter's expense.

III. Alcohol, Drugs and Tobacco

- A. Alcohol: No alcohol or liquor is allowed on City property without prior City Manager approval.
- B. Drugs: No illegal drugs are allowed on City property.
- C. Smoking: No smoking or vaping, including e-cigarettes, is permitted inside any facility. Any person smoking must be at least 50 feet away from any facility entrance.
- D. ANY VIOLATION OF THESE RULES MAY CAUSE THE EVENT TO BE TERMINATED.

IV. Destruction and Damage

- A. Damage: If anyone damages the facility(s) during the rental period, the Renter shall be liable for all necessary repairs.
- B. Destruction: If the City of Las Cruces facility(s) are destroyed or damaged by fire or any other cause or unforeseen occurrence that shall make the fulfillment of the Agreement impossible, then the rental contract shall terminate, and payments will be returned and Renter waives all rights to any claims against the City of Las Cruces.

V. Facility Use

- A. Compliance: Renter agrees that any use of City of Las Cruces facility(s) must comply with all statutes, ordinances, rules and regulations issued by Federal, State and Municipal governments, including all rules of the Las Cruces Police and Fire Departments. When requested, the Renter shall provide Liability insurance naming the City of Las Cruces, its employees and agents as additionally insured with the limits of \$1,000,000. If the City is to be named as additional insured, the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured.
- B. License & Payments: Renter agrees to obtain or collect and to pay and deliver to the proper governmental agency or regulating authority, any and all license fees, permits, royalties and taxes required in connection with the use of the facility(s).
- C. Hazardous Materials: Renter agrees not to bring on to the premises any material, substance, equipment or object which is likely to endanger the life of, cause bodily injury to any person or property or which is likely to constitute a hazard.

VI. Responsibility and Indemnity

- A. Conduct: The conduct of all event participants while on City of Las Cruces property shall be the responsibility of the Renter. The Renter also accepts all responsibility for any injury to person(s) or property, or loss of or damage to property or theft of personal property on City of Las Cruces premises during the rental period or resulting therefrom. Failure by any individual or group to follow all applicable rules and regulations will be cause for eviction. The City of Las Cruces retains the right to evict objectionable persons from the premises. Repeated violations may result in denial of future reservation requests.
- B. Indemnity: The Renter shall release, indemnify, keep and save harmless the City of Las Cruces, its agents, officers or employees from any and all responsibility or liability for any and all damages or injury of any kind or nature whatever (including death) to all persons, whether agents or employees of the Renter or persons attending the event for which the premises have been leased, and to all property damage proximately caused by, incident to, resulting from, arising out of, occurring in connection with, the use of the Renter of the premises. The provisions of this section shall include any and all losses, damages, injuries, settlements, judgments, decrees, awards, fines, penalties, claims, costs and expenses, including reasonable attorney's fees.

VII. Security

- A. Building Security: Different uses of the facility(s) may entail different requirements concerning security. The City of Las Cruces is not responsible for any items left in the facility(s). The Renter will take the necessary precautions to protect personal property and to maintain order during event. ONE PROFESSIONAL SECURITY GUARD PER FIFTY (50) PARTICIPANTS MAY BE REQUIRED. Receipted confirmation of professional security services obtained must be presented at time of final payment.

CONTRACTS TO CONDUCT CITY PROGRAMMING

If the City contracts with any organization to conduct a city-sponsored program, it is the City's responsibility to ensure such activities are carried out by the contractor in compliance with the requirements of the Americans with Disability Act. The following language shall be included in all such contracts entered into by the City.

The Contractor shall ensure that all programs, services and activities are accessible to and useable by persons with disabilities in accordance with the Americans with Disabilities Act; including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing or cognitive disabilities, integrated seating, and the provision of reasonable modifications and/or accommodations and to maintain, and provide to the City upon request, a record of all such requests received, granted and/or denied and the reason for any denials.

PERMITTING PROCEDURE

1. Requests for exclusive use of a City-owned park/recreation facility or portion thereof by any individual, group or organization must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.

(Note: Requests for park/recreation facility areas with bathroom facilities, bathroom facilities will remain available for general public use, and not specifically for permitter. Bathrooms are regularly maintained and stocked on daily schedule. If restrooms are inoperable, signage will be placed at restroom and permitter will be notified.)

2. Requests for use of City-owned parking lots adjacent to City-owned parks and recreation facilities must be submitted in writing to the Department a minimum of ten business days in advance of the requested date and shall contain the reason for the request.
3. Requests for use of the City-owned parking lots surrounding Main Street Downtown (Main Street from Picacho Street to Lohman Avenue) must be submitted in writing to Parks and Recreation Department ten business days in advance of the requested date. Uses that compete with established businesses or the Farmers and Crafts Market are prohibited. Because of the proximity to businesses on Main Street Downtown, use of these parking areas shall only be permitted from 7:00 p.m. to 10:00 p.m., Monday through Saturday, or from 9:00 a.m. to 10:00 p.m., Sundays. (Permitting is now being done by Parks & Recreation).

4. Requests for the use of water holding structures like, but not limited to: Las Cruces Dam and Tee Time will need the prior approval of the Public Works Department before a Park/Facility application can be approved and permitted.
5. Permits for exclusive use of City-owned parks, recreation facilities or parking areas will be issued for a period not less than four hours for the established fee, with the following considerations:
 - a. Permit requests for all parks, pavilions, gazebos and shelters will be rented for an established fee and time period.
 - b. The proposed use will not unreasonably interfere with general public enjoyment of a facility.
 - c. The proposed activity is not anticipated to incite violence, crime or disorderly conduct.
 - d. The proposed activity will not entail unusual expense (overtime scheduling) or risk to the City.
 - e. The facility or portion thereof requested has not previously been reserved.
 - f. The facility requested is suitable for the activity proposed.
 - g. The proposed activity will not interfere with the promotion of public health, welfare and safety of the citizens of Las Cruces.
 - h. All appropriate paperwork has been completed in full and accepted by the Departments.
 - i. The individual, group or organization ensures the permitted facility will be left in a clean and acceptable condition.
 - j. Requests for use of the following parks, but not limited to Apodaca Park, Desert Trails Park, Johnson Park, Klein Park, Women's Pioneer Park, Veterans Memorial Park, and Young Park will require a deposit fee of \$250.00. This payment is non-refundable and will be applied to your overall rental fee.

NON-DISCRIMINATION COMPLIANCE

Facility users will not discriminate against any person in access to or participation in any program contemplated by this policy, or in any facility used in connection therewith, on the basis of race, color, national origin, sex, sexual orientation, gender identity, religion, age or disability in employment or the provision of services. Facility users will ensure that all programs, services and activities are accessible to and useable by persons with disabilities in accordance with the Americans with Disabilities Act, including but not limited to, equal opportunity to participate and benefit, equally effective communication for persons with speech, hearing, and other impairments, integrated seating and the provision of reasonable modifications and/or accommodations and shall adhere to the City of Las Cruces Communication Policy (if portable toilets are going to be provided, accessible units must also be provided at each bank of

standard units).

INSURANCE

The City requires that users of City-owned facilities for special requests, one-time events, athletic leagues, tournament play, and recreational programs provide proof of liability insurance to cover such use of the facilities, with the City of Las Cruces named as an additional insured on the policy, if staff determines that such insurance is necessary. If the City is to be named as additional insured, then the insurance company must issue an endorsement stating that the City of Las Cruces is additional insured. This proof of insurance will be forwarded to the Parks and Recreation Department upon approval of permit. The amount of this insurance shall coincide with the limitations of the *New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1 et seq.* If Insurance is not received, event will be cancelled.

SPECIAL EVENTS REQUESTS

Special Event requests must be submitted a minimum of 30 days in advance by filling out a Facility/Park Use Permit Application and turning it into the Department.

The following information /documentation must be submitted along with the Facility/Park Use Permit Application:

1. On annual basis 30 days prior to a special event, submit a detailed financial statement covering funds received and expended for the event's previous year event or program. The City of Las Cruces may also require and audit at the organization's expense in cases where the City of las Cruces provides funding or direct support.
2. ~~30~~ 10 business days prior to a Special Event, submit proof of insurance for the upcoming event for the required amount. If insurance is not submitted, permit will be cancelled.

SPORTS FIELD REQUESTS

Sport field requests for tournament play may be submitted at the November League Meeting, the Wednesday the week before Thanksgiving, for the coming year up to January 15. Sport field requests for league play may be submitted any time after January 15. (If you are a new requestor, sports field requests will be reviewed on a case by case basis depending on field availability.)

1. On annual basis 30 days prior to a Sports Event, submit a detailed financial statement covering funds received and expended for the event or league operations to include local, state, regional or national tournaments for the previous year event. The City of Las Cruces may also require and audit at the organization's expense in cases where the City of Las Cruces provides funding or direct support.
2. Tournaments will not be approved if they are in association with league play. For example, submitting a permit for tournament play in order to complete league

play will not be approved (masking permits as tournaments to finish league play).

3. If you are a new league (not established) or you are an organization not in “good standing”, a 50% payment will be due upfront once permit has been approved. This payment is nonrefundable ~~but~~ and will be applied to your overall rental fee. **The remaining balance must be paid within one (1) week after the event. All tournaments will require a \$250.00 deposit upon approval of permit.**
4. 30 days prior to a ~~sports~~ **sporting** event, submit proof of insurance for the upcoming event for the required amount.
5. **All Organizations, Leagues and Field Users (including point of contact and league office) that do not reside within City limits will have to pay a Non-Resident Fee and will require a \$250.00 deposit upon approval of permit. This payment is non-refundable and will be applied to your overall rental fee. A post office box will not be allowed as proof of local resident.**
6. **All organizations will be responsible for collection of event camping fees at tournaments.**

Definitions:

- a. **Tournaments** - A tournament will be classified as a tournament if it carries a minimum of fifteen (15) teams which includes local and outside area participants or leagues. Tournaments must be sanctioned by the local, state, or national sports sanctioning body.
- b. **Established Organizations/Leagues** - An organization/league which has utilized City of Las Cruces facilities as an organization/league for three (3) or more years.
- c. **Outside League or Organization** - A team, league, or entity outside the immediate umbrella of an established league or organization which is requesting field use to hold a tournament. For example, this could be a team or organization from another association, city or state.
- d. **Good Standing** – An established league or organization that has paid field request fees within the two (2) weeks, after being invoiced after the event. They should have also submitted their insurance requirements thirty (30) days prior to the event and followed permitting guidelines outlined in this policy on a consistent basis. Period of “good standing” = three (3) years or more.

SPORTS FIELD PRACTICE RESERVATIONS

Parks will issue a reservation for a fee to ensure that all City-owned ball fields are made available on an equitable basis to individuals and organizations. This policy applies to all leagues and organizations wanting to use City athletic fields for practice.

Application Process

- Reservations are taken on a first come, first served basis at the Parks and Recreation Administration office located at 1501 East Hadley. Reservations will only be taken during normal business hours: **Monday-Thursday 8 am-5 pm.**

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- Reservations will only be taken for the following week only and in person. Teams may not reserve more than two practices per week. One individual may reserve one field for a maximum of two times per week.
- Cancellations for practice times will only be honored due to inclement weather and must be submitted within 24 hours of the cancellation. Practices cancelled by individual will not be refunded.
- Practice fields availability may be limited due to permit reservations, fields blocked for construction and field prep.

Requirements

- All teams will need to be covered by the respective leagues insurance for the amount of one million in liability insurance with the City of Las Cruces attached to the policy with an endorsement. If team is not covered, a waiver will need to be signed by all users.
- All teams are responsible for policing the area for litter and making sure that the area is clean at all times. If it is determined by the City of Las Cruces Parks and Recreation Department that deterioration of the fields or abuse is present, all practice requests will be ceased at that time.
- Teams will be responsible for monitoring and conducting themselves in a safe manner.

PARKS AND RECREATION ADVISORY BOARD AUTHORITY OVER LEAGUES/ORGANIZATIONS THAT UTILIZE CITY FIELDS AND/OR FACILITIES

Purpose: To provide guidance to local recreational youth/adult leagues or organizations that utilize City fields and/or facilities. To provide an independent, non-biased committee that has the authority to review league/organization procedures, act as an appellate body for player/coach/parent/spectator suspensions, review financial records and recommend (or require) changes to league/organization operations.

Resolution No. (12-072)

FISHING

Fishing will be allowed at Young Park Pond in accordance with New Mexico Game and Fish regulations.

SWIMMING

Swimming is allowed at Laabs Pool, East Mesa Bataan Memorial Pool, Regional Aquatic Center and ~~Fronger Pool~~ Las Cruces Natatorium. No swimming is allowed in the Young Park Pond. Splash pads and interactive fountains are not bodies of water in which swimming can be conducted. All posted rules must be followed for safety purposes.

CARNIVALS AND AMUSEMENTS

Requests for conducting Circuses, Carnivals/Amusement Parks and similar businesses must be submitted to the Community Development Department's Permitting Office. If approved, these businesses must then apply for a Park Permit if the activity is conducted at a Parks and Recreation area or facility.

ROLLER SKATING, ROLLERBLADING, SKATEBOARDING, REMOTE CONTROL TRACK, ARCHERY, REMOTE CONTROL AIRPLANES, DRONES

The City of Las Cruces may designate and restrict areas and facilities for these purposes.

GOLFING

No hitting of golf balls allowed on any City park facility as per *LCMC, Section 20-36*, with the exception of City golf programming.

MOBILE CONCESSIONS/VENDING

Any individual, group, business entity or organization engaged in the sale of food, beverage, or any other merchandise at a public park, Plaza de Las Cruces or public space within the City limits must obtain a permit from the Parks and Recreation Department. Applicant is responsible and required to meet all applicable city, state and health department laws and regulations, including acquiring all necessary permits for food and beverage preparation. All such permits must be provided to the City prior for the issuance of a permit from the Parks and Recreation Department.

I. REQUIREMENTS:

The Parks & Recreation Department reserves the right to permit if vendors are able to provide the following:

1. **BUSINESS LICENSE:** Provide a copy of the required Business license and Registration permit from the City of Las Cruces Business Registration Office.
2. **FOOD SERVICE PERMIT:** Provide a copy of the required permit(s) from the State of New Mexico Health Department.
3. **LIABILITY INSURANCE WITH ENDORSMENT:** Applicant is required to provide the City a copy of proof of liability insurance coverage in the minimum amount of one million dollars (\$1,000,000) per occurrence, naming the City of Las Cruces as an additional insured with an endorsement page.
4. **FEES:** Vendor agrees to pay the City of Las Cruces \$60 monthly fee. Permits will **ONLY** be issued on a quarterly basis or fraction thereof. Payment shall be made to the City of Las Cruces in full in order to receive a permit for each quarter.
5. TAXATION CERTIFICATE MUST BE ON FILE.

All concession/vendors, to include mobile vendors, must be in good standing at all times. Good standing will be defined as no complaints, regular payment of required fees, and all appropriate documentation on file. The Parks and Recreation Department staff has the right to deny concession/vending permits based on non-compliance. The City may develop a request for proposal to operate all City concession stands on park property.

SPECIAL USE PERMITS (TO INCLUDE, BUT NOT LIMITED TO, MODEL AIRPLANES/MODEL ROCKETS/METAL DETECTING), AND REMOTE CONTROL CARS

Model Airplanes/rockets, metal detecting, and remote control cars are recognized as legitimate recreation activities when they are conducted in ways that do not damage the natural and cultural resources of City of Las Cruces park facilities.

A Facility Use Permit is required to use any city park for these activities. Use of metal detectors is limited to park areas only and not in ball field areas. To obtain a **Park**/Facility use Permit visit the Parks and Recreation Administrative Office at 1501 E. Hadley.

INFLATABLE/PORTABLE PLAY EQUIPMENT

The City of Las Cruces allows inflatable play equipment at designated sites in Young Park, Pioneer Park, Apodaca Park, and Klein Park. Any business that operates/leases party and or event equipment, i.e. jumping balloons, dunk tanks, sporting equipment, etc., in a City park/facility is required to provide proof of general liability insurance in the amount of three million dollars (\$3,000,000) per occurrence, with the City of Las Cruces named as an additional insured with an endorsement page.

The amount of the insurance shall coincide with the limitations of the New Mexico Tort Claims Act, NMSA 1978, Section 41-4-1. This proof of insurance must be forwarded to the Parks and Recreation Department for record keeping. Uninsured businesses may be held personally responsible for injury or damages caused by any uninsured or unauthorized inflatable or portable play equipment.

VEHICLES AND DRIVING IN CITY PARKS

Driving or parking vehicles on the grass or landscaping located in a City park or on City property is prohibited except during events for which a permit has been granted. Driving on park property results in damage to both turf and irrigation sprinkler systems and can result in costly repairs. Items should be hand carried from the street or parking lot to the interior of a park. This is also true for local businesses that offer tents or other large items for party rentals or other activities. In addition, no parking is allowed on the grass surrounding soccer fields and softball/baseball fields. This section does not apply to City vehicles, emergency vehicles or public utility service vehicles.

WELLNESS PROGRAM

The City of Las Cruces has expanded the current workplace Wellness Program by recognizing the value of improving the health and well-being of its employees. The program *is designed to improve employee morale, loyalty, and productivity. Employees have been provided access to physical fitness classes, the weight room and cardio rooms, nutrition classes, diabetes checks, health fairs, sports, and golf opportunities.* Staff will continue to seek ways to increase the benefits for City of Las Cruces employees and their family members.

COMMUNITY GARDENING

The City of Las Cruces offers local citizens use of public property for community gardening activities. Gardeners are encouraged to plant vegetables and other annual plants. All gardening participants must be registered annually. All current gardeners can register for one plot from January 3 until January 31. New gardeners can register for any available plots from February 1 until February 28. Beginning March 1, registered gardeners can request a second plot if available. Applications deadline for gardeners will be accepted beginning February of each year. Registration is accepted at the Parks and Recreation Department, 1501 E. Hadley. Garden plots will be rented on a first-come, first- served basis and for an established fee and time period. Garden sites are:

- Jardin de Esperanza – 341 E. Picacho
- Gomez Community Garden – 2250 S. Espina
- Munson Community Garden – 975 S. Mesquite (program garden)
- Sage Community Garden – 6121 Reynolds Dr.

MEMORIAL TREE AND BENCH PROGRAM

The City of Las Cruces offers a Memorial Tree and Bench Program. The Memorial Tree and Bench Program is a wonderful way for all to celebrate, honor or memorialize a special individual or group. With the purchase of a new tree or park bench, the City of Las Cruces Parks and Recreation Department will work with the donor to assure the planting or installing of a new tree or bench in a park, public space, or along a walking trail. In addition, this unique living memorial will also contribute to the beautification of public spaces for countless generations to enjoy.

WALK OF HONOR BRICK PAVERS

The City of Las Cruces offers the opportunity to purchase personalized quarry tile brick pavers to be used in the construction of a walk of honor for veterans within the City's Veterans Memorial Park on Roadrunner Parkway. Bricks may be purchased at the Parks and Recreation Department for an established fee. Bricks will be ordered quarterly (every three months).

PARK OPENING AND CLOSING HOURS

1. City parks may be open from ~~from sunrise to sunset 5 am—9 pm, March 1 to October 31 (summer hours), and 6 am—7 pm November 1 to February 28 (winter hours)~~, except for emergencies, permitted special events and in parks where hours are posted differently from those operating under the normal operating time. ~~Refer to LCMC, Chapter 22, Parks and Recreation, Article I. "In General", Section 22-4 Chapter 20, PARKS AND RECREATION ARTICLE II. RULES FOR USE OF PARKS, Section 20-28.~~
2. Unidad Park and Butterfield Shooting Range hours of operation are sunrise to sunset. Note: Butterfield Shooting Range will be closed Thursday morning until 3:00 p.m. for maintenance.
3. Splash pad hours will be consistent with similar facilities.
4. Individuals shall not be allowed in any City park during closing times unless authorized by permit.

5. The City Manager has the authority to change opening and closing hours of City parks.
6. Parks and Recreation Department employees or Police employees are not restricted by the opening and closing hours when in performance of their duties.
7. For further information regarding park operations, please *refer to LCMC, ~~Chapter 22, Section 22-1, available in the City Clerk's Office.~~ Chapter 20, Section 20-28, available in the City Clerk's Office.*

PET OWNER'S RESPONSIBILITIES

The City of Las Cruces requires by LCMC, Chapter 1, Section #7-4.a that all pet owners clean up after their pet while they visit our parks and facilities.

In addition, dog owners must have their dogs under their control and on a lead not longer than twelve (12) feet; off leash recreation is provided at the "Off Leash Dog Parks"; ~~directly behind the Meerscheidt Recreation Center, 1600 E. Hadley St.~~

- 1600 E. Hadley (South of Meerscheidt Recreation Center)
- 3551 Bataan Memorial (North of Animal Service Center)
- 855 Amador Ave. (within Burn Lake Park)

Pet owners will be restricted from bringing their pets to athletic complexes, unless designated as a service animal.

MERCHANDISING, ADVERTISING AND SIGNS

1. Individuals, groups or organizations, while utilizing City-owned parks and/or facilities, are prohibited from the following unless authorized by the Departments in writing:
 - a. Calling to the public attention an article or service for sale or hire.
 - b. Posting or erecting any sign on City-owned property unless authorized by the City Sign Code.
 - c. Collection of money by an individual, group, or organization from the public for services and/or merchandise where all or some of such monies will be disbursed to an entity, individual, group or organization, will only be authorized by permit. Applicable park rental fees may apply.
2. The Parks and Recreation Department has created advertising opportunities that will develop partnerships with our local business community to increase the visibility of their respective businesses and to ensure the sustainability of offering quality/affordable programs to the citizens of Las Cruces.
 - a. Advertisements will be offered through personalized display opportunities at designated Parks and Recreation facilities.

- b. Fees will be established as per City Council Approval.

EXCEPTIONS

There may be requests that are exceptions to this policy. These requests will be reviewed on a case-by-case basis and may require Parks and Recreation Advisory Board, City Manager, or City Council approval.

CITY FEE ~~WAIVER~~ POLICIES (as established by City Council)

1. ~~City Fee Waiver Policy.~~
2. Park Facility Fee Waiver for Military Services at Veterans Memorial Park.
3. Official City Sponsored or co-sponsored events as approved by City Council.

CITY OF LAS CRUCES PARKS AND RECREATION PROGRAMS AND FACILITIES ~~2019/2020~~ FEES & CHARGES/FACILITY USE SCHEDULE

I. GENERAL RECREATION PROGRAMS

General Instructions:

Program	Session	FY 19/20	Fees/Charges
Fitness/Circuit Training	1 class	\$2.00	\$2.00
Fitness Punch Card	30 visits	\$48.00	\$60.00
60+ Fitness Punch Card	30 visits	\$30.00	\$30.00
MRC Activity Punch Card (not for rentals)	34 visits	\$30.00	\$30.00
Indoor Cycling	1 class	\$2.00	\$2.00
Gymnastics—Parent/Tot	8 classes	\$30.00	\$30.00
Gymnastics—Beginning	8 classes	\$30.00	\$30.00
Gymnastics—Intermediate	8 classes	\$30.00	\$30.00
Gymnastics—Advanced/Elite	8 classes	\$45.00	\$45.00
Gymnastics—Tumble/Cheer	8 classes	—\$45.00	\$45.00
Adult Dance	8 classes	\$40.00	\$40.00
Racquetball Court Rental Pass	6 visits	\$20.00	\$20.00
Racquetball	1 hour/court	\$ 4.00	\$ 4.00
Pickleball Court Rental (MPR)	1 hour/court	\$10.00	\$10.00
Open Pickleball Session	Per Session		\$2.00
Pickleball Net Rental (for onsite use only)	Per Net		\$10.00
Racquetball Court Rental	1 hour/court	\$10.00	\$10.00
Racquetball/Pickle ball Racquet Rental	1 racquet	\$ 1.00	\$ 1.00
Teen Dance	1 admission	\$3.00	\$3.00
Teen Splash	1 admission	\$1.00	\$3.00
Water Cycle Class	1 class		\$5.00
Water Fitness Class	1 class	\$2.00	\$2.00
Water Fitness Class Punch Card	30 visits	\$48.00	\$60.00
Weight Room – Meerscheidt	Daily Fee	\$1.00	\$1.00
Weight Room – Regional Aquatic Center	Daily Fee	\$2.00	\$2.00
Weight Room – Regional Aquatic Center	30 visits	\$48.00	\$60.00
Therapeutic Program Dance	1 admission	\$2.00	\$2.00
Fitness Classes/Lap Swim	1 hour	\$2.00	\$2.00

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Shower Fee	1 each	\$1.00	\$1.00
Activity ID Card Reprint Fee	ALL	\$5.00	\$5.00
Towel Fee	1 each	\$1.00	\$1.00
Copy Fee	Per copy	\$.50	\$.50
Open Session Basketball/Volleyball/Skate	Daily Fee	\$1.00	1.00
Specialty Camps	Half Day	\$50.00	\$50.00
	Full Day	\$100.00	\$100.00
Locker Rental	Daily	\$.50	\$.50
Locker Rental	Weekly	\$2.50	\$2.50
Locker Rental	Monthly	\$10.00	\$10.00
Locker Rental	Yearly	\$120.00	\$120.00
After School Program (Registration will be accepted based on availability-; a prorated fee may be assessed.)	Per Semester (Fall/Spring)	\$400.00	\$100.00
Summer Recreation Program	Per Session	\$200.00	\$40.00
Spring/ Fall /Winter Camp	Per Session	\$100.00	\$20.00
Program	Session	FY 19/20	Fees/Charges
Camp Daily Drop-In Fee	Per Day	\$20.00	\$0.00
Pre or Post Program Fee	Per Session	\$10.00	\$0.00

~~*Staff will pursue additional program opportunities throughout the year and set fees based on Council's direction concerning rates of recovery.~~

Therapeutic Recreation Programming – Private Entities

A programming fee will be charged for Therapeutic Recreation Program administered activities held at any private entity. ~~not including the building previously known as the “Life Center/Angel Care” (outside of a City building).~~ The Therapeutic Recreation programming fee will be a minimum of 25 cents per participant/care provider per activity. This fee may vary based on the activity, allowing for a wide-range of diversity in venues and opportunities for program participants. The Therapeutic Recreation Program will work with care providing agencies, care providers and participant families to set activity programming fees for more costly and expansive activities. This programming fee will provide a minimal cost recovery and help off-set direct expenses incurred for the facilitation and delivery of such activities.

Sports League Program:

Program	Session	FY 19/20	Fees/Charges
Adult Volleyball*	9 games	\$250.00	\$250.00
Adult Basketball*	9 games	\$465.00	\$465.00
Camp Daily Drop-in Fee		\$ 20.00	\$20.00
Racquetball League	12 games	\$ 12.00	\$12.00
Basketball Coaches Certif.	1 year	\$30.00	\$30.00
Officiating Clinic	1 year	\$30.00	\$30.00
Youth Sports Leagues (City) - with Jersey**	8 games	\$45.00/child	\$50.00/child
Youth Sports Leagues (City)- without Jersey**		\$35.00/child	\$40.00/child
Sports Tournament – Adult (City)*		\$200.00	\$200.00
Sports Tournament – Youth (City)**		\$150.00	\$150.00

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Non-Traditional Sports Tournaments – Adult*		\$75-200.00	\$75-\$200
Non-Traditional Sports Tournaments – Youth**		\$50-150.00	\$50-150.00
Cheer – with Jersey Cheer – without Jersey	8 classes	New \$45.00 Returning \$35	New \$50.00 Returning \$40.00
Coach Rental Card			\$5.00 per player

* Adult Leagues run at 100 percent recovery of direct cost.

**Youth Leagues run at 85 percent recovery of direct cost.

Pilot Program Process:

The Parks and Recreation Department will have the authority to research and pursue new and innovative ~~revenue sources~~ services by utilizing new and creative programming or single event activities for all ages and abilities. **Staff will set fees based on Council's direction concerning rates of recovery.**

Special Events:

Program	Session	FY 19/20	Fees/Charges
Youth Running Events/Late Fee	1 race	\$15.00/\$25.00	\$15.00/\$25.00
Adult Running Events/Late Fee	1 race	\$20.00/\$25.00	\$20.00/\$25.00
Running Event Series	3 5K races	\$30.00	\$30.00
Duathlon/Duathlon Late Fee	1 race	\$30.00/\$35.00	\$30.00/\$35.00

- II. SWIMMING** (In the event of pool closures and capacity, open recreation and swim time will be split into two equal sessions. All swimming pools will have split sessions during summer months (Memorial Weekend thru Labor Day).

Community Education Classes:

Program	Session	FY 19/20	Fees/Charges
First Aid	4 hrs.	\$50.00	\$55.00
CPR-PR		\$70.00	\$75.00
Recertification (CPR-PR or First Aid)	One time	\$45.00	\$50.00
Recertification (Lifeguard Skills)	One time	\$85.00	\$90.00
Home Swimming Pool/Spa Water Safety	1.5 hours	\$25.00	\$30.00
Open Water Safety	1.5 hours	\$25.00	\$30.00
Home Swimming/Water Safety/Open Water	3 hours	\$45.00	\$50.00

- Fees subject to current Red Cross pricing**

Daily Fees (Frenger/East Mesa/Laabs):

	Age Group	FY 19/20	Fees/Charges
Infant	0-2 years	Free	Free
Youth	3-17years	\$2.00	\$2.00
Adult	18-59 years	\$2.00	\$2.00
Senior	60+ years	\$1.00	\$1.00

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Child Watch Fee (Parent/Guardian)	N/A	\$1.00	\$1.00
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30 Punch Admission Card (Frenger/East Mesa/Laabs):

	Age Group	FY 19/20	Fees/Charges
Infant	0-2 years	Free	Free
Youth	3-17 years	\$50.00/30 punch	\$50.00/30 punch
Adult	18-59 years	\$50.00/30 punch	\$50.00/30 punch

Rentals: Frenger/Laabs/East Mesa (Swim Meet/4 hours based)

Amount of Group	FY 19/20	Guards on Duty
Swim Meet (Entire Pool)	\$200 / hr	4 Guards

Las Cruces Natatorium Meet & Practice Fees & Amenities

Amenity/Fee	Fees/Charges		
	Non-Profit	Commercial	Non-Residential
25 yrd/meter lane for practice	\$ 11.00	\$ 50.00	\$ 17.00
50 meter lane for practice	\$ 13.00	\$50.00	\$ 26.00
Swim Meets per hour (scoreboard included)	\$175.00	\$700.00	\$220.00
Starting System per meet	\$ 25.00	\$100.00	\$ 30.00
Dolphin Timers each per meet	\$ 15.00	\$ 60.00	\$ 20.00
Operation Fee for Timing System	\$ 30.00 (per operator)	\$ 30.00 (per operator)	\$ 30.00 (per operator)
Swim Meet Spectator Fee	\$ 3.00	\$ 3.00	\$ 3.00
Touch Pads Each	\$ 15.00	\$ 60.00	\$ 20.00
Swim Meets – Timing System per meet	\$500.00	\$500.00	\$500.00
School Swim Teams per lane	\$ 11.00	\$ 11.00	\$ 11.00
Staff Fee (Salary/Labor)	\$18.00 (2 Lifeguards Reg.) \$ 20.00 (1 H. Guard) \$ 16.00 Attendee (2)	\$ 18.00 (2 Lifeguards Reg.) \$ 20.00 (1 H. Guard) \$16.00 Attendee (2)	\$ 18.00 (2 Lifeguards Reg.) \$20.00 (1 H. Guard) \$16.00 Attendee (2)

Rentals will be based on overall demand (public use) and safety window of opportunity (amount of daylight). *Swim Team Rentals as per agreement.*

Holidays/Maintenance Closures:

Swimming pools may be closed on City observed holidays with the exception of Memorial Day, Fourth of July and Labor Day.

LAS CRUCES REGIONAL AQUATIC CENTER

Special Events:

Program	Session	FY 19/20	Fees/Charges
Children's Triathlon and Races	1 race	\$15.00	
Aquatic Special Event	1 event		\$5.00 per participant

Daily Fees:

	Age Group	FY 19/20	Fees/Charges
Infant	0-2 years	Free	Free
Youth	3-17 years	\$3.00	\$3.00
Adult	18-59 years	\$4.00	\$4.00
Senior	60+ years	\$3.00	\$3.00
Child Watch Fee (Parent/Guardian 18+)	N/A	\$1.00	\$1.00

~~30 Punch Admission Card / Open Swim~~

	Age Group	FY 19/20
Infant	0-2 years	Free
Youth*	3-17 years	\$80.00/30 punch
Adult*	18-59 years	\$110.00/30 punch
Senior*	60+ years	\$80.00/30 punch

Gift certificates are available for purchase at all swimming pool facilities.

Swimming Lessons:

Program	Levels	FY 19/20	Fees/Charges
Private Lessons	All Ages	\$35.00/hour	\$35.00/hour
Infant/Toddler/Preschool/ Level 1 & 2	Beginner	\$45.00/8 classes	\$45.00/8 classes
	Levels 3 & 4 (Intermediate)	\$60.00/8 classes	\$60.00/8 classes
	Levels 5, 6 & 7(Advanced)	\$60.00/8 classes	\$60.00/8 classes
Lifeguarding (includes books or pocket mask)		\$200.00/30 hours	\$200.00/30 hours
Lifeguarding Instructor (LGI) Does not include books		\$195.00/26 hours	\$200.00/26 hours
Water Safety Instructor (WSI) Minimum age 16 years. Does not include books		\$190.00/15 hours	\$200.00/15 hours
Be A Guard WSIA & Guard Start (Working at Pools) Minimum age 15 years. Must have passed Level 3		\$95.00/15 hours	\$95.00/15 hours

Lifeguard Training fee is refundable upon successful completion of certification process and

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upon hire with the City of Las Cruces (completion of 90 days of service).

Rentals: (Fitness Room) – Week day operations only.

Amount of Group	Guards-on-Duty	FY 19/20	Fees/Charges
Plus Sound System		\$20.00/hr	
Fitness Room			\$20.00/hr

Rentals: (Party Area)

Area	FY 19/20	Fees/Charges
Party Room/Wet *	\$100.00/3 ½ hours	\$100.00/3 hours
Private Use-190 Maximum Capacity, Includes Guards/fees, Friday, Saturday, Sunday only	\$400/2 hrs	\$400/2 hrs

III. FACILITIES RENTAL

Community Gardens *

	FY 19/20	Fees/Charges
Jardin de Esperanza	\$15.00/plot	\$15.00/plot
Gomez Community Garden	\$15.00/plot	\$15.00/plot
Sage Community Garden	\$15.00/plot	\$15.00/plot

*Munson Garden (program)

Meerscheidt, Frank O'Brien Papen Center, East Mesa, A. Fielder Memorial Safe Haven, and WIA Building (weekend rates only and/or after normal business hours):

Rental Area	FY 19/20	Fees/Charges
WIA Building	\$40.00/hr	\$40.00/hr
East Mesa Multi-Purpose Room Team Rental		\$10.00/hr
Multi-Purpose Room/or Dining Room	\$40.00/hr	\$40.00/hr
Class Room	\$30.00/hr	\$30.00/hr
Auditorium (Frank O'Brien Papen Community Center only)	\$60.00/hr	\$60.00/hr
Gym Rentals (Meerscheidt Rec Center only)	\$40.00/hr	\$40.00/hr
Gymnastic Rental Package (East Mesa)-instructor & equipment	\$50.00/hr plus room rental	
Sand Volleyball Courts includes use of commercial net system – setup & teardown (Meerscheidt Rec Center Only)	\$40.00 per 2hr time period per court	\$40.00 per 2hr time period per court
Sand Volleyball Courts (per day) includes non-commercial net only (Meerscheidt Rec Center Only)	\$40.00/day per court	\$40.00/day per court
Meerscheidt Facility (Entire building-Indoor)		\$100.00/hour

Frank O'Brien Papen (weekday operations only):

Rental Area	FY 19/20	Fees/Charges
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Class Room	\$15.00/hr	\$15.00/hr
Dining Room (Kitchen not included)	\$25.00/hr	\$30.00/hr
Any additional room associated with Multi-Purpose Rental	\$10.00/hr	
Auditorium (Frank O'Brien Papen Community Center only)	\$30.00/hr	\$40.00/hr
Game Room Rental – includes use of equipment	\$40.00/hr	40.00/hr

Meerscheidt Recreation Center (weekday operations only and during normal business hours):

Rental Area	FY 19/20	Fees/Charges
Multi-Purpose Room Team Rental	\$10.00/hr	\$10.00/hr
City League Team Practice/Rental Card	\$50.00	\$50.00/6 sessions \$70.00/8 sessions
Gymnasium – Half Court	\$10.00/hr	\$10.00/hr
Gymnasium – Full Court	\$20.00/hr	\$20.00/hr
Sand Volleyball Courts – includes non-commercial net only	\$10.00 per court	\$10.00 per court

City approved professional security guard services by the renter at a ratio of one guard for every 50 guests (licensed/bonded).

In an effort to reduce staff overtime costs, no rentals will be offered on City Holidays.

The primary focus for Meerscheidt Recreation Center will be sports related activities and programs; and Frank O'Brien Papen Center will be recreational programming, activities and private rentals. East Mesa & A. Fielder Memorial Safe Haven will primarily be for youth programming.

IV. FUNDRAISING RENTALS

- Nonprofit organizations that are holding an event / tournament that are not Co-Sponsored by the City of Las Cruces will incur fees.
- Non-profit / for profit fundraising exclusive use events of an entire park may be assessed a flat fee rate of \$1,250.
- Car shows with exclusive use of park lawn areas will be assessed a flat fee rate of \$500 in addition to the rental fees assessed.
- All rentals requesting exclusive use of park areas will be assessed a fee of \$50 per four hours per section of the park requested. An additional \$50 fee will be assessed for electrical service and water service. Additional electric panels will need to be coordinated and approved through the City's Facility section. A separate fee will be assessed.

V. MERCHANDISE

Merchandise	Amount Requested	FY 19/20	Fees/Charges
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Program/Event T-Shirts			
Short Sleeve	Each	\$10.00	\$15.00
Long Sleeve T-Shirts	Each	\$15.00	\$20.00
Sweatshirts	Each	\$20.00	\$25.00
Swim Pant Fee/Youth	Each	\$1.00	\$1.00
Goggles	Each	\$10.00	\$10.00
Towels	Each	\$10.00	\$10.00
Earplugs	Each	\$3.00	\$3.00
Nose Clips	Each	\$3.00	\$3.00
Head Phones	Each	\$3.00	\$3.00
Pickleball Ball	Each		\$1.00
Swim Cap (Latex)	Each	\$3.00	\$3.00
Swim Cap (Silicone)	Each	\$5.00	\$5.00
Ziggy Plush	Each		\$10.00

VI. MEMORIAL TREES, BENCHES, WALK OF HONOR BRICKS

Item	Fees/Charges
Tree	\$500.00 per tree
Bench with Plaque	Range of \$2,200.00 – \$2,500.00
Bench without Plaque	\$1,800.00
Walk of Honor Memorial Brick	\$ 35.00 per brick

VII. PARK PERMIT FEE

Facility Requests	Number of Hours/Day Fee	FY 19/20	Fees/Charges
Park area/section	4	\$50.00	\$50.00
Trail area			\$2.00 per/participant
Parking Lot Fees – half lot	4		\$100.00
Parking Lot Fees – entire lot All parking lot rentals will require a Traffic Control Plan (TCP) for the Event from Public Works	4		\$200.00

VIII. SPORTS LEAGUES (PER FIELD/COURT/GAME FEE)

Sport/Age Group	FY 19/20	Fees/Charges	
		Resident	Non-Resident
Recreational Youth Baseball/Softball/Soccer/Football (Local – 17 years and under)	\$0	\$0	\$0
Select Youth Baseball/Softball/Soccer/Football (Non-Local* – 17 years and under)	\$10.00	\$10.00	\$20.00
Adult Baseball/Softball	\$25.00	\$25.00	\$50.00

Agenda Item #8.1.

Adult Football/Soccer	\$20.00	\$20.00	\$40.00
Senior Softball/Baseball (Local)	\$12.50	\$12.50	\$25.00
Adult Tournaments (up to 12 hours)			
4 Field Complex	\$600.00	\$600.00	\$1,200.00
3 Field Complex	\$450.00	\$450.00	\$900.00
Single fields	\$150.00	\$150.00	\$300.00
High Noon #1 – 5, #11–12	\$500.00	\$500.00	\$1,000.00
Burn Lake	\$300.00	\$300.00	\$600.00
Provencio Van Dame	\$300.00	\$300.00	\$600.00
Soldados	\$200.00	\$200.00	\$400.00
Apodaca Baseball	\$200.00	\$200.00	\$400.00
Youth Tournaments (up to 12 hours)			
4 Field Complex	\$200.00	\$200.00	\$400.00
3 Field Complex	\$150.00	\$150.00	\$300.00
Single fields	\$50.00	\$50.00	\$100.00
High Noon #1 - 5, #11–12	\$250.00	\$250.00	\$500.00
Burn Lake	\$150.00	\$150.00	\$300.00
Provencio Van Dame	\$150.00	\$150.00	\$300.00
Soldados	\$100.00	\$100.00	\$200.00
Apodaca Baseball	\$100.00	\$100.00	\$200.00
Field Service Fee Per Game/Per Field (Complete Service)	\$ 80.00	\$ 80.00	\$160.00
Field Service Fee Per Field/Per Game (Touch Up)	\$ 24.00	\$ 24.00	\$48.00
Service Fees for: Pedestrian Barricades, Temporary Fences, or Goal Transportation		\$250.00 each per set up	\$500.00 each per set up
Practice Field Fees: Practice space can be reserved for the following fields as available: Paz, Maag, Apodaca Baseball, Apodaca Softball, Burn Lake Provencio/Van Dame.	\$10.00 per hr (max 2 hrs per day, max 2 days per week	\$10.00 per hr (max 2 hrs per day, max 2 days per week	\$20.00 per hr (max 2 hrs per day, max 2 days per week
Tennis Camp, Pickleball, Handball Court Fee (Youth)	\$1.00 per court/per 4 hrs	\$1.00 per court/per 4 hrs	\$2.00 per court/per 4 hrs
Tennis Camp, Pickleball, Handball Court Fee (Adult)	\$5.00 per court/per 4 hrs	\$5.00 per court/per 4 hrs	\$10.00 per court/per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Youth) all courts	\$25.00 per 4 hrs	\$25.00 per 4 hrs	\$50.00 per 4 hrs
Tennis, Pickleball, Handball Tournament Fee (Adult) all courts	\$50.00 per 4 hrs	\$50.00 per 4 hrs	\$100.00 Per 4 hrs

~~*Non-local – Non-City Resident~~

NOTE: Facility Change Fee: Set up \$1,000.00, Tear Down \$1,000.00

Sport/Age Group Non-Traditional Sports/Groups	FY 19/20	Fees/Charges	
		Resident	Non-Resident
Camping Fees: RV/Trailer Tents	\$10.00 per night \$5.00 per night	\$10.00 per night \$5.00 per night	\$20.00 per night \$10.00 per night
Yearly Fee for League/Season BMX Horseshoe Courts (Entire) Horseshoe Courts (Single Court) Skate Park	\$1,000.00 \$100.00 \$5.00/4 hr Max \$50.00/4 hr Max	\$1,000.00 \$100.00 per 4 hrs \$5.00/4 hr Max per 4 hrs \$50.00/4 hr Max per 4 hrs	\$2,000.00 \$200.00 per 4 hrs \$10.00 per 4 hrs \$200.00 per 4 hrs

IX. DOWNTOWN AREA FEES

AREA	Duration	Fee	Duration	Fee
North Section MSD / free general public	4 hours	\$ 0	12 hours	\$ 0
North Section MSD / rental	4 hours	\$50	12 hours	\$150
Middle Section MSD / free general public	4 hours	\$ 0	12 hours	\$ 0
Middle Section MSD / rental	4 hours	\$50	12 hours	\$150
South Section MSD / free general public	4 hours	\$ 0	12 hours	\$ 0
South Section MSD / rental	4 hours	\$50	12 hours	\$150
Parking lot/space Concession/Vendor	Month	\$560	MonthQuarter	\$ 50150
Parking lot reservation	4 hours	\$50	12 hours	\$150
La Placita/rental	4 hours	\$50	12 hours	\$150

X. MOBILE CONCESSION/VENDING FEES

Mobile Concessions		FY 19/20	Fees/Charges
Parks and Recreational Facility Parking Lots		\$150. Qtr. \$60 Monthly	\$150 Qtr. \$60 Monthly

Service is defined as the ability to access electricity. (Not all facilities have this capability).

~~(Fees and Charges for FY 18/19 & 19/20)~~



City Council Action and Executive Summary

24-003

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1	☐ 2	☐ 3	☐ 4	☐ 5	☐ 6	☐ N/A
1st Reading:				Adopted:	July 3, 2023		
Drafter:	Valerie Uribe			Department:	Legal		
Program:	Administration			Line of Business:	Office of the Director		
Title:	A RESOLUTION APPROVING A WHOLESALER (SPIRITS, BEER, AND WINE) LIQUOR LICENSE. PURSUANT TO RULE 15.10.32.8 IF THE PROPOSED LICENSED PREMISES IS WITHIN 400 FEET OF A CHURCH OR SCHOOL, AND THE APPLICANT DOES NOT ADMIT THE PROPOSED LICENSED PREMISES IS WITHIN 300 FEET OF A CHURCH OR SCHOOL, THE APPLICATION MUST BE ACCOMPANIED BY A CERTIFIED REPORT OF A REGISTERED ENGINEER OR DULY LICENSED SURVEYOR OR MAY OBTAIN A WAIVER FROM A LOCAL OPTION DISTRICT GOVERNING BODY FOR THE PROPOSED LOCATION. THE APPLICANT AT THIS TIME IS SEEKING A WAIVER, LOCATED AT 508 N. MESQUITE STREET 1/2, LAS CRUCES, NEW MEXICO 88001.						

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

PURPOSE(S) OF ACTION:

Approve a Wholesaler (Spirits, Beer, and Wine) Liquor License to Vino Real, LLC.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

Pursuant to New Mexico Statutes, an application for a Wholesaler (Spirits, Beer, and Wine) Liquor License must be accompanied by a resolution of the City Council approving of and consenting after a public hearing.

Vino Real, LLC, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico (“ABC”) for a Wholesaler (Spirits, Beer, and Wine) Liquor License. The location for the license is at 508 N. Mesquite Street 1/2, Las Cruces, New Mexico 88001. ABC granted conditional preliminary approval on May 12, 2023.

The City Council is required to hold a public hearing within 45 days after the date of receipt of the conditional preliminary approval letter from ABC. A public hearing to review this issue is scheduled during the regular City Council meeting to be held on Monday, July 3, 2023, beginning at 1:00 p.m. Notice of this public hearing was published in the *Las Cruces Sun-News* on June 2, 2023, and June 16, 2023.

Council may approve or disapprove the Wholesaler (Spirits, Beer, and Wine) Liquor License. However, Council’s disapproval must be based on substantial evidence that the transfer of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.

Council may also fail to either approve or disapprove the license. If Council fails to approve or disapprove the license within 30 days after the public hearing, the Director of Alcoholic Beverage Control may give final approval of the license.

SUPPORT INFORMATION:

[Exhibit "A". Alcohol and Gaming's Letter and Application.](#)

[Attachment "A". Notice of Intent to Approve published in the Las Cruces Sun News.](#)

[Attachment "B". Traffic Impact Report from the Traffic Engineering Section.](#)

[Attachment "C". Fire and Safety Compliance Report from the Las Cruces Fire Department.](#)

[Attachment "D". Liquor License Impact Report \(Zoning\) from Development Services.](#)

[Attachment "E". Criminal Activity Report for the Las Cruces Police Department.](#)

[Attachment "F". Business Registration Report from Community Development Services.](#)

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 of and consent to the approval of a Wholesaler (Spirits, Beer, and Wine) Liquor License and the Alcohol Beverage Control will continue with the application process.

2. Vote "No" this must be based on substantial evidence that the transfer and change of the license would adversely affect the health, safety or welfare of the citizens of the City of Las Cruces.

3. Vote to "Amend" this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

4. Vote to "Table" this is not permitted by the Liquor Control Act, NMSA 1978, Section 60-6B-4.

RESOLUTION 24-003

A RESOLUTION APPROVING A WHOLESALER (SPIRITS, BEER, AND WINE) LIQUOR LICENSE. PURSUANT TO RULE 15.10.32.8 IF THE PROPOSED LICENSED PREMISES IS WITHIN 400 FEET OF A CHURCH OR SCHOOL, AND THE APPLICANT DOES NOT ADMIT THE PROPOSED LICENSED PREMISES IS WITHIN 300 FEET OF A CHURCH OR SCHOOL, THE APPLICATION MUST BE ACCOMPANIED BY A CERTIFIED REPORT OF A REGISTERED ENGINEER OR DULY LICENSED SURVEYOR OR MAY OBTAIN A WAIVER FROM A LOCAL OPTION DISTRICT GOVERNING BODY FOR THE PROPOSED LOCATION. THE APPLICANT AT THIS TIME IS SEEKING A WAIVER, LOCATED AT 508 N. MESQUITE STREET 1/2, LAS CRUCES, NEW MEXICO 88001.

The City Council is informed that:

WHEREAS, Vino Real, LLC, located at 580 N. Mesquite Street 1/2, Las Cruces, New Mexico 88001, applied to the Alcoholic Beverage Control Division of the Regulation and Licensing Department of the State of New Mexico ("ABC") for a Wholesaler (Spirits, Beer, and Wine) Liquor License; and

WHEREAS, ABC granted conditional preliminary approval for a Wholesaler (Spirits, Beer, and Wine) Liquor License by letter dated May 12, 2023; and

WHEREAS, pursuant to law, the application for a Wholesaler (Spirits, Beer, and Wine) Liquor License must be accompanied by a resolution of the Las Cruces City Council approving of and consenting to the approval after a public hearing upon reasonable notice of such hearing; and

WHEREAS, the City Council did on this date hold a public hearing after reasonable notice setting forth the required information concerning the public hearing. The City Council has considered the Wholesaler (Spirits, Beer, and Wine) Liquor License and it has determined that the approval of same is not detrimental to the public health, safety, or welfare of the City of Las Cruces.

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

(I)

THAT the Wholesaler (Spirits, Beer, and Wine) Liquor License to Vino Real, LLC located at 580 N. Mesquite Street 1/2, Las Cruces, New Mexico 88001, as evidenced by ABC's letter and the application attached hereto as Exhibit "A", is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



NMRLD

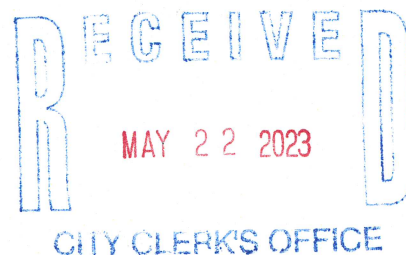
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Phillip A. Sanchez, Interim Director

May 12, 2023

Certified Mail No.: 7021 2720 0001 2204 7948

City of Las Cruces
Christine Rivera, Acting City Clerk
PO Box 20000
Las Cruces, NM 88004



Lic. No. /Appl. No.: N/A
Name of Applicant: Vino Real, LLC
Doing Business As: Vino Real, LLC
Proposed Location: 508 N. Mesquite St. ½, Las Cruces, NM 88001

The Director of the Alcoholic Beverage Control Division (ABC) has reviewed the referenced Application and granted **Conditional Preliminary Approval**. It is being forwarded to you for Local Option District approval or disapproval of the Liquor License Application.

Notice of the Public Hearing required by the Liquor Control Act shall be given by the governing body by publishing a notice of the date, time, and place of the hearing **twice during the 30 days prior to the hearing** in a newspaper of general circulation within the territorial limits of the governing body. **The first notice must be published at least thirty (30) days before the hearing.** Both publications must occur before a hearing can be conducted. The notice shall include:

- (A) Name and address of the Applicant/Licensee;
- (B) The action proposed to be taken;
- (C) The location of the licensed premises.

In addition, if the Local Option District has a website, **the Notice shall also be published on the website.**

While the law states that "within forty-five (45) days after receipt of a Notice from the Alcoholic Beverage Control, the governing body shall hold a Public Hearing in the question of whether the department should approve the proposed issuance or transfer", we recognize the potential for conflict between the requirement for publication of 30 day notice and the 45 day hearing requirement.

With that in mind, when a local governing body receives a liquor license application from ABC, that governing body has a couple of options:

- 1) Hold a hearing on the license application within the statutory time frame of forty-five (45) days, as required by the Liquor Control Act, and comply with all other statutory and regulatory procedures and notify ABC of your decision within thirty (30) days of the hearing;
- 2) Request from ABC an extension of time, past the forty-five (45) days, designating how much additional time will be needed to conduct the hearing in compliance with all statutory and



regulatory procedures. After the extension is granted and the hearing is held, notify ABC of your decision within thirty (30) days of the hearing;

ABC has no preference in the option you choose.

The governing body is required to send notice by certified mail to the Applicant of the date, time, and place of the Public Hearing. The governing body may designate a Hearing Officer to conduct the hearing. **A record shall be made** of the hearing.

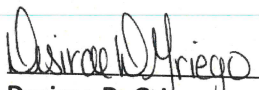
The Applicant is seeking a Wholesaler (Spirits, Beer, and Wine) Liquor License.

Pursuant to Rule 15.10.32.8 If the proposed licensed premises is within 400 feet of a church or school, and the applicant does not admit the proposed licensed premises is within 300 feet of a church or school, the application must be accompanied by a certified report of a registered engineer or duly licensed surveyor or may obtain a waiver from a local option district governing body for the proposed location. The applicant at this time is seeking a waiver.

Within thirty (30) days after the Public Hearing, the governing body shall notify ABC of their decision to approve or disapprove the issuance or transfer of the license by signing the enclosed original Page 1 of the Application. The original Page 1 of the Application must be returned together with the notices of publication. If the Governing Body fails to either approve or disapprove the issuance or transfer of the license within thirty days after the Public Hearing, the Director may issue the license.

If the Governing Body disapproves the issuance or transfer of the license, it shall notify ABC within thirty (30) days setting forth the reasons for the disapproval. A copy of the Minutes of the Public Hearing shall be submitted to ABC with the Notice of Disapproval (*Page 1 of the Application, noting disapproval*).

Respectfully,


Desirae D. Griego

Admin Law Judge | Hearing Officer
NM Regulation & Licensing Department
Alcoholic Beverage Control Division
Phone: (505) 476-4552 Fax: (505) 476-4595
Email: Desirae.Griego@rld.nm.gov

Enclosures:

1. Original Page 1 of the Application (*must be signed and returned w/notices of publication*)
2. Copy of Page 2 of the Application
3. Copy of the Zoning Statement





NMRLD
NEW MEXICO
REGULATION &
LICENSING DEPARTMENT

RECEIVED

FEB 17 2023

ALCOHOL & GAMING DIVISION

STATE OF NEW MEXICO
MICHELLE LUJAN GRISHAM, GOVERNOR
Linda M. Trujillo, Superintendent
Andrew Vallejos, Director

Wholesaler Liquor Location Application | \$200.00

ABC USE ONLY: Application Fee \$ 200.00 Received on: 2-20-23 Application Fee, non-refundable
License Fee \$ _____ Received on: _____ Receipt No. _____
Application Number: _____ Local Option District: Las Cruces

Check appropriate boxes:

TYPE OF WHOLESALER: [Licensing Fee due at Final] ☐ Beer [\$1,000] ☐ Wine [\$750] ☐ Beer & Wine [\$1,500]
☐ Spirits [\$1,500] ☐ Spirits & Wine [\$1,750] ☒ Spirits & Beer & Wine [\$2,500]
☐ Limited Beer* Based on Production, Master License No. _____ and _____
☐ Limited Wine** Based on Production, Master License No. _____ and _____
☐ §66-6A-29 Wine** Based on Production, Master Winegrower License No. _____

*To Qualify for Limited Wholesaler, Applicant must hold a*Small Brewer / **Winegrower and a Restaurant or Dispenser type License*

Applicant is ☐ Individual ☒ Limited Liability Company ☐ Corporation ☐ Partnership (General/Limited)

NAME OF APPLICANT: Vino Real, LLC

D/B/A Name to be used: Vino Real, LLC per Justin H. Harper Business Phone No: 915.202.4919

Mailing Address: 1540 5th St. Las Cruces, NM 88005

Email (required) missionvalleydist@gmail.com

Physical location where license is to be used: 508 N. Mesquite St. Ste. 1/2, Las Cruces, NM 88001

County: Dona Ana (Include street number / highway number / state road, city, state, and zip code)

Are alcoholic beverages currently being dispensed at the proposed location ☐ Yes ☒ No If Yes, License # / Type: _____

Contact Person: Justin Harper **Phone #:** 915.202.4919 **Email:** missionvalleydist@gmail.com

I, (print name) Justin Harper, as (title) Owner, Vino Real being first duly sworn upon oath deposes and says: that he/she is the applicant or is authorized by the applicant to make this application; that he/she has read the same; knows the contents therein contained are true. Applicant(s) agree(s) that if any statements or representations herein are found to be false, the Director may refuse to issue or renew the license or may cause the license to be revoked at any time.

You must sign and date this form before a Notary Public.

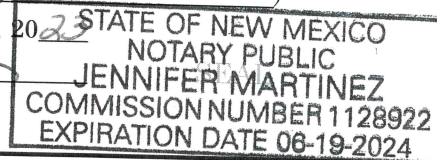
Signature of Applicant: _____ Date: 2/14/2023

Notary Public Use Only: (State of NEW MEXICO, County of DONA ANA)

SUBSCRIBED AND SWORN TO before me this 14th day of FEBRUARY, 2023

By: JUSTIN HARPER Notary Public: Jennifer Martinez

Date my Commission Expires: 06/19/2024



Local Option District Use Only: Local Governing Body of _____ City, County, Village

Public Hearing held on _____ 20____ Please check one: ☐ Approved ☐ Disapproved

Signature of City/County Official: _____ Title: _____

Alcoholic Beverage Control Division Use Only: ☐ Approved ☐ Disapproved, _____

Signed by Director: _____ Date: _____



Premises Location, Ownership, and Description | NMSA §60-6B-10 | Page 2

1. The land and building which is proposed to be the licensed premises is: **(check one)**

☐ Owned by Applicant, copy of deed/document attached

☒ Leased by Applicant, copy of lease/document attached

☐ Other (provide details): _____

2. If the land and building are not owned by Applicant, indicate the following:

A. Owner(s): Michael Ponce

B. Date and Term of Lease: 12/28/2022. 01/01 - 06/30/2023, then month-to-month.

3. Premises location is Zoned (example C-1, see Zoning Statement): C-2

Zoning Statement attached, ☒ Yes ☐ No Must be obtained from the Local Government, listing the proposed location by address, Type of Zone, state whether alcoholic beverages are allowed at proposed location, and if applicable, whether packaged sales, patio service and/or manufacturing is allowable. If there is no zoning in the proposed location, attach Statement from the local government, indicating there is no zoning.

4. **Distance* from nearest Church:** (Property line of church to closest point of licensed premises—shortest distance)

Name of Church: Bethel Second Baptist Church Miles/feet: 260 Feet

Address/location of Church: 405 E Hadley Ave, Las Cruces, NM 88001

5. **Distance* from nearest School:** (Property line of school to closest point of licensed premises—shortest distance)

Name of School: Central Elementary School Miles/feet: 2,400 Feet

Address/location of School: 105 Alameda Blvd, Las Cruces, NM 88005

6. **Attach Detailed Floor Plan**, must include the Total Square Footage of premises; List nearest cross street; Show which direction is North; Show each level (floor) where alcoholic beverages will be sold or consumed, exterior walls, doors, and interior walls; Patio Area with type of barrier used; Highlight Bonded Areas. The floor plan should be no larger than 8½ x 11 inches and must be labeled with designated areas highlighted, which will reflect the proposed Licensed Premises.

7. Type of Operation: ☐ Hotel ☐ Lounge ☐ Package Grocery ☐ Racetrack
☐ Restaurant ☐ Craft Distiller ☐ Small Brewer ☐ Winery ☒ Wholesaler
☐ Other (specify): _____

***NOTE:** If the distance is beyond 300 feet, but less than 400 feet, and the Applicant does not admit that the location is within 300 feet and requests a waiver from the LOD, a Registered Engineer or Licensed Surveyor must complete a Survey Certificate showing the exact distance.





STATEMENT OF ZONING

The property located at 508 N Mesquite St, and having an Account ID Number of R0206265, in Las Cruces, New Mexico, is zoned as follows:

SMOZD-C2 (SOUTH MESQUITE OVERLAY-COMMERCIAL MEDIUM INTENSITY)

Comments: According to Article 38-49.2 of the Zoning Code, the South Mesquite Overlay District is designed to positively address issues unique to Las Cruces' Original Townsite and surrounding area. This area is addressed in the 2005 adopted Mesquite Neighborhood Plan and the 2007 adopted Mesquite Historic District Neighborhood Design Plan. Specific provisions in this Ordinance deal with issues such as compatible design, parking, setbacks, and land use/zoning designations that are better suited to this older part of the city characterized by smaller lots with multiple dwellings and scarce off-street parking resources. Additionally, neighborhood design guidelines and standards have been created that will help enhance and preserve the unique character of Las Cruces' first neighborhood.

The C-2 zoning district facilitates and encourages development of those uses which provide retail and service activities as a convenience to adjacent neighborhoods and whose use generally serves a population of 5,000 to 30,000.

A Storage, warehousing accessory to office, retail trade, service or industry businesses specifically alcohol with no sales on premises is an allowed land use, on the condition that no more than 95% of the total square footage is used for storage.

The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

January 25, 2023
Date


Kyle Metzgar
Planning Technician Sr.

Please be advised that the information presented on this document is taken from the City of Las Cruces Zoning Atlas. Nothing shall prevent the City of Las Cruces from amending this information if review of the Zoning Ordinance shows the Atlas to be in error.

Agenda Item #9.1

Text of Ad: 05/24/2023

**NOTICE OF INTENT TO
APPROVE**

Notice is hereby given that the Las Cruces City Council will hold a Public Hearing to discuss approval or disapproval of a Wholesale (Spirits, Beer, and Wine) Liquor License to Vino Real, LLC located at 508 N. Mesquite Street, ½, Las Cruces, NM 88001.

Pursuant to Rule 15.10.32.8 if the proposed licensed premises is within 400 feet of a church or school, and the applicant does not admit the proposed licensed premises is within 300 feet of a church or school, the application must be accompanied by a certified report of a registered engineer or duly licensed surveyor or may obtain a waiver from a local option district governing body for the proposed location. The applicant is seeking a waiver.

The Public Hearing will be held as part of the regularly scheduled meeting of the City Council on Monday, July 3rd, 2023, beginning at 1:00 p.m., in the City Council Chambers, 700 North Main Street, City Hall. If passed, the Director of Alcoholic Beverage Control of the State of New Mexico Regulation & Licensing Department may approve the issuance of the license.

Witness my hand and seal this the 24th day of May 2023
Christine Rivera, MS, CMC
City Clerk
Pub: June 2, 16, 2023
AD#5716962

Agenda Item #9.1.

Valerie Uribe

From: Gary Skelton
Sent: Thursday, May 25, 2023 2:00 PM
To: Valerie Uribe
Subject: RE: Vino Real, LLC
Attachments: Report - Wholesaler Application 508 N Mesquite.pdf

Valerie:

Please find the attached report for this application.

Gary Skelton, P.E.

Engineer/Public Works/Traffic Management
 Direct: 575-541-2561 Main: 575-541-2505, gskelton@lascruces.gov



From: Valerie Uribe <vuribe@lascruces.gov>
Sent: Tuesday, May 23, 2023 9:04 AM
To: Jennifer Lucero <jenlucero@las-cruces.org>; Adam Ochoa <aocchoa@las-cruces.org>; Bobbie Munoz <romunoz@las-cruces.org>; Christina Abeyta Corella <cabeyta@las-cruces.org>; Cody Haver <chaver@las-cruces.org>; Daniel Balderrama <dbalderrama@las-cruces.org>; Elena Sanchez <ESanchez@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>; Jackie Baylon <jbaylon@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Kendle Arellano <kmclclurg@las-cruces.org>; Sean Mullen <smullen@las-cruces.org>; Kyle Metzgar <kmetzgar@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Miguel Dominguez <midominguez@las-cruces.org>; Soogyu Lee <sglee@las-cruces.org>; Hector Terrazas <hterrzas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Michael Landavazo <mlandavazo@las-cruces.org>
Cc: Stevie Hendrix <shendrix@lascruces.gov>
Subject: Vino Real, LLC

Good morning,

Attached please find a request from Vino Real, LLC seeking a Wholesaler (Spirits, Beer, and Wine) Liquor License at 508 N. Mesquite Street, ½, Las Cruces, NM 88001.

Please provide reports no later than June 2, 2023.

Thank you,

Valerie Uribe

Senior Legal Assistant/Legal Department/City Attorney's Office
 Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@lascruces.gov
 700 N. Main Street, Suite 3200, Las Cruces, NM 88001



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MEMORANDUM

To: Jocelyn Garrison, Interim City Attorney
From: Gary Skelton, P.E., Engineer **Initials:** GS
Date: May 25, 2023
Subject: Traffic Investigation Report – Wholesaler Liquor Location Application
Location: 508 N. Mesquite Street, Las Cruces, Nm 88001
Applicant: Vino Real, LLC

As requested, Traffic Engineering has completed a traffic investigation for Vino Real, LLC operating at 508 N. Mesquite Street in Las Cruces, New Mexico. The following information is submitted for review:

- The business location will be 508 N. Mesquite Street. According to the Mesilla Valley MPO Interactive Traffic Flow Map, the most current traffic volume on N. Mesquite Street near the subject location is approximately 1,030 vehicles per day. The most current traffic volume on Hadley Avenue near the subject location is approximately 1,050 vehicles per day.
- The Mesilla Valley MPO classifies N. Mesquite Street and Hadley Avenue near the subject property as local roads. All roads primarily serve residential and commercial use near the subject property.
- The site has a driveway access on Hadley Avenue and a second access driveway on Mesquite Street with parking facilities on the site. There are areas of on-street parking located near the subject property. There are currently obstructions to the sight lines for both driveways due to existing conditions on the property.

The approval of the Wholesaler Liquor Location Permit application at this location does not appear to adversely impact traffic operations along the roadway segment. Feel free to contact me at 575-541-2561 with any questions.

Agenda Item #9.1.

Valerie Uribe

From: Mark Dubbin
Sent: Wednesday, May 24, 2023 9:10 AM
To: Valerie Uribe
Cc: Jose Leos; Michael Landavazo
Subject: RE: Vino Real, LLC

LCFD approved.

Mark Dubbin, PE, FPE

Fire Protection Engineer\Las Cruces Fire Department\Fire Prevention

Direct: 575-528-4081 Main 575-528-4150 Fax 575-528-4082 mdubbin@las-cruces.org



From: Valerie Uribe <[vuribe@lascruces.gov](mailto: vuribe@lascruces.gov)>
Sent: Tuesday, May 23, 2023 9:04 AM
To: Jennifer Lucero <[jenlucero@las-cruces.org](mailto: jenlucero@las-cruces.org)>; Adam Ochoa <[aochoa@las-cruces.org](mailto: aochoa@las-cruces.org)>; Bobbie Munoz <[romunoz@las-cruces.org](mailto: romunoz@las-cruces.org)>; Christina Abeyta Corella <[cabeyta@las-cruces.org](mailto: cabeyta@las-cruces.org)>; Cody Haver <[chaver@las-cruces.org](mailto: chaver@las-cruces.org)>; Daniel Balderrama <[dbalderrama@las-cruces.org](mailto: dbalderrama@las-cruces.org)>; Elena Sanchez <[ESanchez@las-cruces.org](mailto: ESanchez@las-cruces.org)>; Gary Skelton <[gskelton@las-cruces.org](mailto: gskelton@las-cruces.org)>; Jackie Baylon <[jbaylon@las-cruces.org](mailto: jbaylon@las-cruces.org)>; Jason Smith <[jasmith@las-cruces.org](mailto: jasmith@las-cruces.org)>; Kendle Arellano <[kmcclurg@las-cruces.org](mailto: kmcclurg@las-cruces.org)>; Sean Mullen <[smullen@las-cruces.org](mailto: smullen@las-cruces.org)>; Kyle Metzgar <[kmetzgar@las-cruces.org](mailto: kmetzgar@las-cruces.org)>; Mark Dubbin <[MDubbin@las-cruces.org](mailto: MDubbin@las-cruces.org)>; Miguel Dominguez <[midominguez@las-cruces.org](mailto: midominguez@las-cruces.org)>; Soogyu Lee <[sglee@las-cruces.org](mailto: sglee@las-cruces.org)>; Hector Terrazas <[hterrazas@las-cruces.org](mailto: hterrazas@las-cruces.org)>; Jeremy Story <[jstory@las-cruces.org](mailto: jstory@las-cruces.org)>; Jose Leos <[jleos@las-cruces.org](mailto: jleos@las-cruces.org)>; Michael Landavazo <[mlandavazo@las-cruces.org](mailto: mlandavazo@las-cruces.org)>
Cc: Stevie Hendrix <[shendrix@lascruces.gov](mailto: shendrix@lascruces.gov)>
Subject: Vino Real, LLC

Good morning,

Attached please find a request from Vino Real, LLC seeking a Wholesaler (Spirits, Beer, and Wine) Liquor License at 508 N. Mesquite Street, ½, Las Cruces, NM 88001.

Please provide reports no later than June 2, 2023.

Thank you,

Valerie Uribe

Senior Legal Assistant/Legal Department/City Attorney's Office
Direct (575) 541-2020, Main (575) 541-2128, Email [vuribe@lascruces.gov](mailto: vuribe@lascruces.gov)
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Agenda Item #9.1.

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Agenda Item #9.1.

Valerie Uribe

From: Kyle Metzgar
Sent: Thursday, June 1, 2023 9:04 AM
To: Valerie Uribe
Subject: RE: Vino Real, LLC
Attachments: 1- Memo 508 Mesquite M-23-063 REVIEWED.docx; 2-Liquor License Report Vino Real 508 N Mesquite REVIEWED.docx; 3- Statement of Zoning 508 N Mesquite (SMOZD-C2) REVIEWED.docx; 4-Zoning Map 508 N Mesquite.docx; 5 - Notificaton Map 508 N Mesquite.docx; 6 Originsl Mailing List 508 N Mesquite.csv; 7 Mailing Labels 508 N Mesquite.csv

Good morning,

Attached is the liquor report for 508 N Mesquite, Vino Real, LLC from the Community Development Department
Thank you

Kyle D. Metzgar

Planning Technician Sr./Community Development/ Building & Development Services

Direct: 575-528-3064 Main: 575-528-3043, kmetzgar@las-cruces.org



From: [Valerie Uribe](#)

Sent: Tuesday, May 23, 2023 9:04 AM

To: [Jennifer Lucero](#); [Adam Ochoa](#); [Bobbie Munoz](#); [Christina Abeyta Corella](#); [Cody Haver](#); [Daniel Balderrama](#); [Elena Sanchez](#); [Gary Skelton](#); [Jackie Baylon](#); [Jason Smith](#); [Kendle Arellano](#); [Sean Mullen](#); [Kyle Metzgar](#); [Mark Dubbin](#); [Miguel Dominguez](#); [Soogyu Lee](#); [Hector Terrazas](#); [Jeremy Story](#); [Jose Leos](#); [Michael Landavazo](#)

Cc: [Stevie Hendrix](#)

Subject: Vino Real, LLC

Good morning,

Attached please find a request from Vino Real, LLC seeking a Wholesaler (Spirits, Beer, and Wine) Liquor License at 508 N. Mesquite Street, ½, Las Cruces, NM 88001.

Please provide reports no later than June 2, 2023.

Thank you,

Valerie Uribe

Senior Legal Assistant/Legal Department/City Attorney's Office

Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@lascruces.gov

700 N. Main Street, Suite 3200, Las Cruces, NM 88001



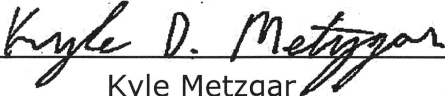
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MEMORANDUM

To: Jocelyn Garrison, City Attorney
From: Kyle Metzgar, Planning Technician Sr
Date: June 1, 2023
Subject: Liquor License Impact Report, Vino Real, LLC

Initials:
File #: M-23-063

Attached, please find the Liquor License Impact Report for a Wholesaler (Spirits, Beer and Wine) Liquor License Application for Vino Real, LLC at 508 N. Mesquite St. from the Community Development Department. If you have any questions, please contact me at (575) 528-3064.



Kyle Metzgar
Planning Technician Sr.

5-31-2023
Date

cc: David Weir, AICP, Chief Planning Administrator
Katherine Harrison-Rogers, AICP, Senior Planner

Initials:
Initials:

**City of Las Cruces
Community Development Department**

LIQUOR LICENSE IMPACT REPORT

Wholesaler (Spirits, Beer and Wine)Liquor License Application

**Vino Real, LLC
508 N. Mesquite St.**

June 1, 2023

LIQUOR LICENSE IMPACT REPORT
Wholesaler (Spirits, Beer and Wine) Liquor License Application

Vino Real, LLC
508 N. Mesquite St.

The purpose of this report is to review, analyze and determine any possible impacts of a liquor license relating to land use and other planning related issues.

PROPERTY INFORMATION:

Location: 508 N. Mesquite St.
Applicant: Vino Real, LLC
Business Name: Vino Real, LLC

LAND USE AND ZONING INFORMATION:

Subject Property Zoning: SMO/C-2 (South Mesquite Overlay/General Commercial District)

Subject Property Current Land Use: Electric Sun LLC (Tattoo Parlor)

<u>Adjacent Land Uses</u>	<u>Zoning</u>	<u>Land Use</u>
North	SMO/C-2	Residential
South	SMO/C-2	Residential
East	SMO/C-2	Residential
West	SMO/PUD	Commercial

DISTANCE REQUIREMENTS:

Greater than 300 feet to a school: YES
Greater than 300 feet to a church: NO
Greater than 300 feet to a military installation: YES

TRAFFIC COUNT AND ACCESS INFORMATION:

Roadway: N. Mesquite St.
Classification: Local Roadway
Number of Lanes: 2
Site Access: 2 (Shared)
Nearest Intersection: N. Mesquite St. and E. Hadley Ave.

PARKING REQUIREMENTS:

In the South Mesquite Overlay (SMO) does not require buildings within the SMO constructed prior to 1955 to provide any off-street parking. The building on the subject property was built circa 1920 and therefore requires no off-street parking.

IMPACT ANALYSIS:

The site of the proposed Wholesaler (Spirits, Beer and Wine) is located on N. Mesquite Street, a local roadway. This roadway is a street of relatively short length that provides access to a collector street and is designed to discourage its use by through traffic. The subject property is zoned SMO/C-2, which allows the proposed.

There is a question, however, concerning the required distance between liquor establishments and military installations, churches, and schools. New Mexico State Statutes read that the liquor establishment must be 300 feet from the property line of military installations, churches and schools. The proposed Vino Real, LLC is approximately 259 ± feet away from a church property, Bethel Second Baptist Church, located at 405. E Hadley Ave.

According to New Mexico State Law, a local governing district may grant a waiver to allow such a business within 300 feet of a church or school. Thus, the local governing district may determine whether or not the location of the liquor license request is appropriate. The law does not set parameters to assist in determining applicability, therefore, Planning Staff assumes the local government district may use traditional guidelines, such as, health, safety, and welfare to make this decision.

STATEMENT OF ZONING

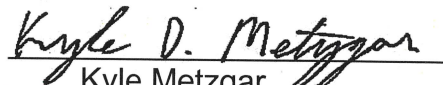
The property located at 508 N. Mesquite St., and having an Account ID Number of R0206265, in Las Cruces, New Mexico, is zoned as follows:

SMO-C2 (SOUTH MESQUITE OVERLAY-GENERAL COMMERCIAL DISTRICT)

Comments: According to Article 38-49.2 of the Zoning Code, the South Mesquite Overlay District is designed to positively address issues unique to Las Cruces' Original Townsite and surrounding area. This area is addressed in the 2005 adopted Mesquite Neighborhood Plan and the 2007 adopted Mesquite Historic District Neighborhood Design Plan. Specific provisions in this Ordinance deal with issues such as compatible design, parking, setbacks, and land use/zoning designations that are better suited to this older part of the city characterized by smaller lots with multiple dwellings and scarce off-street parking resources. Additionally, neighborhood design guidelines and standards have been created that will help enhance and preserve the unique character of Las Cruces' first neighborhood. A liquor wholesaler (spirits, beer and wine) is a permitted use on the subject property provided that all rules and regulations of the State of New Mexico are met.

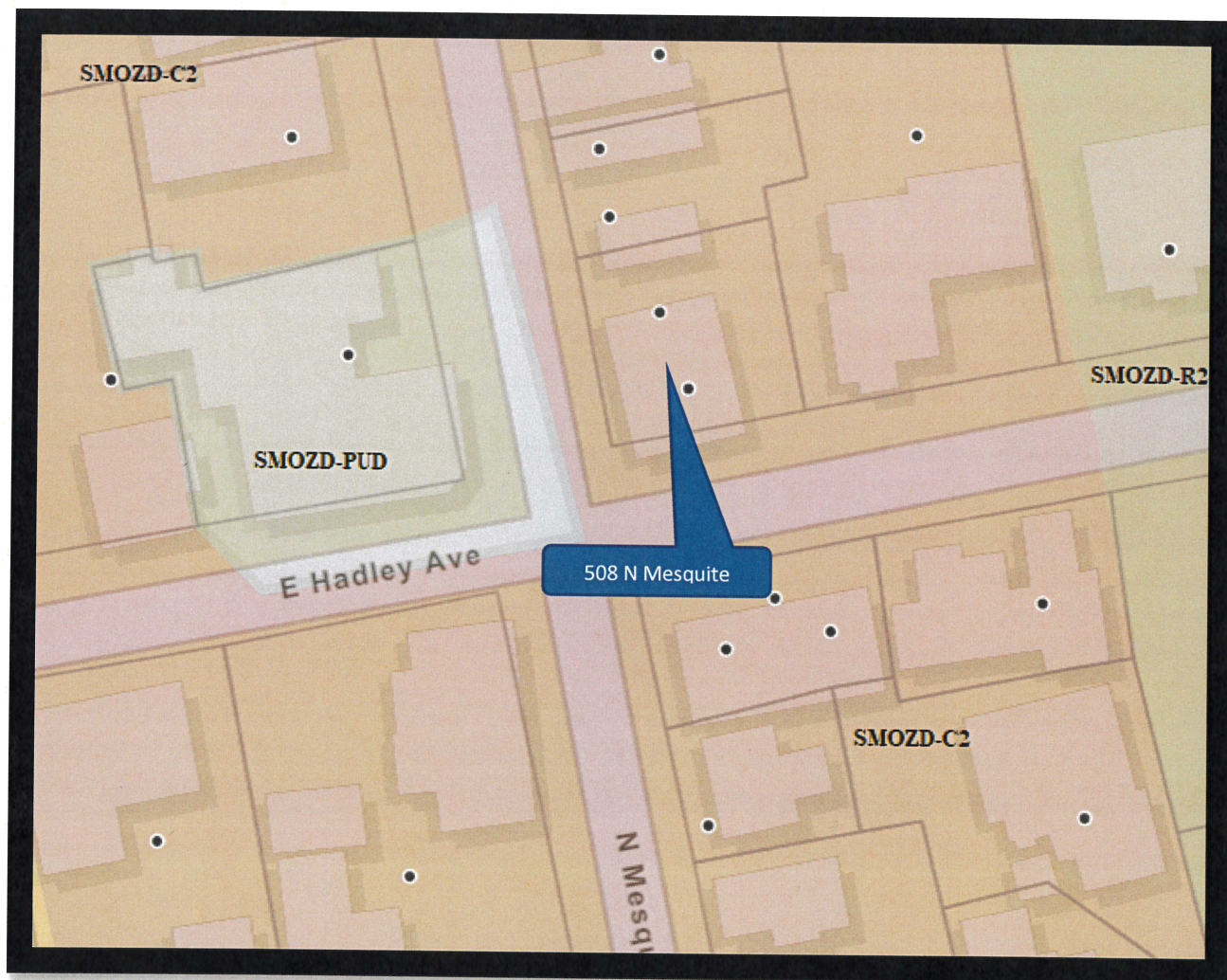
The above described property located in the City of Las Cruces, New Mexico, has been reviewed and found to be zoned as indicated above in accordance with the Las Cruces Zoning Atlas. Accordingly, I do hereby approve and issue this Statement of Zoning.

May 31, 2023
Date


Kyle Metzgar
Planning Technician Sr.

Please be advised that the information presented on this document is taken from the City of Las Cruces Zoning Atlas. Nothing shall prevent the City of Las Cruces from amending this information if review of the Zoning Ordinance shows the Atlas to be in error.

ZONING MAP

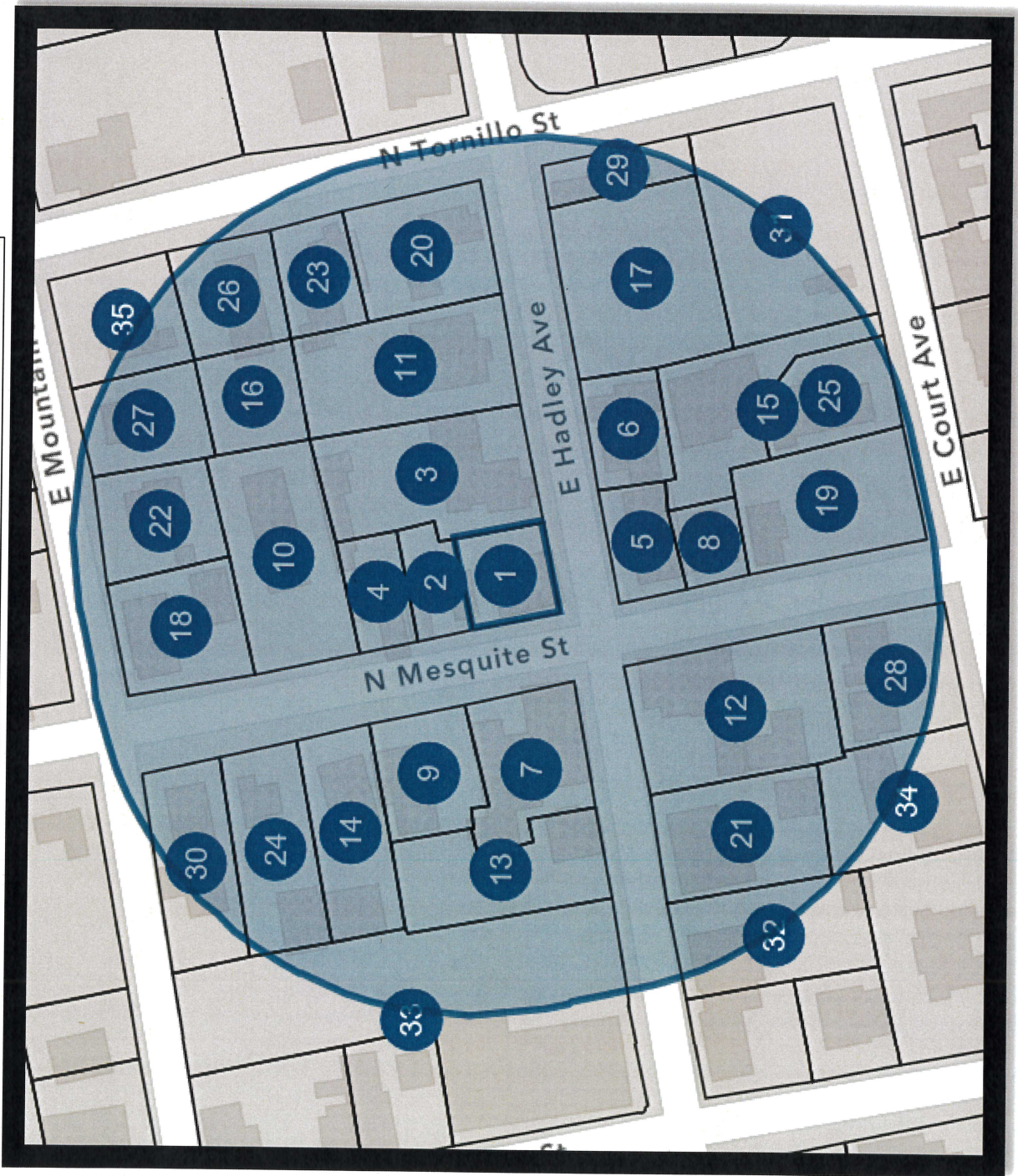


SMOZD-C2 – South Mesquite Overlay-Commercial Medium Intensity

SMOZD-PUD – South Mesquite Overlay-Planned Unit Development

SMOZD-R2 – Multi-Dwelling Low Density

Notification Map



Agenda Item #9.1.

OWNERNAME	MAILADDR1	CITY	STATE	ZIP
AKBARI-SHAHMIRZADI NANCY	540 N MESQUITE ST	LAS CRUCES	NM	88001
ARMENDARIZ N ALEXANDER & RUBEN F ARMENDARIZ	518 N MESQUITE ST	LAS CRUCES	NM	88001
BARELA JOSE V & ESTHER S	516 E HADLEY AVE	LAS CRUCES	NM	88001
BETHEL SECOND BAPTIST CHURCH OF LC	405 E HADLEY	LAS CRUCES	NM	88001
BORUNDA FRANK	527 N TORNILLO	LAS CRUCES	NM	88001
BORUNDA FRANK & YOLANDA A SILVA	527 N TORNILLO	LAS CRUCES	NM	88001-2760
CAFFARO GLADYS ELSA	540 EAST MOUNTAIN AVENUE	LAS CRUCES	NM	88001
CHAVEZ-VILLA TASIA JOANNE	906 LENOX AVENUE	LAS CRUCES	NM	88005
CUMMINS ROBERT JR & LORETTA MEEKS	444 E HADLEY	LAS CRUCES	NM	88001
DELACRUZ MIGUEL	3519 WICKHAM	EL PASO	TX	79904
DELGADO DORA G TRUSTEE	713 SNOW ROAD	LAS CRUCES	NM	88005
DRUMMOND ISARA D	517 NORTH MESQUITE STREET	LAS CRUCES	NM	88001
FRANCE LAWRENCE B III	713 EAST TEXAS ST	GRAPEVINE	TX	76051
HERRINGTON PAULA TRUSTEE PAULA HERRINGTON LIVING TRUST	8797 WIND DANCER TR	LAS CRUCES	NM	88011
MARTOS LIMITED LIABILITY COMPANY	1155 N MESQUITE	LAS CRUCES	NM	88001
MEEKS LORETTA M	444 E HADLEY AVE	LAS CRUCES	NM	88001
MICHAEL PONCE	508 1/2 N MESQUITE ST	LAS CRUCES	NM	88001
MUNOZ RENE	539 N MESQUITE ST	LAS CRUCES	NM	88001
OLIVAS EVANGELINA L	3324 JUPITER	LAS CRUCES	NM	88012
ORANGE SUN LLC	2040 SALOPEK RD	LAS CRUCES	NM	88005
PEHR ROBERT L	2405 N VALLEY DR	LAS CRUCES	NM	88001
RAMIREZ ROSA	429 E COURT AVE	LAS CRUCES	NM	88001-3443
RODRIGUEZ DAVID A	PO BOX 814	LAS CRUCES	NM	88004-0814
SANCHEZ ALEX J	515 E HADLEY	LAS CRUCES	NM	88001
SANCHEZ AUGUSTINE	515 E AMADOR	LAS CRUCES	NM	88001-3307
SANCHEZ CHRISTOPHER W	12110 LAS VEGAS ST	SAN ANTONIO	TX	78233
SANCHEZ GERALD R & SANDRA	428 E HADLEY	LAS CRUCES	NM	88001
SANCHEZ HARRY G & MARISA A SANCHEZ & HARRY J SANCHEZ	441 E HADLEY	LAS CRUCES	NM	88001-3454
SANCHEZ MARISA A	429 E HADLEY AVE	LAS CRUCES	NM	88001
TELLEZ TODD H & CYNTHIA L	511 E COURT AVE	LAS CRUCES	NM	88001
URANGA ROBERT L & CECILIA D	424 N MESQUITE	LAS CRUCES	NM	88001-2874
VIRRUETA RAMONA	414 EAST HADLEY	LAS CRUCES	NM	88001

Agenda Item #9.1.

OWNERNAME	MAILADDR1	CITY	STATE	ZIP
AMIGOS NORTH MAIN LLC	1155 S TELSHOR SUITE B	LAS CRUCES	NM	88011
BECKMAN EVAN J	1842 N CLAYTON ST	WICHITA	KS	67203
BG GARCIA ENTERPRISES LLC	949 SOUTH MELENDRES	LAS CRUCES	NM	88005
BLAKES'S LOTABURGER LLC #28	3205 RICHMOND DR NE	ALBUQUERQUE	NM	87107
BORREGO OLIVIA K	PO BOX 3554	ANTHONY	NM	88021
BREWER OIL CO	PO BOX 1347	ARTESIA	NM	88211
BRITTON JULIAN A	217 ALVAREZ DR	EL PASO	TX	79932
BURNAM DENZIL C III & PATRICIA H	906 LENOX AVE	LAS CRUCES	NM	88005
BUTLER CAROLINE A & THEODORE T ARMIJO REV TR	2620 GARNER RD SW	ALBUQUERQUE	NM	87105
CITIZENS BANK OF LAS CRUCES	PO BOX 2108	LAS CRUCES	NM	88004
CLARK RICHARD A & MARY P	2734 TOPLEY AVE	LAS CRUCES	NM	88005
DURAN ARTURO G JR	2728 TOPLEY AVE	LAS CRUCES	NM	88005
ESTRADA MICHAEL	2738 TOPLEY AVE	LAS CRUCES	NM	88001
GALLAGHER-IKARD IRA LLC	4480 LONESOME PINE	LAS CRUCES	NM	88007
KOSNICK ROBERT A	2725 TOPLEY AVE	LAS CRUCES	NM	88005
LAS CRUCES MEDICAL CENTER LLC ATTN CHSPSC LLC LEGAL DEPT	4000 MERIDIAN BLVD	FRANKLIN	TN	37067
MARTIN DON E & KARINA V	2715 TOPLEY	LAS CRUCES	NM	88005
MARTINEZ ELIGIO N & OFELIA	2717 TOPLEY AVE	LAS CRUCES	NM	88005
MONDRAGON IGNACIO	2732 TOPLEY AVE	LAS CRUCES	NM	88005
MORGAN JOHN E	PO BOX 1448	LAS CRUCES	NM	88004
RAMIREZ SABINO M JR	2724 TOPLEY AVE	LAS CRUCES	NM	88005
SALTED OR UN LLC	131 N ROADRUNNER PARKW	LAS CRUCES	NM	88007
SECOR CHARLES M	2736 TOPLEY AVENUE	LAS CRUCES	NM	88005
TRI-STATE GENERATION & TRANSMISSION ASSOCIATION	1100 W 116TH AVE	WESTMINSTER	CO	80234
U S BORDER PATROL	2320 TEMPLE ST	LAS CRUCES	NM	88005
UNITED STATES OF AMERICA	1800 MARQUESS	LAS CRUCES	NM	88005
VIGIL HENRY J CO TRUSTEE	PO BOX 2999	MESILLA PARK	NM	88047

Agenda Item #9.1.

Valerie Uribe

From: Sean Mullen
Sent: Tuesday, May 23, 2023 10:06 PM
To: Valerie Uribe
Subject: RE: Vino Real, LLC

Approved.

Thank you,

Sean Mullen

Deputy Chief of Administration/Las Cruces Police Department
 Direct: 575-528-4101 Main: 575-528-4200, smullen@las-cruces.org



From: Valerie Uribe <vuribe@lascruces.gov>
Sent: Tuesday, May 23, 2023 9:04 AM
To: Jennifer Lucero <jenlucero@las-cruces.org>; Adam Ochoa <aocchoa@las-cruces.org>; Bobbie Munoz <romunoz@las-cruces.org>; Christina Abeyta Corella <cabeyta@las-cruces.org>; Cody Haver <chaver@las-cruces.org>; Daniel Balderrama <dbalderrama@las-cruces.org>; Elena Sanchez <ESanchez@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>; Jackie Baylon <jbaylon@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Kendle Arellano <kmccclurg@las-cruces.org>; Sean Mullen <smullen@las-cruces.org>; Kyle Metzgar <kmetzgar@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Miguel Dominguez <midominguez@las-cruces.org>; Soogyu Lee <sglee@las-cruces.org>; Hector Terrazas <hterrzas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Michael Landavazo <mlandavazo@las-cruces.org>
Cc: Stevie Hendrix <shendrix@lascruces.gov>
Subject: Vino Real, LLC

Good morning,

Attached please find a request from Vino Real, LLC seeking a Wholesaler (Spirits, Beer, and Wine) Liquor License at 508 N. Mesquite Street, ½, Las Cruces, NM 88001.

Please provide reports no later than June 2, 2023.

Thank you,

Valerie Uribe

Senior Legal Assistant/Legal Department/City Attorney's Office
 Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@lascruces.gov
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Agenda Item #9.1.

Valerie Uribe

From: Jennifer Lucero
Sent: Wednesday, May 24, 2023 9:26 AM
To: Valerie Uribe; Adam Ochoa; Bobbie Munoz; Christina Abeyta Corella; Cody Haver; Daniel Balderrama; Elena Sanchez; Gary Skelton; Jackie Baylon; Jason Smith; Kendle Arellano; Sean Mullen; Kyle Metzgar; Mark Dubbin; Miguel Dominguez; Soogyu Lee; Hector Terrazas; Jeremy Story; Jose Leos; Michael Landavazo
Cc: Stevie Hendrix
Subject: RE: Vino Real, LLC

Good morning Valerie,

There is NO record of a Business License and NO liquor license for the address at 508 N. Mesquite Street, ½, Las Cruces, NM 88001, for the Veno Real LLC. The applicant can apply on the Accela portal, for both licenses. Please direct them to the website below to create their applications, and to me for any questions.

<https://aca-prod.accela.com/lascruces/Default.aspx>

Please feel free to call me with any questions.

Thank you,

Jennifer Lucero

Permit Technician/Community Development/Permits and Inspections

Direct: 575-528-3095 Office Main: 575-528-3059

Email: jenlucero@lascruces.gov

Customer Online Accela Portal:

<https://aca-prod.accela.com/LASCRUCES/Default.aspx>



CITY OF LAS CRUCES

From: Valerie Uribe <vuribe@lascruces.gov>

Sent: Tuesday, May 23, 2023 9:04 AM

To: Jennifer Lucero <jenlucero@las-cruces.org>; Adam Ochoa <aocchoa@las-cruces.org>; Bobbie Munoz <romunoz@las-cruces.org>; Christina Abeyta Corella <cabeyta@las-cruces.org>; Cody Haver <chaver@las-cruces.org>; Daniel Balderrama <dbalderrama@las-cruces.org>; Elena Sanchez <ESanchez@las-cruces.org>; Gary Skelton <gskelton@las-cruces.org>; Jackie Baylon <jbaylon@las-cruces.org>; Jason Smith <jasmith@las-cruces.org>; Kendle Arellano <kmccclurg@las-cruces.org>; Sean Mullen <smullen@las-cruces.org>; Kyle Metzgar <kmetzgar@las-cruces.org>; Mark Dubbin <MDubbin@las-cruces.org>; Miguel Dominguez <midominguez@las-cruces.org>; Soogyu Lee <sglee@las-cruces.org>; Hector Terrazas <hterrazas@las-cruces.org>; Jeremy Story <jstory@las-cruces.org>; Jose Leos <jleos@las-cruces.org>; Michael Landavazo <milandavazo@las-cruces.org>

Cc: Stevie Hendrix <shendrix@lascruces.gov>

Subject: Vino Real, LLC

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Please provide reports no later than June 2, 2023.

Thank you,

Valerie Uribe

Senior Legal Assistant/Legal Department/City Attorney's Office

Direct (575) 541-2020, Main (575) 541-2128, Email vuribe@lascruces.gov

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**24-004**

City Council Action and Executive Summary

Type of Action:

☒ Resolution☐ Ordinance☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A
1st Reading:	Adopted: July 3, 2023
Drafter: Rocio Gamboa	Department: Financial Services
Program: Budget	Line of Business: Fiscal Management

Title:	A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2022-23 BUDGET FOR 2023 FISCAL YEAR-END.
---------------	---

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 staff will prepare budget adjustments for the fiscal year starting July 1, 2022, through June 30, 2023. Adjustments include 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.

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" Fund Summary - FY23](#)

[Attachment "A" Budget Adjustment Summary - FY 23](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☒ Yes

☐ No

BUDGET / FISCAL IMPACT:

Agenda Item #9.2.

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 FY2023 budget.
2. Vote "No"; this will not approve the Resolution nor accept the budget adjustments as presented, and will not adjust the City's FY2023 budget.
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 Adjustments Summary

RESOLUTION 24-004

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2022-23 BUDGET FOR 2023 FISCAL YEAR-END.

The City Council is informed that:

WHEREAS, City staff members have prepared a monthly budget adjustment for the fiscal year starting July 1, 2022 through June 30, 2023; 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 City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	2100			
	SPECIAL REVENUE REIMB GRANTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 24,280	24,280	0	24,280
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	259	0	259
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	182,000	247,000	0	247,000
Federal Grants	5,358,203	17,025,158	(169,393)	16,855,765
State Grants	1,120,000	10,952,458	(647,012)	10,305,446
Local Grants	46,440	69,089	0	69,089
Debt Service	0	0	0	0
Total Revenues	6,706,643	28,293,964	(816,405)	27,477,559
TOTAL RESOURCES	\$ 6,730,923	28,318,244	(816,405)	27,501,839
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	629,444	6,199,922	0	6,199,922
Las Cruces Fire Department	85,478	1,378,031	0	1,378,031
Utilities	0	1,300,000	0	1,300,000
Economic Development	2,798,662	13,147,596	0	13,147,596
Internal Audit	0	0	0	0
Assistant City Manager-400	468,870	1,229,604	0	1,229,604
Human Resources	0	0	0	0
Financial Services	0	405,073	0	405,073
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	11,030	458,744	0	458,744
Community Development	337,981	851,286	0	851,286
Quality of Life	2,375,183	2,959,751	(816,405)	2,143,346
Public Works	0	365,000	0	365,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 6,706,648	28,295,007	(816,405)	27,478,602
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	\$ 24,275	23,237	0	23,237

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	2100 SPECIAL REVENUE REIMB GRANTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 24,280	24,280	0	24,280
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	259	0	259
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	182,000	247,000	0	247,000
Federal Grants	5,358,203	16,855,765	(64,984)	16,790,781
State Grants	1,120,000	10,305,446	0	10,305,446
Local Grants	46,440	69,089	0	69,089
Debt Service	0	0	0	0
Total Revenues	6,706,643	27,477,559	(64,984)	27,412,575
TOTAL RESOURCES	\$ 6,730,923	27,501,839	(64,984)	27,436,855
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	629,444	6,199,922	(64,984)	6,134,938
Las Cruces Fire Department	85,478	1,378,031	0	1,378,031
Utilities	0	1,300,000	0	1,300,000
Economic Development	2,798,662	13,147,596	0	13,147,596
Internal Audit	0	0	0	0
Assistant City Manager-400	468,870	1,229,604	0	1,229,604
Human Resources	0	0	0	0
Financial Services	0	405,073	0	405,073
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	11,030	458,744	0	458,744
Community Development	337,981	851,286	0	851,286
Quality of Life	2,375,183	2,143,346	0	2,143,346
Public Works	0	365,000	0	365,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 6,706,648	27,478,602	(64,984)	27,413,618
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	\$ 24,275	23,237	0	23,237

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	2440 PRISONER CARE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,678,069	1,678,069	0	1,678,069
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	\$ 1,678,069	1,678,069	0	1,678,069
Expenditures				
General Government	0	0	0	0
Legislative	0	500,000	100,000	600,000
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	500,000	100,000	600,000
Other Resources				
Operating Transfers In	0	500,000	0	500,000
Operating Transfers Out	(1,000,000)	(1,000,000)	0	(1,000,000)
Total Other Resources	\$ (1,000,000)	(500,000)	0	(500,000)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 678,069	678,069	(100,000)	578,069

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	2650 FLOOD CONTROL OPERATIONS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,760,004	1,760,004	0	1,760,004
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	5,147,483	5,147,483	27,195	5,174,678
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	3,570	3,570	0	3,570
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	5,151,053	5,151,053	27,195	5,178,248
TOTAL RESOURCES	\$ 6,911,057	6,911,057	27,195	6,938,252
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	50,000	50,000	0	50,000
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	2,751,609	2,874,609	0	2,874,609
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 2,801,609	2,924,609	0	2,924,609
Other Resources				
Operating Transfers In	224,000	0	0	0
Operating Transfers Out	(3,807,226)	(3,807,226)	0	(3,807,226)
Total Other Resources	\$ (3,583,226)	(3,807,226)	0	(3,807,226)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 526,222	179,222	27,195	206,417

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	3632 2017 NMFA STREETS DS 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 118,133	118,133	0	118,133
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	\$ 118,133	118,133	0	118,133
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	294,660	294,660	0	294,660
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 294,660	294,660	0	294,660
Other Resources				
Operating Transfers In	294,708	294,708	60,365	355,073
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 294,708	294,708	60,365	355,073
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 118,181	118,181	60,365	178,546

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	4632 2017 NMFA STREETS PROJ 2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 65,104	65,104	0	65,104
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	1,750	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	1,750	0	0	0
TOTAL RESOURCES	\$ 66,854	65,104	0	65,104
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	66,667	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	598,727	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 665,394	0	0	0
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	(60,365)	(60,365)
Total Other Resources	\$ 0	0	(60,365)	(60,365)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ (598,540)	65,104	(60,365)	4,739

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	5301 WATER DEVELOPMENT			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 247,299	247,299	0	247,299
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	1,098,437	1,098,437	0	1,098,437
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	1,072	1,072	0	1,072
Miscellaneous Revenues	15,000	15,000	0	15,000
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	1,114,509	1,114,509	0	1,114,509
TOTAL RESOURCES	\$ 1,361,808	1,361,808	0	1,361,808
Expenditures				
General Government	55,050	55,050	0	55,050
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	1,203,759	1,500,877	21,000	1,521,877
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	\$ 1,258,809	1,555,927	21,000	1,576,927
Other Resources				
Operating Transfers In	0	300,000	21,000	321,000
Operating Transfers Out	(100,000)	(100,000)	0	(100,000)
Total Other Resources	\$ (100,000)	200,000	21,000	221,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 2,999	5,881	0	5,881

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	6310 UNEMPLOYMENT RESERVE			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,279,827	1,279,827	0	1,279,827
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	\$ 1,279,827	1,279,827	0	1,279,827
Expenditures				
General Government	0	0	0	0
Legislative	0	0	0	0
Municipal Court	0	0	0	0
Chief Administrative Officer	0	0	0	0
City Manager	0	0	0	0
Legal	0	0	32,400	32,400
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	32,400	32,400
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	\$ 1,279,827	1,279,827	(32,400)	1,247,427

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	6330			
	WORKERS COMPENSATION			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 2,555,856	2,555,856	0	2,555,856
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	\$ 2,555,856	2,555,856	0	2,555,856
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	1,968,853	1,968,852	255,147	2,223,999
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	\$ 1,968,853	1,968,852	255,147	2,223,999
Other Resources				
Operating Transfers In	890,000	1,145,147	0	1,145,147
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 890,000	1,145,147	0	1,145,147
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 1,477,003	1,732,151	(255,147)	1,477,004

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	6340			
	LIABILITY CLAIMS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 3,841,537	3,841,537	0	3,841,537
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	\$ 3,841,537	3,841,537	0	3,841,537
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	7,152,369	7,152,369	1,777,669	8,930,038
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	\$ 7,152,369	7,152,369	1,777,669	8,930,038
Other Resources				
Operating Transfers In	4,300,000	6,077,669	0	6,077,669
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 4,300,000	6,077,669	0	6,077,669
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 989,168	2,766,837	(1,777,669)	989,168

BUDGET ADJUSTMENT SUMMARY

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Quality of Life
PROGRAM:	Senior Nutrition
REVENUE ADJ AMOUNT	\$(816,404.55)
EXPENDITURE ADJ AMOUNT	\$(816,404.55)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Resolution 23-026 approving "Various Grant Awards" approved September 6, 2022 was missing the fund summary for Title III Federal & State Senior Services grant. This grant was budgeted during the FY23 Budget process, and the grant needed to be adjusted to reflect actual award amount. DFA requested fund summary be approved by Council for DFA Budget Monthly reports.	

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Police
PROGRAM:	Traffic
REVENUE ADJ AMOUNT	\$(42,875)
EXPENDITURE ADJ AMOUNT	\$(42,875)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Byrne JAG FFY21 Grant is complete and ready to be closed out. This amendment will bring grant projections to actuals.	

BUDGET ADJUSTMENT SUMMARY

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Police
PROGRAM:	Traffic
REVENUE ADJ AMOUNT	\$(22,109)
EXPENDITURE ADJ AMOUNT	\$(22,109)
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: FFY22 Step-NMDOT-Traffic Safety Funding grant is complete and ready to be closed out. This amendment of (\$4,081) will bring grant projections to actuals. Police FFY22 VOCA (Victims of Crime Act) grant is complete and ready to be closed out. This amendment of (\$18,028) will bring Grant projections to actuals	

FUND NO.	2440
FUND TITLE:	Prisoner Care
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Mayor and Council Admin
PROGRAM:	Non-subsection
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$100,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increase budget for Prisoner Care, there are two more months left pay.	

BUDGET ADJUSTMENT SUMMARY

FUND NO.	2650
FUND TITLE:	Flood Control Operations
TYPE OF ADJUSTMENT:	Revenue
DEPARTMENT:	Non-Department
PROGRAM:	Non-Subsections
REVENUE ADJ AMOUNT	\$27,195
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Adjusting revenue to reflect for May and June property taxes coming in higher than budgeted.	

FUND NO.	3632
FUND TITLE:	2017 NMFA Streets DS
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non-Department
PROGRAM:	Non-Subsections
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$60,365
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Completion of 2017 NMFA street project, transferring remaining funds to debt service fund.	

BUDGET ADJUSTMENT SUMMARY

FUND NO.	4632
FUND TITLE:	2017 NMFA Streets Proj
TYPE OF ADJUSTMENT:	Transfer
DEPARTMENT:	Non-Department
PROGRAM:	Non-Subsections
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$(60,365)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Completion of 2017 NMFA street project, transferring remaining funds to debt service fund.	

FUND NO.	5301
FUND TITLE:	Water Development
TYPE OF ADJUSTMENT:	Expense & Transfer
DEPARTMENT:	Utilities
PROGRAM:	Technical Support
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$21,000
TRANSFER ADJ AMOUNT	\$21,000
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Utilities needs to increase budget by \$21,000 to cover Water portion of Impact Fee Study.	

BUDGET ADJUSTMENT SUMMARY

FUND NO.	6310
FUND TITLE:	Unemployment Reserve
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Legal
PROGRAM:	Claims & Mgmt Risk Mitigation
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$32,400
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Including budget for Liability insurance premiums.	

FUND NO.	6330
FUND TITLE:	Workers Compensation
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Legal
PROGRAM:	Claims & Mgmt Risk Mitigation
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$255,147
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: There was a transfer from the general fund 1000 to workers compensation fund 6330 on 04/17/23 with Res 23-115. The expense was not budgeted, this adjustment includes budget for Workers Compensations to reflect actuarial report.	

BUDGET ADJUSTMENT SUMMARY

FUND NO.	6340
FUND TITLE:	Liability Claims
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Legal
PROGRAM:	Claims & Mgmt Risk Mitigation
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$1,777,669
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: There was a transfer from fund 1000 to fund 6340 Liability Claims on 04/17/23 with Res 23-115. The expense was not budgeted, this adjustment includes Budget for Liability Claims to reflect actuarial report.	



City Council Action and Executive Summary

24-005

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A		
1st Reading:	Adopted: July 3, 2023		
Drafter:	Rocio Gamboa	Department:	Financial Services
Program:	Budget	Line of Business:	Fiscal Management
Title:	A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY’S ADOPTED FY2023-24 BUDGET.		

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 staff will prepare budget adjustments for the fiscal year starting July 1, 2023 through June 30, 2024. Adjustments include 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.

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" Fund Summary -FY24](#)
- [Attachment "A" Budget Adjustment Summary - FY24](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

- ☒ Yes
- ☐ No

BUDGET / FISCAL IMPACT:

Agenda Item #9.3.

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.
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.
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 24-005

A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023-24 BUDGET.

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

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

Exhibit "A"

	2100 SPECIAL REVENUE REIMB GRANTS			
	2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 698,496	698,496	0	698,496
Revenues				
Municipal Gross Receipts Tax	0	0	0	0
Public Safety Gross Receipts Tax	0	0	0	0
Hold Harmless Replacement GRT	0	0	0	0
State-Shared Gross Receipts Tax	0	0	0	0
Environmental Gross Receipts Tax	0	0	0	0
County Environmental Gross Receipts Tax	0	0	0	0
Internet Sales Gross Receipts Tax	0	0	0	0
Gasoline Tax	0	0	0	0
Cannabis Excise Tax	0	0	0	0
Lodgers Tax	0	0	0	0
Property Taxes	0	0	0	0
Payment In Lieu of Property Tax	0	0	0	0
Franchise Fees	0	0	0	0
Payment In Lieu of Franchise Fees	0	0	0	0
Licenses, Fees & Permits	0	0	0	0
Convention Center Fee	0	0	0	0
Auto License - State Shared	0	0	0	0
Fines & Forfeitures	0	0	0	0
Charges For Services	0	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	247,000	247,000	0	247,000
Federal Grants	14,620,646	14,620,646	0	14,620,646
State Grants	5,898,088	5,898,088	59,620	5,957,708
Local Grants	26,065	26,065	0	26,065
Debt Service	0	0	0	0
Total Revenues	20,791,799	20,791,799	59,620	20,851,419
TOTAL RESOURCES	\$ 21,490,295	21,490,295	59,620	21,549,915
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	2,707,818	2,707,818	0	2,707,818
Las Cruces Fire Department	1,314,070	1,314,070	0	1,314,070
Utilities	875,000	875,000	0	875,000
Economic Development	12,497,596	12,497,596	0	12,497,596
Internal Audit	0	0	0	0
Assistant City Manager-400	501,795	501,795	0	501,795
Human Resources	0	0	0	0
Financial Services	412,656	412,656	0	412,656
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	9,793	9,793	0	9,793
Community Development	338,931	338,931	59,620	398,551
Quality of Life	1,769,141	1,769,141	0	1,769,141
Public Works	365,000	365,000	0	365,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 20,791,800	20,791,800	59,620	20,851,420
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 0	0	0	0
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 698,495	698,495	0	698,495

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

Exhibit "A"

	2401 POLICE PROTECTION FUND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 17,308	17,308	0	17,308
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	236,000	236,000	178,500	414,500
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	236,000	236,000	178,500	414,500
TOTAL RESOURCES	\$ 253,308	253,308	178,500	431,808
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	236,000	236,000	178,500	414,500
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	\$ 236,000	236,000	178,500	414,500
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	\$ 17,308	17,308	0	17,308

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

Exhibit "A"

	2805 ENVIRONMENTAL PROTECTION FUND			
	2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 0	0	223,675	223,675
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	200,000	200,000
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	200,000	200,000
TOTAL RESOURCES	\$ 0	0	423,675	423,675
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	247,000	247,000
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	247,000	247,000
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	176,675	176,675

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

Exhibit "A"

	4028 2023 SSGRT 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 0	0	12,723,083	12,723,083
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	\$ 0	0	12,723,083	12,723,083
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	12,700,000	12,700,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	0	12,700,000	12,700,000
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	23,083	23,083

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

Exhibit "A"

	4231 2022 GO BOND 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 0	0	17,101,627	17,101,627
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	\$ 0	0	17,101,627	17,101,627
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	340,000	340,000
Public Works	0	0	16,660,000	16,660,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 0	0	17,000,000	17,000,000
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	101,627	101,627

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

Exhibit "A"

	5100 UTILITIES SHARED SERVICES			
	2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ (70,712)	(70,712)	0	(70,712)
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	18,046,169	18,046,169	0	18,046,169
Investment Income	13,996	13,996	0	13,996
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	18,060,165	18,060,165	0	18,060,165
TOTAL RESOURCES	\$ 17,989,453	17,989,453	0	17,989,453
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	15,651,805	15,651,805	0	15,651,805
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	1,657,561	1,657,561	40,945	1,698,506
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 17,309,366	17,309,366	40,945	17,350,311
Other Resources				
Operating Transfers In	0	0	0	0
Operating Transfers Out	(285,000)	(285,000)	0	(285,000)
Total Other Resources	\$ (285,000)	(285,000)	0	(285,000)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 395,087	395,087	(40,945)	354,142

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

Exhibit "A"

	5920 TRANSIT OPERATING 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ (541,492)	(541,492)	0	(541,492)
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	767,000	767,000	0	767,000
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	12,115	12,115
Federal Grants	1,363,171	1,363,171	0	1,363,171
State Grants	0	0	0	0
Local Grants	0	0	0	0
Debt Service	0	0	0	0
Total Revenues	2,130,171	2,130,171	12,115	2,142,286
TOTAL RESOURCES	\$ 1,588,679	1,588,679	12,115	1,600,794
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	4,555,730	4,555,730	1,512,115	6,067,845
Parks & Recreation	0	0	0	0
Community Development	0	0	0	0
Quality of Life	0	0	0	0
Public Works	0	0	0	0
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 4,555,730	4,555,730	1,512,115	6,067,845
Other Resources				
Operating Transfers In	3,991,355	3,991,355	0	3,991,355
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 3,991,355	3,991,355	0	3,991,355
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 1,024,304	1,024,304	(1,500,000)	(475,696)

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

Exhibit "A"

	8100 SC SOLID WASTE AUTHORITY 2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 5,412,567	5,412,567	0	5,412,567
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	11,860,185	11,860,185	0	11,860,185
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	100,000	100,000	0	100,000
Federal Grants	0	0	0	0
State Grants	1,078,348	1,078,348	0	1,078,348
Local Grants	0	0	0	0
Debt Service	0	0	100,000	100,000
Total Revenues	13,038,533	13,038,533	100,000	13,138,533
TOTAL RESOURCES	\$ 18,451,100	18,451,100	100,000	18,551,100
Expenditures				
General Government	167,772	167,772	0	167,772
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	\$ 167,772	167,772	0	167,772
Other Resources				
Operating Transfers In	950,000	950,000	(100,000)	850,000
Operating Transfers Out	0	0	0	0
Total Other Resources	\$ 950,000	950,000	(100,000)	850,000
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 19,233,328	19,233,328	0	19,233,328

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

Exhibit "A"

	8170 SCSWA RECYCLING			
	2023-24			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 1,933,080	1,933,080	0	1,933,080
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	4,256,453	4,256,453	0	4,256,453
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	950,000	950,000	0	950,000
Local Grants	0	0	0	0
Debt Service	100,000	100,000	100,000	200,000
Total Revenues	5,306,453	5,306,453	100,000	5,406,453
TOTAL RESOURCES	\$ 7,239,533	7,239,533	100,000	7,339,533
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	(400,000)	(400,000)	(100,000)	(500,000)
Total Other Resources	\$ (400,000)	(400,000)	(100,000)	(500,000)
Accrual Adjustments	0	0	0	0
ENDING BALANCE	\$ 6,839,533	6,839,533	0	6,839,533

BUDGET ADJUSTMENT SUMMARY

FUND NO.	2100
FUND TITLE:	Special Revenue Reimb Grants
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Community Development
PROGRAM:	Land Use Development
REVENUE ADJ AMOUNT	\$59,620
EXPENDITURE ADJ AMOUNT	\$59,620
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Carryover SHPO CLG Grant for Mesquite historic district.	

FUND NO.	2401
FUND TITLE:	Police Protection Fund
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Police
PROGRAM:	Administration
REVENUE ADJ AMOUNT	\$178,500
EXPENDITURE ADJ AMOUNT	\$178,500
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Increased allocation for police protection fund.	

FUND NO.	2805
FUND TITLE:	Environmental Protection Fund
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Police
PROGRAM:	Traffic
REVENUE ADJ AMOUNT	\$200,000
EXPENDITURE ADJ AMOUNT	\$247,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Amending fund beginning balance to actuals and budgeting revenue and expenses.	

FUND NO.	4028
FUND TITLE:	2023 SSGRT
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering & Surveying
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$12,700,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Amending fund beginning balance to actuals and budgeting expenses. Bonds were accepted by Council after FY24 budgets were finalized.	

FUND NO.	4231
FUND TITLE:	2022 GO Bond
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering & Surveying
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$17,000,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Amending fund beginning balance to actuals and budgeting expenses. Bonds were accepted by Council after FY24 budgets were finalized.	

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Construction Management
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$16,397
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Budgeting expenses funded by fund 5100 in the Public Works Department that were excluded in FY24 budget.	

FUND NO.	5100
FUND TITLE:	Utilities Shared Services
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Public Works
PROGRAM:	Engineering And Architecture
REVENUE ADJ AMOUNT	\$
EXPENDITURE ADJ AMOUNT	\$24,548
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Budgeting expenses funded by fund 5100 in the Public Works Department that were excluded in FY24 budget.	

FUND NO.	5920
FUND TITLE:	Transit Operating
TYPE OF ADJUSTMENT:	Revenue & Expense
DEPARTMENT:	Non-Department
PROGRAM:	Non-Subsection
REVENUE ADJ AMOUNT	\$12,115
EXPENDITURE ADJ AMOUNT	\$12,115
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Insurance recovery for damaged bus stop shelter on N. Roadrunner Pkwy & Coventry Rd.	

FUND NO.	5920
FUND TITLE:	Transit Operating
TYPE OF ADJUSTMENT:	Expense
DEPARTMENT:	Assistant City Manager
PROGRAM:	Fixed Route
REVENUE ADJ AMOUNT	
EXPENDITURE ADJ AMOUNT	\$1,500,000
TRANSFER ADJ AMOUNT	\$
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Carryover FTA ARPA FY2022 5307 operating grant.	

FUND NO.	8100
FUND TITLE:	SC Solid Waste Authority
TYPE OF ADJUSTMENT:	Revenue & Transfer
DEPARTMENT:	Non-Department
PROGRAM:	Non-Subsection
REVENUE ADJ AMOUNT	\$100,000
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$(100,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Adjusted transfers to properly align with revenue and transfers for FY24 budget recap.	

FUND NO.	8170
FUND TITLE:	SCSWA Recycling
TYPE OF ADJUSTMENT:	Revenue & Transfer
DEPARTMENT:	Non-Department
PROGRAM:	Non-Subsection
REVENUE ADJ AMOUNT	\$100,000
EXPENDITURE ADJ AMOUNT	\$
TRANSFER ADJ AMOUNT	\$(100,000)
CIP PROJECT AMENDMENT NEEDED:	No
REASON FOR ADJUSTMENT: Adjusted transfers to properly align with revenue and transfers for FY24 budget recap.	

**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:	Adopted: July 3, 2023
Drafter: Charlie Fierro	Department: Financial Services
Program: Budget	Line of Business: Fiscal Management

Title:	A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT GRANT AWARDS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2023 BUDGET.
---------------	---

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

PURPOSE(S) OF ACTION:

To accept awarded grants and adjust the FY23 budget.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City relies on grant funding for many of the critical programs provided each year for the residents of Las Cruces. Grant funding awards are received throughout the fiscal year and are not budgeted during the normal fiscal year budgeting process. Funds are not budgeted until the City has received a grant award agreement due to the unpredictable nature of funding levels and timing.

Per the City's Grants Administration Program Policy, the City Manager, or his designee, may execute grant agreements with funding agencies. Upon receipt of the fully executed agreement from the funding agency, the Council may adjust the budget.

The request for City Council is to accept the budget adjustments to be used by the departments for the scope of work as defined by each grant agreement.

SUPPORT INFORMATION:

[Exhibit "A" Fund Summary](#)

[Attachment "A" Grant Listing](#)

[Attachment "B" LEDA 828 23828-IGA - Executed 4.19.23](#)

[Attachment "C" LEDA 828 23828- PPA - Signed by CLC \[FE\]](#)

[Attachment "D" 23829-EDD Downtownt Agreement 419-A22G2074-2309 13 \(2\)](#)

[Attachment "E" 23952-Youth Leadership Camp - 2023 Executed MOU](#)

PLAN(S):

City Council Strategic Plan, Department Strategic Business Plan, Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

Agenda Item #9.4.

DOES THIS AMEND THE BUDGET?:

☒ Yes

☐ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: Exhibit
"A"

AVAILABLE AMOUNT: Exhibit
"A"

EXPENDITURE AMOUNT:
Exhibit "A"

Funding Source(s):

Various

Overall Budget Impact:

Please refer to Exhibit "A" Fund Summaries

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☒ Yes

☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution to accept the budget adjustments as presented and adjust the City's FY2023 Budget.
2. Vote "No"; this will not approve the Resolution to adjust the budget as presented and return the funds to the granting agency.
3. Vote to "Amend"; this could delay the Resolution and the process of spending the grant funds within the predetermined grant schedule and require direction to staff.
4. Vote to "Table"; this will delay the Resolution and will impact the implementation of the grant agreement, the City departments ability to utilize the funds and return the grant funds to the granting agency.

RESOLUTION 24-006

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 FY2023 BUDGET.

The City Council is informed that:

WHEREAS, the City has received notice of grant awards for various City departments; and

WHEREAS, the grants will be used as designated in the scope of work and within the specified time period as shown in the grant agreements executed by the City Manager, or his designee; and

WHEREAS, the grant agreements that are the subject of this budget adjustment will be attached to the Resolution with a Summary, as Attachment "A"; and each agreement will be attached as subsequent attachments.

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

(I)

THAT the City hereby amends the FY2023 City Budget to accept all grant awards as shown in the Fund Summary, Exhibit "A", attached hereto and made part of this Resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

Mayor

ATTEST:

City Clerk

Moved by:

Seconded by:

AYES

NAYS

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	2100 SPECIAL REVENUE REIMB GRANTS			
	2022-23			
	Original Budget	Amended Budget	Req. Adjustment	Adjusted Budget
RESOURCES				
Beginning Balance	\$ 24,280	24,280	0	24,280
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	259	6,000	6,259
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	182,000	247,000	0	247,000
Federal Grants	5,358,203	16,855,765	0	16,855,765
State Grants	1,120,000	10,305,446	3,000,000	13,305,446
Local Grants	46,440	69,089	0	69,089
Debt Service	0	0	0	0
Total Revenues	6,706,643	27,477,559	3,006,000	30,483,559
TOTAL RESOURCES	\$ 6,730,923	27,501,839	3,006,000	30,507,839
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	629,444	6,199,922	6,000	6,205,922
Las Cruces Fire Department	85,478	1,378,031	0	1,378,031
Utilities	0	1,300,000	0	1,300,000
Economic Development	2,798,662	13,147,596	3,000,000	16,147,596
Internal Audit	0	0	0	0
Assistant City Manager-400	468,870	1,229,604	0	1,229,604
Human Resources	0	0	0	0
Financial Services	0	405,073	0	405,073
Information Technology	0	0	0	0
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	11,030	458,744	0	458,744
Community Development	337,981	851,286	0	851,286
Quality of Life	2,375,183	2,143,346	0	2,143,346
Public Works	0	365,000	0	365,000
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 6,706,648	27,478,602	3,006,000	30,484,602
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	\$ 24,275	23,237	0	23,237

CITY OF LAS CRUCES
BUDGET ADJUSTMENT REQUEST
BUDGET FISCAL YEAR 2022-23

Exhibit "A"

	4100 CAPITAL PROJECTS REIMB GRANTS			
	2022-23			
	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	5,508,937	7,872,546	0	7,872,546
State Grants	16,541,864	18,639,519	900,000	19,539,519
Local Grants	350,000	861,264	0	861,264
Debt Service	0	0	0	0
Total Revenues	22,400,801	27,373,329	900,000	28,273,329
TOTAL RESOURCES	\$ 22,400,801	27,373,329	900,000	28,273,329
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	47,000	160,000	0	160,000
Las Cruces Fire Department	74,798	332,731	0	332,731
Utilities	0	0	0	0
Economic Development	2,631,838	1,734,242	900,000	2,634,242
Internal Audit	0	0	0	0
Assistant City Manager-400	0	0	0	0
Human Resources	0	0	0	0
Financial Services	0	0	0	0
Information Technology	370,000	370,000	0	370,000
Fleet	0	0	0	0
Assistant City Manger-500	0	0	0	0
Parks & Recreation	3,816,025	4,654,367	0	4,654,367
Community Development	0	0	0	0
Quality of Life	742,500	742,500	0	742,500
Public Works	14,718,640	19,379,489	0	19,379,489
Legislative Reserve	0	0	0	0
Total Expenditures	\$ 22,400,801	27,373,329	900,000	28,273,329
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)

Agenda Item #9.4.



CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 05/08/2023

Grant Team Representative: Crystal Silva

Application Submission Date:

Council Budget Adjustment Date:

Requested Amount: N/A

Amount of Award: \$ 3,000,000.00

Award Notification Date:

Grant Agreement #: NMEDD LEDA 828P

Funding Agency: NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT (NMEDD)

CFDA #: N/A

Funder MUNIS CID #: 299931

PROJECT INFORMATION

Grant Project Title: LEDA-828 PRODUCTIONS



Type of Funding: State Operating

Type of Grant: Non-Competitive/Entitlement Recurring

Grantor Type: State

Match Amount: \$ 897,596.00

Match Description: State Match

Match Percent/Ratio: N/A

Match Source: N/A



Grant Effective Date: 03/30/2023

Grant Reversion Date: 01/31/2033

Starting Fiscal Year of Grant: FY2023

Grant Scope of Work:

The Qualifying Entity will remodel/refurbish and occupy the production facility at 106 S. Miranda Street and other suitable locations within Las Cruces, New Mexico (the "Project") and will employ at least 100 full-time persons by December 31, 2029 and generate a minimum of \$350 million in production spend by December 31, 2032.

Does this grant involve Sub-Grantees or Pass Through Grants:

☐ YES

☒ NO

DEPARTMENT INFORMATION

Department: ECONOMIC DEVELOPMENT

Line of Business:

Program:

Project Manager: Elizabeth Teeters

Email: eteeters@las-cruces.org

Phone: 575.541.3476

MUNIS Dept. Number:

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: (2100 for General Grants/4100 for Capital Grants)

STATE REV 2100-20235001-599200

STATE EXP 2100-20235001-721080

ADVANCE 2100-2100-291000

Capital Assets: ☐ YES ☒ NO

Reimbursable Grant: ☐

Revenue Collected in Advance: ☒

Grant Application #: _____

Project Code # 23828

Set-Up Date: _____

Date to Accounting: _____

Accounting Department Info:

CITY MATCH COMING FROM DFA APPROPRIATION PROJECT
PROJECT#23859; 22-G4052 STATE FUND 89200-\$386,561
PROJECT #23549; 22-G4053 STATE FUND 89200-\$511,035



CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 06/02/2023

Grant Team Representative: Susan Gonzales

Application Submission Date:

Council Budget Adjustment Date: 07/03/2023

Requested Amount:

Amount of Award: \$ 900,000.00

Award Notification Date: 03/28/2023

Grant Agreement #: 22-G2074

Funding Agency: State of New Mexico Economic Development Department

CFDA #:

Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: ACD GATEWAY & LIGHTING



Type of Funding: State Capital

Type of Grant: Legislative Appropriation

Grantor Type: State

Match Amount: \$ 180,000.00

Match Description: State Match

Match Percent/Ratio: 20%- min 60%

Match Source: PROJECT #12011; 20-E2551



Grant Effective Date: 04/24/2023

Grant Reversion Date: 06/30/2026

Starting Fiscal Year of Grant: FY2023

Grant Scope of Work:

to plan, design, construct, and improve infrastructure in downtown main street districts and in local arts and cultural districts statewide

Does this grant involve Sub-Grantees or Pass Through Grants:

☐ YES

☒ NO

DEPARTMENT INFORMATION

Department: Economic Development

Line of Business:

Program:

Project Manager: Elizabeth Teeters

Email: eteeters@las-cruces.org

Phone: 575-541-3476

MUNIS Dept. Number:

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: (2100 for General Grants/4100 for Capital Grants)

Revenue 4100-40235003-599200-Proj#23829

Expense 4100-40235003-804000-Proj#23829

Capital Assets: ☐ YES ☒ NO

Reimbursable Grant: ☒

Revenue Collected in Advance: ☐

Grant Application #: _____

Project Code # 23829

Set-Up Date: _____

Date to Accounting: _____

Accounting Department Info:



CITY OF LAS CRUCES

The following grant has been awarded to the City of Las Cruces

Today's Date: 06/01/2023

Grant Team Representative: Susan Gonzales

Application Submission Date:

Council Budget Adjustment Date: 07/03/2023

Requested Amount:

Amount of Award: \$ 6,000.00

Award Notification Date:

Grant Agreement #:

Funding Agency: New Mexico State University Board of Regents

CFDA #:

Funder MUNIS CID #:

PROJECT INFORMATION

Grant Project Title: LCPD Summer Youth Leadership Academy



Type of Funding: Other Operating

Type of Grant: Non-Competitive/Entitlement Recurring

Grantor Type: Local

Match Amount: \$ 0.00

Match Description: SELECT

Match Percent/Ratio: n/a

Match Source: n/a



Grant Effective Date: 06/01/2023

Grant Reversion Date: 07/15/2023

Starting Fiscal Year of Grant: FY2023

Grant Scope of Work:

Create and provide a safe learning environment in schools and continue a lasting relationship between the police department, NMSU, the school district and the students which will encourage communications and serve to develop a continually focused, effective collaboration to the benefit of our youth.

Does this grant involve Sub-Grantees or Pass Through Grants:

☐ YES

☒ NO

DEPARTMENT INFORMATION

Department:

Line of Business: Police



Program: Police

Project Manager: Laurie Padilla-Nunley



Email: lpadilla@las-cruces.org

Phone: 575-541-4135



MUNIS Dept. Number:

ACCOUNT STRINGS:

Include the fund number - Object Description - Amount: (2100 for General Grants/4100 for Capital Grants)

2100-20132001-591190-Proj#23952

2100-20132001-701000-Proj#23952

Capital Assets: ☐ YES ☒ NO

Reimbursable Grant: ☒

Revenue Collected in Advance: ☐

Grant Application #: _____

Project Code # 23952

Set-Up Date: _____

Date to Accounting: _____

Accounting Department Info:

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT
AND THE CITY OF LAS CRUCES, NEW MEXICO**

This Intergovernmental Agreement ("Agreement") is entered into as of the date of the last signature affixed below by and between the New Mexico Economic Development Department ("EDD") and The City of Las Cruces (the "City"), a political subdivision of the State of New Mexico, and collectively referred to as "the Parties" with reference to the following facts.

RECITALS:

WHEREAS, the legislature of the State of New Mexico appropriated funds to the Economic Development Department for economic development projects statewide pursuant to the Local Economic Development Act (the "Appropriation"); and

WHEREAS, the purpose of the Local Economic Development Act, NMSA 1978 §5-10-1 through §5-10-14 (2020) ("LEDA"), is to provide "public support for economic development to foster, promote and enhance local economic development efforts"; and

WHEREAS, the City has adopted LEDA by Ordinance No. 2873, which established the City of Las Cruces Economic Development Plan that promotes economic development within the City; and

WHEREAS, 828 Productions, LLC (hereinafter "Qualifying Entity") has entered into a Local Economic Development Project Participation Agreement (hereinafter "PPA") with the City. A copy of the City's Ordinance and PPA are attached hereto and incorporated herein; and

WHEREAS, pursuant to the terms of that PPA, the Qualifying Entity will remodel/refurbish and occupy the production facility at 106 S. Miranda Street and other suitable locations within Las Cruces, New Mexico (the "Project") and will employ at least 100 full-time persons by December 31, 2029; and

WHEREAS, EDD and the City desire to enter into this Agreement as necessary to facilitate disbursement of funds for the Project.

NOW THEREFORE, the Parties do hereby agree to the following terms and conditions to accomplish the Project.

SECTION 1. PURPOSE OF AGREEMENT:

The purpose of this Agreement is to define the responsibilities of the City and EDD for the oversight and administration of up to \$3,000,000 of the Appropriation for the Project. It is the intent of the parties that the City will receive an amount up to three million dollars (\$3,000,000) to implement the Project. The Parties agree that any and all State funds received will be accounted for by the City as the fiscal agent for EDD in accordance with the procedures the City will use to account for its own funds and property used to implement the project, or any properties acquired or developed by the City as a result of implementation of the Project will be used by the City for economic development purposes only.

SECTION 2. SCOPE OF WORK:

The City will act as fiscal agent for up to \$3,000,000 of the Appropriations for the Project. Pursuant to Section 5-10-3(D) of LEDA, EDD will transfer up to \$3,000,000 to the City for costs and expenses associated with the Project. In exchange for the contribution, the Qualifying Entity certifies it will employ at least 100 full-time employees at the facility by December 31, 2029, and generate a minimum of \$350 million in production spend by December 31, 2032.

All the terms, conditions, and requirements set forth under the PPA are incorporated into this Agreement. EDD and the City agree that failure of the Qualifying Entity to create the number of new full-time jobs described in the PPA or otherwise meet its obligations set forth under the PPA shall require the City to apply the applicable Clawback as provided for by the PPA. In the event that the Qualifying Entity does not remit to the City the monies owned as provided for by the PPA then such violation will require that the City foreclose on the

security interest after any cure period granted to the Qualifying Entity. Any monies recovered by the City as a result of payment made by the Qualifying Entity from the application of the applicable Clawbacks shall be returned to EDD within 30 calendar days. Any foreclosure of the security interest shall be returned to EDD. The Qualifying Entity will deliver to the City contemporaneously with the execution of the PPA a form of security acceptable to all parties, which will be incorporated into this Agreement (the "Security").

SECTION 3. CITY RESPONSIBILITIES:

The City shall:

- A. Pay the costs and expenses incurred for the Project from the Appropriation.
- B. Provide to EDD supporting documentation in a format acceptable to EDD for activities associated with the Project. Any funds recaptured by the City as the result of enforcing the provisions of the PPA shall be returned to EDD.
- C. The City shall notify EDD in writing of any failure to meet requirements (default) of the PPA by the Qualifying Entity within 15 business days of learning of the event of default.
- D. Serve as Fiscal Agent for the funds transferred to it under this Agreement.
- E. Distribute the funds transferred to the City by EDD to the Project; account for receipts and disbursements of said monies; and provide EDD with the required financial documentation pertaining to this disbursement.
- F. Submit all required and reasonably requested documentation to EDD including the endorsed LEDA Ordinance approved by the City Council accepting the Project as qualifying entity for LEDA, with the accompanying endorsed Project Application and PPA entered into by the City and the Qualifying Entity, a fully executed copy of the Security, and copies of invoices and other documentation as required by EDD within the time required.
- G. Not impose any obligations on EDD with respect to the administration of this Project, other than the transfer of funds as described herein; and

- H. Initiate and prosecute litigation as necessary to enforce the terms of the PPA, at EDD's cost, if necessary.

SECTION 4. CITY CERTIFICATIONS:

As Fiscal Agent, the City hereby assures and certifies that:

- A. It will comply with all applicable State laws, regulations, policies, guidelines and requirements with respect to the acceptance and use of the Appropriation.
- B. It has the legal authority to receive and expend the Appropriation.
- C. It will enforce the provisions of Ordinance No. 2873 and the City's Economic Development Plan.
- D. It has exercised due diligence in confirming that the Project is a viable economic development initiative with potential long term economic development benefits based on information provided by EDD;
- E. It will provide to EDD upon request all documentation and references to expertise it has relied upon in approving this Project upon receipt thereof or reliance thereupon and also with copies of all reports and documentation City receives from the Qualifying Entity;
- F. It has entered into a PPA with the Qualifying Entity and has obtained from the NM EDD all financial documentation necessary to protect the City's and State's investments in the Project;
- G. It shall not at any time during the life of this Agreement convert any property acquired or developed pursuant to this Agreement to uses other than those within the Project description as defined herein;
- H. It will notify EDD of any default on the part of the Qualifying Entity within 15 business days of learning of any default and shall provide the Qualifying Entity an opportunity to cure any default by in accordance with the PPA prior to termination thereof;
- I. No member, officer or employee of the City or its designees or agents, no member of the governing body of the locality of which the Project is situated, and no other public official that exercises any functions or

responsibilities with respect to the Project during his/her tenure, or for one (1) year thereafter, shall have any interests, direct or indirect, in any contract or subcontract, or the process thereof, for work to be performed in connection with the Project that is the subject of this Agreement. The City shall incorporate in all contracts or subcontracts a provision prohibiting such interest pursuant to this certification; and

- J. It has complied with Article IX, Section 14, of the New Mexico Constitution known as the "anti-donation clause."

SECTION 5. EDD RESPONSIBILITIES:

EDD shall:

- A. Transfer to the City for costs and expenses incurred for the Project an amount not to exceed three million dollars (\$3,000,000). The funds shall be used only for the purpose stated in this Agreement.
- B. Monitor job creation by the Qualifying Entity and report the number of jobs created to the City each quarter up to January 31, 2033.
- C. At its discretion, review and audit the Project if it is deemed to be necessary or desirable; and
- D. Reimburse the City for any costs associated with litigation to enforce the terms of the Security and the Clawback provisions.

SECTION 6. TERM OF AGREEMENT:

This Agreement shall become effective on the date it is fully executed and shall terminate on January 31, 2033 or when all of the obligations of the PPA have been fulfilled.

SECTION 7. LIABILITY:

No Party shall be responsible for liability incurred as a result of the other Party's acts or omissions. Any liability incurred in connection with this Agreement is subject to the New Mexico Tort Claims Act. The City and EDD may agree to reimburse one another under these liability provisions, subject to sufficient

appropriation by the New Mexico Legislature or sufficient funds being available to the party, as determined by the Party responsible for payment.

SECTION 8. DISPOSITION OF PROPERTY; RECORDS; RETURN OF SURPLUS FUNDS

- A. Property purchased under this Agreement for the Project shall remain with the purchasing party unless otherwise agreed upon.
- B. The City shall keep such records as will fully disclose the amount and disposition of the total funds from all sources budgeted for the Project, the purposes for which such funds were used and such other records as EDD may require.
- C. If, upon the expiration of the Project or the termination date of this Agreement, any surplus funds are possessed by the City, the City shall return said funds to EDD for disposition in accordance with law.

SECTION 9. STRICT ACCOUNTABILITY:

The City shall be strictly accountable for receipts and disbursements relating hereto and shall make all relevant financial records available to EDD and the New Mexico State Auditor quarterly or upon request and shall maintain all such records for a period of six (6) years following completion of all the records and any audits.

SECTION 10. REPORTS:

The Qualifying Entity shall submit quarterly reports regarding employment to the EDD during the life of this Agreement and EDD shall share those reports and any other information obtained respecting job retention and creation attributable to the State appropriation with the City. The City shall coordinate with EDD to conduct an annual performance review of the Project.

SECTION 11. NOTICES; REPRESENTATIVES OF THE PARTIES:

Any notice required to be given to either party by this Agreement shall be in writing and shall be delivered in person, by courier service or by U.S. Mail, either first class or certified, return receipt requested, postage prepaid, as follows. The parties hereby designate the individuals named below as their representative responsible for overall administration of this Agreement.

To EDD:

Finance Development Team Leader
NM Economic Development Department
Joseph Montoya Building
1100 St. Francis Drive
PO Box 20003
Santa Fe, New Mexico 87504

To the CITY:

City Manager
The City of Las Cruces
700 S Main Street
P O Box 20000
Las Cruces, NM 88004

SECTION 12. AMENDMENTS:

This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto.

SECTION 13. GOVERNING LAW/VENUE:

This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the last date of signature below,

THE CITY OF LAS CRUCES, NEW MEXICO

By: 
Name: Ifo Pili
Title: City Manager
Date: 3/30/23

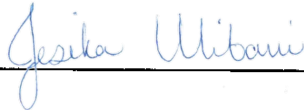
APPROVED AS TO FORM

By: _____
The City of Las Cruces Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: 
Alicia J. Keyes
Cabinet Secretary
Date: 4/19/2023

APPROVED AS TO FORM

By: 
Jesika Ulibarri
General Counsel

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on March 20, 2023 by and between **CITY OF LAS CRUCES, NEW MEXICO** (the "City"), a political subdivision of the State of New Mexico (the "State"), and **828 Productions, LLC** (the "Company").

Recitals.

- A. Article 9, Section 14 of the New Mexico Constitution provides counties the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.
 - B. Pursuant to City of Las Cruces Ordinance No. 2873 (the "Las Cruces Local Economic Development Plan"), adopted on September 17, 2018, the City established the City of Las Cruces Economic Development Plan (the "Plan") as the City's economic development plan as required by Section 5-10-6, NMSA 1978.
 - C. As provided in the Las Cruces Local Economic Development Plan Ordinance, the City considered an application from the Company, which proposed that the City serve as local government conduit for an appropriation of up to \$3,000,000 from the Legislature of the State of New Mexico (the "**State Contribution**") and also provide up to \$897,596 in Capital Outlay funds (the "**City Contribution**") toward the Company's development of a production facility at 106 S. Miranda Street in the City of Las Cruces, New Mexico (the "Project"). The company will construct and occupy the facility and will employ a minimum of 100 full-time persons by December 31, 2029.
 - D. The City has adopted Ordinance No. 2873 ("Local Economic Development Act") and Resolution No. 19-050 ("Local Economic Development Plan" finding that the Company is a "qualifying entity" and the Project is an "economic development project" as those terms are defined by the Act, and approving this Agreement as meeting the requirements of the Act.
- 1. Goals and Objectives.** The objective of this Agreement is to create and support an economic development project that fosters, promotes and enhances local economic development efforts. The goal is that the Project will provide jobs and career opportunities that will benefit the community and contribute to its long-term economic growth and sustainability.

2. Substantive Contribution from the Company.

- a. **Facility.** The Company will establish a production facility at 106 S. Miranda Street and other suitable locations within the City of Las Cruces, New Mexico (the "Facility").
- b. **Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will make capital investments in the Project and costs associated therewith (including, for the acquisition of land, building, equipment, tangible personal property and services associated with the acquisition, construction and equipping of the Project) in the amount of approximately \$75,000,000 by December 31, 2031 (the "Project Contribution").
- c. **Production Spend Investment.** The Company (or one of its subsidiaries, affiliates, investment partners or other related entities) will spend \$350 million on productions by December 31, 2032.
- d. **Job Creation.** The Company will directly employ a target of 100 full-time employees at the facility by December 31, 2029 (the "Job Target"). "Job" means a permanent, full-time employment position (at least 32 hours per week) offering the employee the full range of benefits offered to other full-time employees of the Company. Full-time employees do not include agency, sub-contracted, temporary employees or independent contractors.
- e. **Sustainability.** Although the Company intends to have a long-term presence in the City, for purposes of the contractual obligations of this Agreement, the Company covenants to continue to operate the Project until December 31, 2032.

3. The State Contribution

- a. The City anticipates that the State Contribution will be delivered by the State to the City for disbursement to the Company upon enactment of the Project LEDA Ordinance, and execution of this document and the intergovernmental agreement between the State and the City, after which time the City will request transfer of the State Contribution. Upon receipt, the City will place the State Contribution into a separate account established in connection with the Project, as required by law. The City will disburse the State Contribution, if and when it is received, only in the manner described in this Agreement and the Intergovernmental Agreement executed between the City and the State. The City will disburse the State Contribution to the Company as reimbursement for LEDA Eligible Expenditures subject to the Company's satisfaction of the conditions set forth herein. Disbursements shall be paid on a reimbursement basis and the Company shall first incur the LEDA Eligible Expenditures and then submit requests for reimbursement to the City. For purposes of this

Agreement, "**LEDA Eligible Expenditures**" shall mean: expenditures including, but not limited to, land, building and infrastructure, including permanently installed and situated physical assets and the design, labor and permitting required to put them in place. Examples include: foundation, drainage improvements, electrical wiring, architecture fees, insulation, landscaping and equipment rentals.

- b. The State's contribution is composed of a LEDA award of \$3,000,000 for use by the Company for such purposes as set forth in NMSA 1978, § 5-10-3(E), the application of the Company and the agreements entered into between the parties. The Company shall also instruct the contracted construction companies to use the correct **New Mexico Taxation and Revenue Department Location Code of 07-105 for the City of Las Cruces.**

4. The City Contribution.

- a. The City will account for receipts and disbursements of the State Contribution and will provide financial documentation to the State pertaining to the State Contribution. The City will contribute up to \$897,596 in Capital Outlay funds. The City will comply with the Local Economic Development Act ("LEDA") with respect to the acceptance and disbursement of the State and Local Contributions. As required by the LEDA Ordinance and the Act, City will deposit the State Contribution into a clearly identified separate account.
- b. The State Contribution will be disbursed to the Company through the City for reimbursement of LEDA Eligible Expenditures.

5. Disbursement of City and State Contributions

- a. State and City contributions shall be deposited into separate accounts for this project and disbursed through the City.
- b. **Conditions to Disbursement; Performance Milestones.** The State Contribution will be disbursed in four (4) separate allotments. The City Contribution will be disbursed in six (6) separate allotments. Each disbursement will be conditioned on (i) the Company's having incurred LEDA Eligible Expenditures prior to the disbursement; (ii) where applicable, the Company meeting minimum employment targets and being in compliance with job reporting requirements; and (iii) the Company's satisfaction of the performance milestones set forth below (the "Disbursement Performance Milestones") for each allotment prior to the disbursement:

State of New Mexico LEDA Disbursement Schedule		
<u>Tranche</u>	<u>Amount of State Contribution Available for Disbursement/Tranche</u>	<u>Disbursement Performance Milestone</u>
1	\$1,000,000	Obtain a certificate of occupancy, incur LEDA eligible expenses, and current with all reporting
2	\$1,000,000	Hire 30 new employees for a total employment of 30 and maintain for two quarterly reporting periods, incur LEDA eligible expenses and current with all reporting
3	\$500,000	Maintain a minimum of 35 employees for two quarterly reporting periods and have at least \$100,000,000 in film production spend and current with all reporting
4	\$500,000	Hire 40 additional new employees for a total employment of 70 employees and maintain for two quarterly reporting periods, incur LEDA eligible expenses and current with all reporting
City of Las Cruces LEDA Disbursement Schedule		
<u>Tranche</u>	<u>Amount of Local Contribution Available for Disbursement/Tranche</u>	<u>Release of Lien Performance Milestone</u>
1	\$304,790	Access road to Stage 1 and Work Shop
2	\$96,144	Surface Parking Workshop
3	\$83,328	Surface Parking – Stage 1 Lot
4	\$119,900	Surface Parking – POB Lots 2&3
5	\$159,100	Surface Parking – Lot 6
6*	\$134,334	Surface Parking – Lot 5
*Will not reimburse for entire cost		

6. **Disbursement Requests.** From time to time, after the Company has satisfied the conditions for disbursement set forth herein, the Company may submit to the City and the New Mexico Economic Development Department ("EDD") a written request for disbursement of the State Contribution (the "Disbursement Request"). All Disbursement Requests shall be accompanied by (i) documentation substantiating LEDA Eligible Expenses, and (ii) documentation of current employment level in New Mexico pursuant to Section 10c below. The Company will not submit a Disbursement Request for less than \$50,000, but may, upon completion of all performance milestones, submit a Disbursement Request for up to the full amount of the State Contribution or City Contribution then available to the Company at any time. The City may, in good faith, object to or require additional information regarding a Disbursement Request to verify compliance with this Agreement.

7. **Review.** EDD will review the Disbursement Request to assure the charges submitted are LEDA Eligible Expenditures. The EDD's review and approval or objection shall not be unreasonably withheld and shall occur within 30 calendar days of receipt of the Disbursement Request. The City will disburse to the Company the full amount requested in the Disbursement Request no later than 30 calendar days after EDD's approval of the Disbursement Request.
8. **No Offset of City costs.** The City may not offset any internal costs or overhead charges for review or processing of the Disbursement Requests against the Disbursement Request or the State Contribution.
9. **Security.** As security for the faithful performance and payment of Company's obligations under this Agreement, prior to the Company's receipt of any part of the State Contribution or City Contribution, Company shall furnish the City with a Letter of Credit or some alternative form of security in a form mutually acceptable to the parties (the "Security"). The maximum obligation secured by the Security (the "Maximum Obligation") will be \$3,897,596. The Company shall be permitted to obtain incremental increases in the Security in the amount of each Disbursement Request and shall not be required to secure the Maximum Obligation before a disbursement will be made. No State Contribution will be transferred to the City until Security in the amount of the State Contribution is accepted.
 - a. The City may draw on the Security in order to satisfy any unpaid Clawback Penalty which shall become due and payable, but only thirty (30) calendar days following written demand for payment to the Company. Such draw may be initiated without filing a proceeding in any court of competent jurisdiction.
 - b. Provided that the Company has not been required to pay any Clawback, the Security will terminate on January 31, 2033, unless earlier released in accordance with this Agreement.
 - c. If the State or the City reduce the amount of LEDA Funds and/or forgivable lien that are made available for the Project and/or if the Company does not draw the entire amount of the LEDA Funds and/or forgivable lien available, the Maximum Obligation will be reduced proportionately to reflect the amount of LEDA Funds and/or forgivable lien actually received by the Company.
 - d. A mortgage agreement/municipal lien document shall be recorded in Dona Ana County in the amount of the City Contribution. Partial lien releases shall be recorded upon performance of the set performance milestones.
10. **Clawbacks.** Notwithstanding any other provision of this Agreement, the Company shall be required to pay the Clawback Penalties set forth in this Section (together with forfeiture of the security instrument provided to secure the Company's Clawback obligations), if the Company does not satisfy the conditions

set forth herein.

Facility Closure Clawback.

Full closure of the facility will result in a clawback based on the number of years the Q/E has operated under this agreement as per the following table:

2023	100%
2024	100%
2025	100%
2026	100%
2027	90%
2028	80%
2029	70%
2030	60%
2031	50%
2032	40%

- a. For purposes of this Agreement, a failure to produce product for a period of 90 calendar days or more, after initial startup (initial startup will be considered the date of the first production run or within 180 days of receipt of certificate of occupancy, whichever comes first) or failure to occupy the Facility shall be considered a cessation of operations; provided however cessations for reasonable periods for the repair or replacement of facilities damaged or destroyed, cessations resulting from labor disputes, strikes, riots or acts of God, shortages of materials or supplies or for any other reason beyond the reasonable control of the Company, or under similar circumstances will not constitute a failure by the Company to comply with this Section 10a. If the Company ceases operations for any of the causes set forth in this Section 10a, the Company shall submit a plan for resolving such cessation of operations within 30 calendar days. In the event of a cessation of operations, the Company shall provide written notice thereof and a reason therefore to the City within 10 calendar days.
- b. **Performance Clawback.** It is the Company's intent to create, hire and maintain the number of jobs set forth in the table below under the column captioned "Cumulative Fulltime Target Job Number" on the Job Determination Dates set forth below. If the Company does not meet or exceed the job numbers set forth under the column captioned "Minimum Job Number" in the table below on each of the specified Job Determination Dates (and after expiration of the Cure Periods), then the Company shall be required to pay a Clawback Penalty (as defined below) to the City which will be applied in the percentage set forth in the table below in addition the company is agreeing to generate a minimum of \$350 million in production those clawback penalties are also described below:

Job Creation and Production Spend Commitment and Schedule					
<u>Year</u>	<u>Cumulative Full Time Job Creation Target</u>	<u>Minimum Job Number</u>	<u>Job Determination Period</u>		<u>Clawback %</u>
1	10	9	Ordinance Date	12/31/23	100%
10	10+90 = 100	90	1/1/32	12/31/32	30%
b Additional Notes: Only New Mexico based employees count towards job creation target.					
^ Clawback calculator attached for illustrative purposes.					

<u>Year</u>	<u>Cumulative Spend Target</u>	<u>Minimum Spend</u>	<u>Spend Determination Period</u>		<u>Clawback %</u>
5	\$55,000,000	\$50,000,000	Ordinance Date	12/31/2027	100%
10	\$350,000,000	\$315,000,000	1 /1/32	12/31/2032	50%
Clawback percentage is calculated on the shortfall quotient times the amount of LEDA received by the company time the percentage of clawback, example illustrated below					
Year 10 production spend by the company \$290,000,000 LEDA received \$3,897,000					
$\$315,000,000 - \$290,000,000 = \$25,000,000$		$\$25,000,000 / \$315,000,000 = 7.94\%$			
$7.94\% \times \$3,897,000 = \$309,285.71$		$\$309,285.71 \times 50\% = \$154,642.86$			

For the purposes of this Section:

The "**Clawback Penalty**" is a penalty that the Company will be required to pay the City upon the Company's failure to meet the Minimum Job Target on the applicable Job Determination Date, if such Minimum Job Target is not otherwise reached by the Company during the Cure Period. The Clawback Penalty shall be equal to the product of the Percentage Hiring Shortfall (as defined herein), multiplied by the total State Contribution paid to the Company as of that time. For purposes of this subsection, the "**Percentage Hiring Shortfall**" shall be the quotient of (i) the Minimum Job Number for applicable Job Determination Date, minus the actual number of jobs the Company maintains at the Facility at that time, divided by (ii) the Minimum Job Number for applicable Job Determination Date. See Attachment 1 hereto for examples of job Clawback Calculations

"**Cure Period**" is the period of 180 calendar days after each Job Determination Date during which the Company shall have the opportunity to cure any shortfall in meeting the Minimum Job Number. For the avoidance of doubt, if the Company meets the Minimum Job Number at any time during the Cure Period as validated

by the job reporting requirements set forth herein, the Company shall have no obligation to pay a Clawback Penalty corresponding to the applicable Job Determination Date. If the Company fails to reach the Minimum Job Number during the Cure Period, the Company shall pay the City a Clawback Penalty determined in accordance with the table set forth above.

In the event that there are shortfalls on both jobs and spend requirements the respective clawback penalties will be combined to determine the total clawback required.

The parties hereto recognize certain economic factors generally described as "Business Climate Changes" are beyond the control of any of the parties and may affect the ability of the Company to strictly adhere to the job creation numbers and schedule set forth herein. "Business Climate Changes" means substantial changes, beyond the control of the Company within the industry in which the Company operates, that causes a significant decrease in the Company's ability to perform pursuant to the requirements of this agreement with the City. The Company may request specific modifications to the job creation schedule in writing within ten calendar days of learning of the existence of the "Business Climate Change." Such notification shall include the details of the business climate change, the effect thereon on the Company, and the modification of this agreement the Company requests. If the City and EDD agree that Business Climate Changes have affected the Company's ability to perform, the Performance Clawback may be modified by ordinance.

- c. **Job Reporting.** The Company shall submit quarterly employment reports documenting its quarterly filing of the Department of Workforce Solutions' (DWS) Employment and Wage Detail Reporting as submitted to DWS in the form and manner required by EDD and the City beginning with the January 31, 2023 and continuing every April 30, July 31 and October 31 thereafter until the completion of this agreement. The State will provide copies of all such reports to the City or the State may request a copy of the Company's quarterly employment reports at any time while this Agreement is in effect and the Company agrees to provide such documents. The Company acknowledges this quarterly reporting will be relied upon by the City and the State to ascertain if the Company is in compliance with the job creation provisions of this Agreement and all subsequent and ancillary agreements. The Company will receive no disbursements of State Contribution as stipulated in this Agreement without up-to-date quarterly job reporting as set forth herein.
 - 1. The Company shall complete an annual economic impact data sheet (EIA) provided by the State of New Mexico Economic Development department not later than February 28 of each year beginning in 2024. This will reflect actual economic activity and hiring of the Q/E for the preceding calendar year. Failure to complete EIA data sheet by April 15th of any calendar year Q/E shall be subject to a 10% clawback of all

funds received.

- d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

11. Fees. Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

12. Annual Performance Review. To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2023 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

13. Termination. This Agreement shall terminate at the close of business on January 31, 2033 or when otherwise terminated by ordinance.

14. Request for early release of security. If the Company achieves and then sustains the Minimum Job Number of 100 permanent, full-time employees for six (6) consecutive months prior to December 31, 2030 and has made in excess of three hundred and fifty million dollars (\$350,000,000) in production spend the Company may request release of the Security and termination of the agreement. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of the Security may not be submitted prior to December 31, 2030. Upon receipt of such a request the New Mexico Economic

Development Department will work with the Company to gather sufficient documentation of the economic activity directly created by the Company during the period of this agreement and complete an economic impact analysis report. If said report verifies that the State of New Mexico has received direct tax revenues from the activity of the company said request shall be granted.

15. **Liability.** No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.
16. **Amendments.** This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the Governing Body of City of Las Cruces.
17. **Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.
18. **Miscellaneous.** This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the City and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.
19. **Notice.**
All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:

City of Las Cruces
Attention: Economic Development
P O Box 20000
Las Cruces, New Mexico 88004

If to the Company:

828 Productions, LLC
100 S. Church Street
Las Cruces, NM 88001

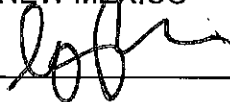
Effective Date: _____

Attachment:

1. Example of Clawback Calculations

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

CITY OF LAS CRUCES, NEW MEXICO

By 

Name Ifo Pili

Title City Manager

828 Productions, LLC

By *todd lundbohm*

Name: Todd Lundbohm

Title: CEO

Attachment 1

Example of Clawback Calculations

Clawback Calculations

Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed)

Job Creation % Shortfall = $(1 - (\text{actual jobs} / \text{cumulative hiring target})) * 100\%$

Example - 1 100% End of year 1, inclusive of cure period

Actual Employees	(a)	41
Cumulative Hiring Target	(b)	42
Job Creation % Shortfall =	(c) = $1 - (a/b)$	2.38%

LEDA Dollars Distributed	(d)	\$ 150,000.00
Clawback %	(e)	100%
Penalty	(f) = $c * d * e$	\$ 3,571.43

Example - 2 100% End of year 2, inclusive of cure period

Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = $1 - (a/b)$	1.72%
LEDA Dollars Distributed	(d)	\$ 200,000.00
Clawback %	(e)	100%
Penalty	(f) = $c * d * e$	\$ 3,448.28

Example - 3 75% End of year 3, inclusive of cure period

Actual Employees	(a)	57
Cum Hiring Target	(b)	58
Job Creation % Shortfall =	(c) = $1 - (a/b)$	1.72%
LEDA Dollars Distributed	(d)	\$ 200,000.00
Clawback %	(e)	75%
Penalty	(f) = $c * d * e$	\$ 2,586.21

Grant Number: 419-A22G2074-2309

**STATE OF NEW MEXICO
DEPARTMENT OF ECONOMIC DEVELOPMENT DEPARTMENT
FUND 89200 CAPITAL APPROPRIATION PROJECT**

THIS AGREEMENT is made and entered into as of this 28th day of March, 2023, by and between the Economic Development Department, hereinafter called the "Department" or abbreviation such as "EDD", and City of Las Cruces in partnership with and for the benefit of Downtown Las Cruces Partnership, hereinafter called the "Grantee." This Agreement shall be effective as of the date it is executed by the Department.

RECITALS

WHEREAS, in the Laws of 2022, Chapter 53, Section 17, Paragraph 1, the Legislature made an appropriation to the Department, funds from which the Department is making available to the Grantee pursuant to this Agreement; and

WHEREAS, the Department is granting to Grantee, and the Grantee is accepting the grant of, funds from this appropriation, in accordance with the terms and conditions of this Agreement; and

WHEREAS, the Department has the authority to enter into grant agreements for the expenditure of legislative appropriations, as per Laws 2022, Chapter 53, section 17, Paragraph 1 and NMSA 1978, § 9-15-7 (2022).

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the parties hereby mutually agree as follows:

ARTICLE I. PROJECT DESCRIPTION, AMOUNT OF GRANT AND REVERSION DATE

A. The project that is the subject of this Agreement is described as follows:

STB22A G2074 \$10,000,000.00

APPROPRIATION REVERSION DATE: 30-JUN-2026

Laws of 2022, Chapter 53, Section 17, Paragraph 1, ten million dollars (\$10,000,000.00), to plan, design, construct and improve infrastructure in downtown main street districts and in local arts and cultural districts statewide; and.

The Grantee's total reimbursements shall not exceed nine hundred thousand dollars (\$900,000.00) (the "Appropriation Amount") minus the allocation for Art in Public Places ("AIPP amount")¹ zero dollars (\$0), if applicable, which equals nine hundred thousand dollars (\$900,000.00) (the "Adjusted Appropriation Amount").

¹ The AIPP amount is "an amount of money equal to one percent or two hundred thousand dollars (\$200,000), whichever is less, of the amount of money appropriated for new construction or any major renovation exceeding one hundred thousand dollars (\$100,000)." Section 13-4A-4 NMSA 1978.

In the event of a conflict among the Appropriation Amount, the Reversion Date, as defined herein and/or the purpose of the Project, as set forth in this Agreement, and the corresponding appropriation language in the laws cited above in this Article I(A), the language of the laws cited herein shall control.

This project is referred to throughout the remainder of this Agreement as the "Project"; the information contained in Article I(A) is referred to collectively throughout the remainder of this Agreement as the "Project Description." If Attachment A imposes more stringent requirements than any requirement set forth in this Agreement, the more stringent requirements of Attachment A shall prevail, in the event of irreconcilable conflict. (SEE ATTACHMENT A) The Grantee shall reference the Project's number in all correspondence with and submissions to the Department concerning the Project, including, but not limited to, Requests for Payment and reports.

ARTICLE II. LIMITATION ON DEPARTMENT'S OBLIGATION TO MAKE GRANT DISBURSEMENT TO GRANTEE

A. Upon the Effective Date of this Agreement, for permissible purposes within the scope of the Project Description, the Grantee shall only be reimbursed monies for which the Department has issued and the Grantee has received a Notice of Department's Obligation to Reimburse² Grantee (hereinafter referred to as "Notice of Obligation"). This Grant Agreement and the disbursement of any and all amounts of the above referenced Adjusted Appropriation Amount are expressly conditioned upon the following:

- (i) Irrespective of any Notice of Obligation, the Grantee's expenditures shall be made on or before the Reversion Date and, if applicable, an Early Termination Date (i.e., the goods have been delivered and accepted or the title to the goods has been transferred to the Grantee and/or the services have been rendered for the Grantee); and
- (ii) The total amount received by the Grantee shall not exceed the lesser of: (a) the Adjusted Appropriation Amount identified in Article I(A) herein or (b) the total of all amounts stated in the Notice(s) of Obligation evidencing that the Department has received and accepted the Grantee's Third Party Obligation(s), as defined in subparagraph iii of this Article II(A); and
- (iii) The Grantee's expenditures were made pursuant to the State Procurement Code and execution of binding written obligations or purchase orders with third party contractors or vendors for the provision of services, including professional services, or the purchase of tangible personal property and real property for the Project, hereinafter referred to as "Third Party Obligations"; and
- (iv) The Grantee's submittal of timely Requests for Payment in accordance with the procedures set forth in Article IX of this Agreement; and
- (v) In the event that capital assets acquired with Project funds are to be sold, leased, or licensed to or operated by a private entity, the sale, lease, license, or operating agreement:
 - a. must be approved by the applicable oversight entity (if any) in accordance with law; or
 - b. if no oversight entity is required to approve the transaction, the Department must approve the transaction as complying with law.

Prior to the sale, lease, license, or operating agreement being approved pursuant to Articles II(A)(v)(a) and II(A)(v)(b) herein, the Department may, in its sole and absolute discretion and unless inconsistent with State Board of Finance imposed conditions, reimburse the Grantee for necessary expenditures

² "Reimburse" as used throughout this Agreement includes Department payments to the Grantee for invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee.

- incurred to develop the Project sufficiently to make the sale, lease, license, or operating agreement commercially feasible, such as plan and design expenditures; and
- (vi) The Grantee's submission of documentation of all Third Party Obligations and amendments thereto (including terminations) to the Department and the Department's issuance and the Grantee's receiving of a Notice of Obligation for a particular amount in accordance with the terms of this Agreement shall be governed by the following:
- a. The Grantee shall submit to the Department one copy of all Third Party Obligations and amendments thereto (including terminations) as soon as possible after execution by the Third Party but prior to execution by the Grantee.
 - b. Grantee acknowledges and agrees that if it chooses to enter into a Third Party Obligation prior to receiving a Notice of Obligation that covers the expenditure, it is solely responsible for such obligations.
 - c. The Department may, in its sole and absolute discretion, issue to Grantee a Notice of Obligation for the particular amount of that Third Party Obligation that only obligates the Department to reimburse Grantee's expenditures made on or before the Reversion Date or an Early Termination Date. The current Notice of Obligation form is attached to this Agreement as Exhibit 2.
 - d. The date the Department signs the Notice of Obligation is the date that the Department's Notice of Obligation is effective. After that date, the Grantee is authorized to budget the particular amount set forth in the Notice of Obligation, execute the Third Party Obligation and request the Third Party to begin work. Payment for any work performed or goods received prior to the effective date of the Notice of Obligation is wholly and solely the obligation of the Grantee.

B. The Grantee shall implement, in all respects, the Project. The Grantee shall provide all necessary qualified personnel, material, and facilities to implement the Project. The Grantee shall finance its share (if any) of the costs of the Project, including all Project overruns.

C. Project funds shall not be used for purposes other than those specified in the Project Description.

D. Unless specifically allowed by law, Project funds cannot be used to reimburse Grantee for indirect Project costs.

ARTICLE III. NOTICE PROVISIONS AND GRANTEE AND DEPARTMENT DESIGNATED REPRESENTATIVES

Whenever written notices, including written decisions, are to be given or received, related to this Agreement, the following provisions shall apply.

The Grantee designates the person(s) listed below, or their successor, as their official representative(s) concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____

Grant Number: 419-A22G2074-2309

Email: _____
Telephone: _____

The Grantee designates the person(s) listed below, or their successor, as their Fiscal Officer or Fiscal Agent concerning all matters related to this Agreement:

Grantee: _____
Name: _____
Title: _____
Address: _____
Email: _____
Telephone: _____

The Department designates the persons listed below, or their successors, as the Points of Contact for matters related to this Agreement.

Department: Economic Development Department
Name: Julie Blanke
Title: Program Planning Specialist
Address: EDD/MainStreet, PO Box 20003, Santa Fe, NM 87504-5003
Email: Julie.blanke@state.nm.us
Telephone: 505-753-8860

The Grantee and the Department agree that either party shall send all notices, including written decisions, related to this Agreement to the above named persons by email or regular mail. In the case of mailings, notices shall be deemed to have been given and received upon the date of the receiving party's actual receipt or five calendar days after mailing, whichever shall first occur. In the case of email transmissions, the notice shall be deemed to have been given and received on the date reflected on the delivery receipt of email.

ARTICLE IV. REVERSION DATE, TERM, DEADLINE TO EXPEND FUNDS

A. As referenced in Article I(A), the applicable law establishes a date by which Project funds must be expended by Grantee, which is referred to throughout the remainder of this Agreement as the "Reversion Date." Upon being duly executed by both parties, this Agreement shall be effective as of the date of execution by the Department. It shall terminate on June 30, 2025 the Reversion Date unless Terminated Before Reversion Date ("Early Termination") pursuant to Article V herein.

B. The Project's funds must be expended on or before the Reversion Date and, if applicable, Early Termination Date of this Agreement. For purposes of this Agreement, it is not sufficient for the Grantee to encumber the Project funds on its books on or before the Project's Reversion Date or Early Termination Date. Funds are expended and an expenditure has occurred as of the date that a particular quantity of goods are delivered to and received by the Grantee or title to the goods is transferred to the Grantee and/or as of the date particular services are rendered for the Grantee. Funds are *not* expended and an expenditure has *not* occurred as of the date they are encumbered by the Grantee pursuant to a contract or purchase order with a third party.

ARTICLE V. EARLY TERMINATION

A. Early Termination Before Reversion Date Due to Completion of the Project or Complete Expenditure of the Adjusted Appropriation or Violation of this Agreement

Early Termination includes:

- (i) Termination due to completion of the Project before the Reversion Date; or
- (ii) Termination due to complete expenditure of the Adjusted Appropriation Amount before the Reversion Date; or
- (iii) Termination for violation of the terms of this Agreement; or
- (iv) Termination for suspected mishandling of public funds, including but not limited to, fraud, waste, abuse, and conflicts of interest.

Either the Department or the Grantee may early terminate this Agreement prior to the Reversion Date by providing the other party with a minimum of fifteen (15) days' advance, written notice of early termination. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(A).

B. Early Termination Before Reversion Date Due to Non-appropriation

The terms of this Agreement are expressly made contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. Throughout this Agreement the term "non-appropriate" or "non-appropriation" includes the following actions by the New Mexico Legislature: deauthorization, reauthorization or revocation of a prior authorization. The Legislature may choose to non-appropriate the Appropriation referred to in Article I and, if that occurs, the Department shall early terminate this Agreement for non-appropriation by giving the Grantee written notice of such termination, and such termination shall be effective as of the effective date of the law making the non-appropriation. The Department's decision as to whether sufficient appropriations or authorizations are available shall be accepted by the Grantee and shall be final. Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department pursuant to Article V(B).

C. Limitation on Department's Obligation to Make Grant Disbursements to Grantee in the Event of Early Termination

In the event of Early Termination of this Agreement by either party, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth Article II.

ARTICLE VI. SUSPENSION OF NEW OR FURTHER OBLIGATIONS

A. The Department may choose, in its sole and absolute discretion, to provide written notice to the Grantee to suspend entering into new and further obligations. Upon the receipt of such written notice by the Grantee:

- (i) The Grantee shall immediately suspend entering into new or further written obligations with third parties; and
- (ii) The Department will suspend the issuance of any new or further Notice of Obligation under this Agreement; and
- (iii) The Department may direct the Grantee to implement a corrective action plan in accordance with Article VI(D) herein.

B. In the event of Suspension of this Agreement, the Department's sole and absolute obligation to reimburse the Grantee is expressly conditioned upon the limitations set forth in Article II herein.

C. A suspension of new or further obligations under this Agreement shall remain in effect unless or until the date the Grantee receives written notice given by the Department informing the Grantee that the Suspension has been lifted or that the Agreement has been Early Terminated in accordance with Article V herein. If the Suspension is lifted, the Department will consider further requests for Notice of Obligation.

D. Corrective Action Plan in the Event of Suspension

In the event that the Department chooses, in its sole and absolute discretion to direct the Grantee to suspend entering into new or further written obligations with third parties pursuant to Article VI(A), the Department may, but is not obligated to, require the Grantee to develop and implement a written corrective action plan to remedy the grounds for the Suspension. Such corrective action plan must be approved by the Department and be signed by the Grantee. Failure to sign a corrective action plan or meet the terms and deadlines set forth in the signed corrective action plan, is hereby deemed a violation of the terms of this Agreement for purposes of Early Termination, Article V(A)(iii). The corrective action plan is in addition to, and not in lieu of, any other equitable or legal remedy, including but not limited to Early Termination.

ARTICLE VII. AMENDMENT

This Agreement shall not be altered, changed, or amended except by instrument in writing duly executed by both the parties hereto.

ARTICLE VIII. REPORTS

A. Database Reporting

The Grantee shall report monthly Project activity by entering such Project information as the Department and the Department of Finance and Administration may require, such information entered directly into a database maintained by the Department of Finance and Administration (<http://cpms.dfa.state.nm.us>). Additionally, the Grantee shall certify on the Request for Payment form (Exhibit 1) that updates have been maintained and are current in the database. The Grantee hereby acknowledges that failure to perform and/or certify updates into the database will delay or potentially jeopardize the reimbursement of funds. The Department shall give Grantee a minimum of thirty (30) days' advance written notice of any changes to the information the Grantee is required to report.

Monthly reports shall be due on the last day of each month, beginning with the first full month following execution of this Agreement by the Department and ending upon the submission of the final request for reimbursement for the Project.

B. Requests for Additional Information/Project Inspection

During the term of this Agreement and during the period of time during which the Grantee must maintain records pursuant to Article VIII, the Department may:

- (i) request such additional information regarding the Project as it deems necessary; and
- (ii) conduct, at reasonable times and upon reasonable notice, onsite inspections of the Project.

Grantee shall respond to such requests for additional information within a reasonable period of time, as established by the Department.

ARTICLE IX. REQUEST FOR PAYMENT PROCEDURES AND DEADLINES

A. The Grantee shall request payment by submitting a Request for Payment, in the form attached hereto as Exhibit 1. Payment requests are subject to the following procedures:

- (i) The Grantee must submit a Request for Payment; and
- (ii) Each Request for Payment must contain proof of payment by the Grantee or liabilities incurred by the Grantee showing that the expenditures are valid or are liabilities incurred by the Grantee in the form of actual unpaid invoices received by the Grantee for services rendered by a third party or items of tangible personal property received by the Grantee for the implementation of the Project; provided, however, that the Grantee may be reimbursed for unpaid liabilities only if the Department, in its sole and absolute discretion, agrees to do so and in accordance with any special conditions imposed by the Department.
- (iii) In cases where the Grantee is submitting a Request for Payment to the Department based upon invoices received, but not yet paid, by the Grantee from a third party contractor or vendor, if the invoices comply with the provisions of this Agreement and are a valid liability of the Grantee, the Grantee shall make payment to those contractors or vendors within five (5) business days from the date of receiving reimbursement from the Department or such shorter period of time as the Department may prescribe in writing. The Grantee is required to certify to the Department proof of payment to the third party contractor or vendor within ten (10) business days from the date of receiving reimbursement from the Department.

B. The Grantee must obligate 5% of the Adjusted Appropriation Amount within six months of acceptance of the grant agreement and must have expended no less than 85% of the Adjusted Appropriation Amount six months prior to the reversion date.

C. Deadlines

Requests for Payments shall be submitted by Grantee to the Department on the earlier of:

- (i) Immediately as they are received by the Grantee but at a minimum thirty (30) days from when the expenditure was incurred or liability of the Grantee was approved as evidenced by an unpaid invoice received by the Grantee from a third party contractor or vendor; or
- (ii) Twenty (20) days from date of Early Termination; or
- (iii) Twenty (20) days from the Reversion Date.

D. The Grantee's failure to abide by the requirements set forth in Article II and Article IX herein will result in the denial of its Request for Payment or will delay the processing of Requests for Payment. The Department has the right to reject a payment request for the Project unless and until it is satisfied that the expenditures in the Request for Payment are for permissible purposes within the meaning of the Project Description and that the expenditures and the Grantee are otherwise in compliance with this Agreement, including but not limited to, compliance with the reporting requirements and the requirements set forth in Article II herein to provide Third Party Obligations and the Deadlines set forth in Article IX herein. The Department's ability to reject any Request for Payment is in addition to, and not in lieu of, any other legal or equitable remedy available to the Department due to Grantee's violation of this Agreement.

ARTICLE X. PROJECT CONDITIONS AND RESTRICTIONS; REPRESENTATIONS AND WARRANTIES

- A. The following general conditions and restrictions are applicable to the Project:
- (i) The Project's funds must be spent in accordance with all applicable state laws, regulations, policies, and guidelines, including, but not limited to, the State Procurement Code (or local procurement ordinance, where applicable).
 - (ii) The Project must be implemented in accordance with the New Mexico Public Works Minimum Wage Act, Section 13-4-10 through 13-4-17 NMSA 1978, as applicable. Every contract or project in excess of sixty thousand dollars (\$60,000) that the Grantee is a party to for construction, alteration, demolition or repair or any combination of these, including painting and decorating, of public buildings, public works or public roads and that requires or involves the employment of mechanics, laborers or both shall contain a provision stating the minimum wages and fringe benefits to be paid to various classes of laborers and mechanics, shall be based upon the wages and benefits that will be determined by the New Mexico Department of Workforce Solutions to be prevailing for the corresponding classes of laborers and mechanics employed on contract work of a similar nature in the locality. Further, every contract or project shall contain a stipulation that the contractor, subcontractor, employer or a person acting as a contractor shall pay all mechanics and laborers employed on the site of the project, unconditionally and not less often than once a week and without subsequent unlawful deduction or rebate on any account, the full amounts accrued at time of payment computed at wage rates and fringe benefit rates not less than those determined pursuant to Section 13-4-11 (B) NMSA 1978 to be the prevailing wage rates and prevailing fringe benefit rates issued for the project.
 - (iii) The Project may only benefit private entities in accordance with applicable law, including, but not limited to, Article IX, Section 14 of the Constitution of the State of New Mexico, the "Anti-Donation Clause."
 - (iv) The Grantee shall not for a period of 10 years from the date of this agreement convert any property acquired, built, renovated, repaired, designed or developed with the Project's funds to uses other than those specified in the Project Description without the Department's and the Board of Finance's express, advance, written approval, which may include a requirement to reimburse the State for the cost of the project, transfer proceeds from the disposition of property to the State, or otherwise provide consideration to the State.
 - (v) The Grantee shall comply with all federal and state laws, rules and regulations pertaining to equal employment opportunity. In accordance with all such laws, rules and regulations the Grantee agrees to assure that no person shall, on the grounds of race, color, national origin, sex, sexual preference, age or handicap, be excluded from employment with Grantee, be excluded from participation in the Project, be denied benefits or otherwise be subject to discrimination under, any activity performed under this Agreement. If Grantee is found to be not in compliance with these requirements during the life of this Agreement, Grantee agrees to take appropriate steps to correct any deficiencies. The Grantee's failure to implement such appropriate steps within a reasonable time constitutes grounds for terminating this Agreement.
- B. The Grantee hereby represents and warrants the following:
- (i) The Grantee has the legal authority to receive and expend the Project's funds.

- (ii) This Agreement has been duly authorized by the Grantee, the person executing this Agreement has authority to do so, and, once executed by the Grantee, this Agreement shall constitute a binding obligation of the Grantee, enforceable according to its terms.
- (iii) This Agreement and the Grantee's obligations hereunder do not conflict with any law or ordinance or resolution applicable to the Grantee, the Grantee's charter (if applicable), or any judgment or decree to which the Grantee is subject.
- (iv) The Grantee has independently confirmed that the Project Description, including, but not limited to, the amount and Reversion Date, is consistent with the underlying appropriation in law.
- (v) The Grantee's governing body has duly adopted or passed as an official act a resolution, motion, or similar action authorizing the person identified as the official representative of the Grantee to sign the Agreement and to sign Requests for Payment.
- (vi) The Grantee shall abide by New Mexico laws regarding conflicts of interest, governmental conduct and whistleblower protection. The Grantee specifically agrees that no officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who exercises any function or responsibility with respect to this Grant, during their tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed or goods to be received, pursuant to this Grant. Further, Grantee shall require all of its contractors to incorporate in all subcontracts the language set forth in this paragraph prohibiting conflicts of interest.
- (vii) No funds have been paid or will be paid, by or on behalf of the Grantee, to any person for influencing or attempting to influence an officer or employee of this or any agency or body in connection with the awarding of any Third Party Obligation and that the Grantee shall require certifying language prohibiting lobbying to be included in the award documents for all subawards, including subcontracts, loans and cooperative agreements. All subrecipients shall be required to certify accordingly.

ARTICLE XI. STRICT ACCOUNTABILITY OF RECEIPTS AND DISBURSEMENTS; PROJECT RECORDS

A. The Grantee shall be strictly accountable for receipts and disbursements relating to the Project's funds. The Grantee shall follow generally accepted accounting principles, and, if feasible, maintain a separate bank account or fund with a separate organizational code, for the funds to assure separate budgeting and accounting of the funds.

B. For a period of six (6) years following the Project's completion, the Grantee shall maintain all Project related records, including, but not limited to, all financial records, requests for proposals, invitations to bid, selection and award criteria, contracts and subcontracts, advertisements, minutes of pertinent meetings, as well as records sufficient to fully account for the amount and disposition of the total funds from all sources budgeted for the Project, the purpose for which such funds were used, and such other records as the Department shall prescribe.

C. The Grantee shall make all Project records available to the Department, the Department of Finance and Administration, and the New Mexico State Auditor upon request. With respect to the funds that are the subject of this Agreement, if the State Auditor or the Department of Finance and Administration finds that any

or all of these funds were improperly expended, the Grantee may be required to reimburse to the State of New Mexico, to the originating fund, any and all amounts found to be improperly expended.

ARTICLE XII. IMPROPERLY REIMBURSED FUNDS

If the Department determines that part or all of the Appropriation Amount was improperly reimbursed to Grantee, including but not limited to, Project funds reimbursed to Grantee based upon fraud, mismanagement, misrepresentation, misuse, violation of law by the Grantee, or violation of this Agreement, the Grantee shall return such funds to the Department for disposition in accordance with law.

ARTICLE XIII. LIABILITY

Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to immunities and limitations of the New Mexico Tort Claims Act.

ARTICLE XIV. SCOPE OF AGREEMENT

This Agreement constitutes the entire and exclusive agreement between the Grantee and Department concerning the subject matter hereof. The Agreement supersedes any and all prior or contemporaneous agreements, understandings, discussions, communications, and representations, written or verbal.

ARTICLE XV. REQUIRED NON-APPROPRIATIONS CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

The Grantee acknowledges, warrants, and agrees that Grantee shall include a "non-appropriations" clause in all contracts between it and other parties that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement that states:

"The terms of this Agreement are contingent upon sufficient appropriations and authorization being made by the Legislature of New Mexico for the performance of this Agreement. If sufficient appropriations and authorization are not made by the Legislature, the City of Las Cruces in partnership with Downtown Las Cruces Partnership may immediately terminate this Agreement by giving Contractor written notice of such termination. The City of Las Cruces in partnership with Downtown Las Cruces Partnership's decision as to whether sufficient appropriations are available shall be accepted by the Contractor and shall be final. Contractor hereby waives any rights to assert an impairment of contract claim against the City of Las Cruces in partnership with Downtown Las Cruces Partnership or the Economic Development Department or the State of New Mexico in the event of immediate or Early Termination of this Agreement by the City of Las Cruces in partnership with Downtown Las Cruces Partnership or the Department"

ARTICLE XVI. REQUIRED TERMINATION CLAUSE IN CONTRACTS FUNDED IN WHOLE OR PART BY FUNDS MADE AVAILABLE UNDER THIS AGREEMENT

Grantee acknowledges, warrants, and agrees that Grantee shall include the following termination clause in all contracts that are (i) funded in whole or part by funds made available under this Agreement and (ii) entered into after the effective date of this Agreement:

"This contract is funded in whole or in part by funds made available under an Economic Development Department Grant Agreement. Should the Economic Development Department early terminate the grant agreement, the City of Las Cruces in partnership with Downtown Las Cruces Partnership may early terminate this contract by providing Contractor written notice of such termination. In the event of termination pursuant to this paragraph, the City of Las Cruces in partnership with Downtown Las Cruces Partnerships's only liability shall be to pay Contractor for acceptable goods delivered and services rendered before the termination date."

Grantee hereby waives any rights to assert an impairment of contract claim against the Department or the State of New Mexico in the event of Early Termination of this Agreement by the Department.

ARTICLE XVII. COMPLIANCE WITH UNIFORM FUNDING CRITERIA.

A. Throughout the term of this Agreement, Grantee shall:

1. submit all reports of annual audits and agreed upon procedures required by Section 12-6-3(A)-(B) NMSA 1978 by the due dates established in 2.2.2 NMAC, reports of which must be a public record pursuant to Section 12-6-5(A) NMSA 1978 within forty-five days of delivery to the State Auditor;
2. have a duly adopted budget for the current fiscal year approved by its budgetary oversight agency (if any);
3. timely submit all required financial reports to its budgetary oversight agency (if any); and
4. have adequate accounting methods and procedures to expend grant funds in accordance with applicable law and account for and safeguard grant funds and assets acquired by grant funds.

B. In the event Grantee fails to comply with the requirements of Paragraph A of this Article XVII, the Department may take one or more of the following actions:

1. suspend new or further obligations pursuant to Article VI(A) of this Agreement;
2. require the Grantee to develop and implement a written corrective action plan pursuant to Article VI(D) of this Agreement to remedy the non-compliance;
3. impose special grant conditions to address the non-compliance by giving the Grantee notice of such special conditions in accordance with Article III of this Agreement; the special conditions shall be binding and effective on the date that notice is deemed to have been given pursuant to Article III; or
4. terminate this Agreement pursuant to Article V(A) of this Agreement.

ARTICLE XVIII. SEVERANCE TAX BOND AND GENERAL OBLIGATION BOND PROJECT CLAUSES

A. Grantee acknowledges and agrees that the underlying appropriation for the Project is a severance tax bond or general obligation bond appropriation, and that the associated bond proceeds are administered by the New Mexico State Board of Finance (SBOF), an entity separate and distinct from the Department. Grantee acknowledges and agrees that (i) it is Grantee's sole and absolute responsibility to determine through SBOF staff what (if any) conditions are currently imposed on the Project; (ii) the Department's failure to inform Grantee of a SBOF imposed condition does not affect the validity or enforceability of the condition; (iii) the SBOF may in the future impose further or different conditions upon the Project; (iv) all SBOF conditions are effective without amendment of this Agreement; (v) all applicable SBOF conditions must be satisfied before the SBOF will release to the Department funds subject to the condition(s); and (vi) the Department's obligation to reimburse Grantee from the Project is contingent upon the then current SBOF conditions being satisfied.

B. Grantee acknowledges and agrees that the SBOF may in its sole and absolute discretion remove a project's assigned bond proceeds if the project doesn't proceed sufficiently. Entities must comply with the requirement to encumber five percent (5%) of Project funds within six months of bond issuance as certified by the grantee in the Bond Questionnaire and Certification documents submitted to the SBOF. Failure to comply may result in the bond proceeds reassignment to a new ready project. If this should occur this grant agreement will be suspended until the entity has demonstrated readiness as determined by the SBOF and the Department.

C. Grantee acknowledges and agrees that this Agreement is subject to the SBOF's Bond Project Disbursements rule, NMAC 2.61.6, as may be amended or re-codified. The rule provides definitions and interpretations of grant language for the purpose of determining whether a particular activity is allowable under the authorizing language of the agreement.

[THIS SPACE LEFT BLANK INTENTIONALLY]

Grant Number: 419-A22G2074-2309

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the date of execution by the Department.

GRANTEE



Signature of Official with Authority to Bind Grantee

City of Las Cruces

Entity Name

By: Ifo Pili, City Manager

(Type or Print Name)

Date 4/21/23



Signature of MainStreet President

By: ROBERT CRUISE

(Type or Print Name)

Date 4/24/2023

ECONOMIC DEVELOPMENT DEPARTMENT



By: _____
Cabinet Secretary

4/28/2023

Date



By: _____
Legal Counsel -- Certifying legal sufficiency

4/28/2023

Date

STATE OF NEW MEXICO CAPITAL GRANT PROJECT Request for Payment Form Exhibit 1			
I. Grantee Information (Make sure information is complete & accurate) A. Grantee: _____ B. Address: _____ (Complete Mailing, including Suite, if applicable) City State Zip C. Phone No: _____ D. Grant No: _____ E. Project Title: _____ F. Grant Expiration Date: _____		II. Payment Computation A. Payment Request No. _____ B. Grant Amount: _____ C. AIPP Amount <i>(If Applicable)</i> : _____ D. Funds Requested to Date: _____ E. Amount Requested this Payment: _____ F. Reversion Amount <i>(If Applicable)</i> : _____ G. Grant Balance: _____ H. ☐ GF ☐ GOB ☐ STB <i>(attach wire if first draw)</i> I. ☐ Final Request for Payment <i>(if Applicable)</i>	
III. Fiscal Year : _____ (The State of NM Fiscal Year is July 1, 20XX through June 30, 20XX of the following year)			
IV. ☐ Reporting Certification: I hereby certify to the best of my knowledge and belief, that database reporting is up to date; to include the accuracy of expenditures and grant balance, project status, project phase, achievements and milestones; and in compliance with Article VIII of the Capital Outlay Grant Agreement.			
V. ☐ Compliance Certification: Under penalty of law, I hereby certify to the best of my knowledge and belief, the above information is correct; expenditures are properly documented, and are valid expenditures or actual receipts; and that the grant activity is in full compliance with Article IX, Sec. 14 of the New Mexico Constitution known as the "anti donation" clause.			
Grantee Fiscal Officer or Fiscal Agent (if applicable)		Grantee Representative	
Printed Name _____ Date: _____		Printed Name _____ Date: _____	
(State Agency Use Only)			
Vendor Code: _____ Fund No.: _____ Loc No.: _____			
I certify that the State Agency financial and vendor file information agree with the above submitted information.			
Division Fiscal Officer _____ Date _____		Division Project Manager _____ Date _____	

**NOTICE OF OBLIGATION TO REIMBURSE GRANTEE
EXHIBIT 2**

Notice of Obligation to Reimburse Grantee [# 1]

DATE: [REDACTED]

TO: Department Representative: [REDACTED]

FROM: Grantee: [REDACTED]

Grantee Official Representative: [REDACTED]

SUBJECT: Notice of Obligation to Reimburse Grantee

Grant Number: [REDACTED]

Grant Termination Date: [REDACTED]

As the designated representative of the Department for Grant Agreement number [REDACTED] entered into between Grantee and the Department, I certify that the Grantee has submitted to the Department the following third party obligation executed, in writing, by the third party's authorized representative:

Vendor or Contractor: [REDACTED]

Third Party Obligation Amount: [REDACTED]

Vendor or Contractor: [REDACTED]

Third Party Obligation Amount: [REDACTED]

Vendor or Contractor: [REDACTED]

Third Party Obligation Amount: [REDACTED]

I certify that the State is issuing this Notice of Obligation to Reimburse Grantee for permissible purposes within the scope of the project description, subject to all the terms and conditions of the above referenced Grant Agreement.

Grant Amount (Minus AIPP if applicable): [REDACTED]

The Amount of this Notice of Obligation: [REDACTED]

The Total Amount of all Previously Issued Notices of Obligation: [REDACTED]

The Total Amount of all Notices of Obligation to Date: [REDACTED]

Note: Contract amounts may exceed the total grant amount, but the invoices paid by the grant will not exceed the grant amount.

Department Rep. Approver: [REDACTED]

Signature: [REDACTED]

Date: [REDACTED]

1 Administrative and/or Indirect Cost – generally, the legislation authorizing the issuance of bonds prohibits the use of its proceeds for indirect expenses (e.g. penalty fees or damages other than pay for work performed, attorney fees, and administrative fees). Such use of bond proceeds shall not be allowed unless specifically authorized by statute.



EXHIBIT 3 GRANTEE MATCH DETAIL FORM

to be completed by the Grantee and *submitted with each Payment Request Form*

The Grantee is required to provide a matching contribution valued at two dollars (\$2.00) in match for every ten dollars (\$10.00) of the total Grant Amount. At least sixty percent (60%) of the Grantee's match must be in the form of cash, and the remainder may be in the form of in-kind contributions by the Grantee. Communities receiving funds for Great Blocks on MainStreet construction-ready documents must provide a full 20% cash match. Grantees are expected to keep accurate and timely records documenting matching contributions. The Grantee Match Detail form must be included with each Request for Reimbursement.

An in-kind contribution is any service or item of cost that is necessary for the completion of the work and that has a verifiable and accountable economic value. Some examples of in-kind contributions include:

- MainStreet Executive Director's time dedicated to coordinating project activities;
- Value of the time and cost associated with assigning municipal staff to project activities;
- Items of cost borne by the municipality or one of the municipality's partners in the project;
- Cost of publicizing notices of meetings and events.

I. Grantee Information

Grant Number _____ Grantee _____

Title of Project _____ Total Grant Amount _____

Total Payment Request _____ Date of Request _____

II. Grantee Match Breakdown

☐ Cash Match *specify dollar amount* _____

☐ In-Kind Match *specify value* _____

Total Match for this Payment _____ Total Match to Date _____

III. Explanation of Grantee Match

Provide a detailed explanation of grantee match for this payment

EXAMPLE

Item #	Description	Dollar Amount
1	Cash GFT paid to contractor	\$3,500
2	In-Kind MainStreet Manager's time: 30 hours at \$20.00/hour	\$600
Total Match by Grantee for this Payment		\$4,100

To be filled out by Grantee

Item #	Description	Dollar Amount
1		
2		
3		
4		
Total Match by Grantee for this Payment		

Agenda Item #9.4.

- Detailed budget breakdown of expenditures to date - If no expenditures to date, indicate your estimated timeline for spending the grant money

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- Description of any problems or delays encountered

- Any other information that may be of assistance to the Economic Development Department in its evaluation of your progress

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2. Grant Amount _____

Expended to Date _____

Grant Balance _____

I hereby certify that the aforementioned Capital Outlay Project funds are being expended in accordance with the Project description (Exhibit A) of the executed Grant Agreement, and in compliance with all other applicable state statutory/regulatory requirements.

Name/Title *please print*

Signature _____

Date _____

Please return to New Mexico MainStreet via julie.blanke@edd.nm.gov

**ATTACHMENT A
PROJECT DESCRIPTION & SCOPE OF WORK**

Name of Grantee(s): City of Las Cruces in partnership with and for the benefit of Downtown Las Cruces Partnership.

Grant Amount: \$900,000.00. Grantee to provide 20% match: at least 60% cash, 40% in-kind services

Project Name: Arts & Cultural District Gateway & Lighting project

Project Description: Develop construction documents and initiate installation for the Arts & Cultural District Gateway & Lighting project.

Signature: 

Email: jrubalcava@las-cruces.org

Signature: 
Elizabeth Teeters (Apr 14, 2023 09:51 MDT)

Email: eteeters@las-cruces.org

MOU CLC-NMSU
LCPD Summer Youth Leadership Academy
FY2023

YOUTH LEADERSHIP ACADEMY

Memorandum of Understanding

Between the

City of Las Cruces Police Department

And New Mexico State University Board of Regents

FORWARD

The City of Las Cruces (City) Las Cruces Police Department (LCPD) and New Mexico State University-Board of Regents (NMSU) have a history of mutual support and strong bond of supporting young people in our community. The LCPD Summer Youth Leadership Academy provides an opportunity for young people to develop their leadership skills and become productive and positive members of their community. The effective interaction of government and education is vital for the well-being of our children and the future of all our youth. School Resource Officers (SRO) work to provide a safe learning environment in the schools. Provide valuable resources to school staff, foster positive relationship with the youth in the schools and develop strategies to resolve problems affecting the school community.

INTRODUCTION

This Memorandum sets out the understanding of the City of Las Cruces on behalf of its police department and NMSU of the responsibilities, principles, working practices and financial responsibility that underlie the relationship between them.

This document shall be finding on both parties as a statement of intent designed to guide officials and support the development of detailed working arrangements.

GOALS AND OBJECTIVES

1. To create and provide a safe learning environment in the schools
 - a. Foster a positive relationship with the youth, school staff and SRO's.
 - b. Support the goals of LCPS's "Character Counts" curricula
 - c. Develop positive skills through mentoring and teamwork
2. Continue a lasting relationship between the police department, NMSU, the school district and the students, which will encourage communications and serve to develop a continually focused, effective collaboration to the benefit of our youth.
 - a. Involve students through leadership activities and workshops

- b. Build relationships with the young people in attendance at the academy, to promote positive connection throughout the youth's school career and beyond
- c. Additionally, work with and on behalf of young people promoting bullying prevention, advocacy, and education

MISSION STATEMENT

Our mission is to motivate and mentor potential young leaders, to enable them to take an active role in their school and community.

We hope to assist in building strong leaders who have hope for the future and the tools to influence a positive and safe community.

ROLES AND RESPONSIBILITIES

- The functions of each party are established by governing rules, regulations, policies, procedures, and statutes. Neither party shall be asked to compromise their internal responsibilities as a result of this partnership.
- SECTION ONE – THE CITY ON BEHALF OF ITS POLICE DEPARTMENT AGREES:
 - LCPD will provide a budget to NMSU for the LCPD Summer Youth Leadership Academy;
 - LCPD will not expend any funds up to \$6,000.00 until the Memorandum of Understanding between the City and NMSU has been fully executed by both parties and the funding accepted by the City Council;
 - LCPD shall act as fiscal agent for funding by setting up a city account that is dedicated to this program to promote accurate tracking of expenditures, reimbursement requests and payments;
 - Financial reporting will be accomplished through the LCPD and the City of Las Cruces Accounting Office; and
 - Provide to NMSU a final programmatic report
- SECTION TWO – NEW MEXICO STATE UNIVERSITY-COLLEGE OF ARTS AND SCIENCES AGREES:
 - NMSU will provide funding not to exceed \$6,000.00 (\$3,000.00 per session) to provide materials and supplies for the LCPD Youth Leadership Academy;
 - Funding is contingent on an NMSU approved LCPD budget and approval of the Memorandum of Understanding by New Mexico State University;
 - To recognize that acceptance of funding is contingent on the approval of this Memorandum of Understanding and ratification of the City Manager's

signature by the City of Las Cruces City Council through a resolution authorizing the receipt and expenditure of funds associated with the LCPD Summer Youth Academy;

- Funding will be on a cost reimbursement basis, by means of an invoice to the NMSU;
- The period of performance to complete activities and expenditures for the Summer Youth Academy will be May 15, 2023 through July 15, 2023.

- **SECTION THREE-LIABILITY:**

- Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.

PARTNER INVOLVEMENT IN COMMUNITY POLICING

The LCPD and the New Mexico State University-Board of Regents are developing and implementing a new and innovative strategy to achieve needed results for our community and youth. This program will only serve to strengthen and verify those efforts. Both parties will strive to proactively solve problems and strengthen the bonds of cooperation within our community of interest.

- A shared focus on providing an effective and efficient service
- The maintenance of key relationships in a flexible way
- An open and cooperative dialogue on strategic and key issues
- A cooperative approach to settling issues of roles and responsibilities
- A transparent relationship which works effectively at all levels to meet the needs and challenges facing our youth.

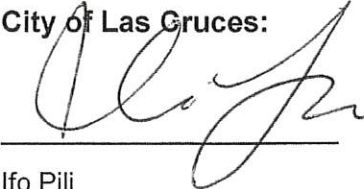
The LCPD and NMSU aim jointly to:

- Enable each party to deliver its services in an effective manner in support of the program objective.
- Enable each party to participate in the development of future procedures in a cooperative atmosphere.

This Agreement shall not be altered, changed, or amended except by an instrument, in writing, executed and approved by all parties.

The following parties have executed Agreement specified on the dates below.

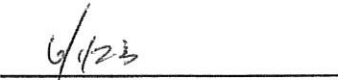
City of Las Cruces:



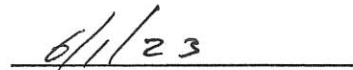
Ifo Pili
City Manager
City of Las Cruces



Miguel Dominguez
Chief of Police
City of Las Cruces



Date



Date

New Mexico State University:

Dr R. T. James
McAteer

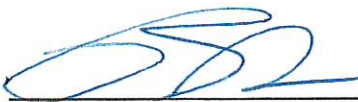
Digitally signed by Dr R. T. James McAteer
Date: 2023.05.22 11:21:28 -06'00'

Printed Name Robert T. J. McAteer, Senior Associate Provost
Provost Office
New Mexico State University

05/22/2023

Date

APPROVED AS TO FORM:



5/31/23

City Attorney



City Council Action and Executive Summary

24-007

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A
1st Reading:	Adopted: July 3, 2023
Drafter:	Lisa Padron
Program:	Purchasing
Department:	Financial Services
Line of Business:	Procure-to-Pay

Title:

A RESOLUTION TO AWARD CONTRACTS FOR SURVEY SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC., COBB, FENDLEY & ASSOCIATES INC., CONSTRUCTION SURVEY TECHNOLOGIES, INC., FRANK X. SPENCER AND ASSOCIATES, INC., HIGH MESA CONSULTING GROUP, LIBBIN UNDERWOOD ENGINEERING & SURVEYING, LLC, AND SOUDER, MILLER & ASSOCIATES, FOR INDEFINITE COST, INDEFINITE QUANTITY FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR FOUR (4) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-032).

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

PURPOSE(S) OF ACTION:
To award contracts for surveying services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
In February 2023, Engineering and Architecture Section of the Public Works Department requested proposals for surveying services. The Purchasing Section received seven (7) proposals that were evaluated and scored by the Selection Advisory Committee (SAC) (see Attachment "A"). The SAC is recommending award to all seven (7) rated firms as follows:

- 1. Bohannan Huston, Inc. - Las Cruces, New Mexico
- 2. Cobb, Fendley & Associates, Inc. - Albuquerque, New Mexico
- 3. Construction Survey Technologies, Inc. - Las Cruces, New Mexico
- 4. Frank X. Spencer and Associates, Inc. - El Paso, Texas
- 5. High Mesa Consulting Group - Albuquerque, New Mexico
- 6. Libbin Underwood Engineering & Surveying, LLC - Las Cruces, New Mexico
- 7. Miller Engineers, Inc. DBA Souder, Miller & Associates - Las Cruces, New Mexico

As a municipality responsible for providing and supporting a vast array of public services including, but not limited to, public utilities, roadways, parks, athletic fields, building structures, the City requires services from Surveyors having in-house capabilities for providing professional surveying services on large, multifaceted projects from start to finish with preference for firms having minimal reliance on outside consultants.

To meet the need for required surveying services and to do so in an efficient, effective manner, the City establishes Surveying Services Agreements, herein referred to as "Agreements", with multiple Surveyors.

Agenda Item #9.5.

Projects identified throughout each year are assigned to contracted firms, on an as-needed basis, such enabling projects to be completed in a timely manner.

SUPPORT INFORMATION:

[Exhibit "A" 22-23-032 Surveying Services PSA - Bohannon Huston - CA approved](#)

[Exhibit "B" 22-23-032 Surveying Services PSA - Cobb Fendley - CA approved](#)

[Exhibit "C" 22-23-032 Surveying Services PSA - Construction Survey Technologies - CA approved](#)

[Exhibit D 22-23-032 Surveying Services PSA - Frank X Spencer - CA approved](#)

[Exhibit "E" 22-23-032 Surveying Services PSA - High Mesa Consulting Group - CA approved](#)

[Exhibit "F" 22-23-032 Surveying Services PSA - Libbin Underwood - CA approved](#)

[Exhibit "G" 22-23-032 Surveying Services PSA - Souder Miller - CA approved](#)

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 Resolution and award contracts to the seven (7) selected pre-qualified firms, to provide surveying services for the City on an as-needed basis, to each firm for indefinite cost, indefinite quantity, for the next four years subject to annual renewals and approved budget appropriations.

2. Vote "No"; this will not approve the Resolution, and City Council will need to provide staff with alternative direction.

3. Vote to "Amend"; this could modify the Resolution based on City Council direction to staff.

4. Vote to "Table"; this could delay awarding contracts for surveying services and prevent completion of budgeted projects.

RESOLUTION 24-007

A RESOLUTION TO AWARD CONTRACTS FOR SURVEY SERVICES ON AN AS-NEEDED BASIS TO BOHANNAN HUSTON, INC., COBB, FENDLEY & ASSOCIATES INC., CONSTRUCTION SURVEY TECHNOLOGIES, INC., FRANK X. SPENCER AND ASSOCIATES, INC., HIGH MESA CONSULTING GROUP, LIBBIN UNDERWOOD ENGINEERING & SURVEYING, LLC, AND SOUDER, MILLER & ASSOCIATES, FOR INDEFINITE COST, INDEFINITE QUANTITY FOR A PERIOD OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR FOUR (4) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND APPROVED BUDGET APPROPRIATIONS (PROCUREMENT NO. 22-23-032).

The City Council is informed that:

WHEREAS, Engineering and Architecture Section of the Public works Department requested proposals for surveying services in February of 2023; and

WHEREAS, these services are required to provide professional surveying services on projects from start to finish; and

WHEREAS, the purpose of the surveying services Request for Proposals is to pre-qualify multiple firms that can provide professional surveying services; and

WHEREAS, these agreements will be used on an as-needed basis for a period of up to five (5) years, subject to annual renewals and approved budget appropriations; and

WHEREAS, the Purchasing Section received seven (7) proposals that were evaluated and scored by the Selection Advisory Committee (SAC); and

WHEREAS, the SAC is recommending award to all seven (7) rated firms as follows: Bohannon Huston, Inc., Cobb, Fendley & Associates, Inc., Construction Survey Technologies, Inc., Frank X. Spencer and Associates, Inc., High Mesa Consulting Group, Libbin Underwood Engineering & Surveying, LLC, and Miller Engineers, Inc. DBA Souder, Miller & Associates.

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

(I)

THAT the contracts for surveying services are hereby awarded to Bohannon Huston, Inc., Cobb, Fendley & Associates, Inc., Construction Survey Technologies, Inc., Frank X. Spencer and Associates, Inc., High Mesa Consulting Group, Libbin Underwood Engineering & Surveying, LLC, and Miller Engineers, Inc. DBA Souder, Miller & Associates, as shown in Exhibits "A" through "G", respectively, attached hereto and made part of this Resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-032
Survey Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Bohannon Huston, Inc., of 425 S. Telshor Blvd., Suite C-103, Las Cruces, NM, 88011-8237, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Surveying services on an as-needed basis via Project Assignment Agreements (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-032, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-032, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30, 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
- c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
- d. Coverage must be primary and non-contributory.
- e. Coverage must be per project or per location.
- f. Coverage must be on an occurrence form.
- g. Subrogation must be waived.
- 2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
- 3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
- 4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Tony Trevino, PE, CFM

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Bohannon Huston, Inc.
425 S. Telshor Blvd. Suite C-103
Las Cruces, NM 88011-8237
ATTENTION: Alan Benham, PS, PE, CFedS

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.

BOHANNAN HUSTON, INC.

CITY OF LAS CRUCES

BY: _____
Alan Benham, PS, PE, CFedS
Senior Vice President

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 6/20/2023

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Surveyor a detailed project description, including scope of work and any other special instructions needed by the Surveyor to prepare items such as preliminary and final cost estimates, complete project plans and specifications, project reports, and other related surveying services. The preferred Surveyors shall provide surveying services that may include but not be limited to, the following:

1. Boundary Surveys
2. Right-of-Way/Easement Surveys
3. Construction Layout Surveys
4. Engineering Design Surveys
5. Route Surveys
6. NMDOT survey & mapping
7. As-Built Surveys
8. Topographic Surveys
9. Control Surveys
10. Terrestrial or Drone scanning/imagery
11. Monument preservation and restoration
12. Other Survey Related Services
13. Subsurface utilities exploration (ASCE 38-22)
14. Expert witness in a judicial and/or quasi-judicial setting

- B. Project Assignment Agreements

A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Surveyor proposing to do the work. The cost proposal may utilize one of the following pricing formats:

1. Lump Sum
2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
3. An alternative unit cost breakdown

- C. Deliverables

Each project contract will require a list of deliverables, timeline and method of payment. The Surveyor may be required to supply to the City the following items, when specified and as requested on the Scope of Work for each individual project.

1. Preliminary report containing schedule of work and cost estimate.
2. Survey drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Surveying firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF

format of the survey for Department and Purchasing Section use.

- a. Legal descriptions and certified plats of survey (in accordance with the laws of the State, 12.8.2 Minimum Standards for Surveying in New Mexico, and City of Las Cruces Municipal Code), closure sheets, etc.
- b. Digital copies of field notes or printouts of field notes from electronic data collector.
- c. Sketches, plots (computer, overlay, and hand-drawn), serial photographs, or other drawings, on the medium and to the scale specified.
- d. Hard copies containing results including coordinates of items located or set in the field or calculated.
- e. ASCII file of all survey points in CSV format.
- f. Copy of other digital files (e.g. Trimble collector .JOB files, Trimble Business Center, raw scan files)
- g. Full scale PDF or DWF copy of all final product drawings, plats of survey, etc.
- h. Locations and descriptions of monuments set or reset, such as benchmarks, baseline control points, property corners, etc.
- i. Project reports, including boundary survey report, right-of-way report, control survey report, and survey accuracy statements.
- j. Computer discs containing results as stated above,
- k. Reproducible as-built drawings.
- l. Any other item specified in the contract for that project.
- m. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey and report shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:
 - Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey
 - Equipment/crew names used to conduct the Survey
 - Horizontal and vertical control marks used to tie the survey to the City approved control
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used
- n. "RECORD DRAWINGS" shall be clearly labeled on each sheet
- o. Preferred CAD format is the latest version of Autodesk Civil 3D (C3D) utilizing City-developed C3D templates, styles, and point codes to facilitate survey / engineering standards and field-to-finish workflows
- p. Topographic surveys shall utilize field-to-finish workflows that facilitate high precision TIN models
- q. All survey work performed for City projects will utilize City Coordinate System / horizontal/vertical datum, and use AutoCAD template settings
- r. Project reports (e.g. Control, Boundary)
- s. Any other item specified in the contract for that project

1. COST PROPOSAL

CATEGORY	RATE	UNIT
1. Direct costs	At Cost	
2. Indirect costs	At Cost	
3. Labor (hours) by major tasks		
a. Principal Surveyor	\$255	Hourly
b. Project Surveyor/Project Manager	\$230	Hourly
c. Senior Surveyor	\$195	Hourly
d. Design Surveyor	\$170	Hourly
e. Surveyor Intern	\$130	Hourly
f. Surveyor Technician	\$130	Hourly
g. Drafting Technician	\$115	Hourly
h. Survey Crew (1 person crew)	\$130	Hourly
i. Construction Inspector/Observer	\$130	Hourly
j. Administrative/Clerical	\$100	Hourly
k. Field testing & investigations	TBD	Hourly
4. Materials	At Cost	
5. Equipment	\$28	Hourly
6. Subcontractors	TBD if needed	
7. Any other proposed costs that may be incurred by the City.		
Vehicle Mileage Rate (per mile)	75.5 cents/mile	
Travel (Per Diem – per Day)	GSA Rate	

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-032 SURVEYING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-032 dated _____, 20__ between the CITY and Bohannan Huston, Inc., (CONTRACTOR), as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

- 1. In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-032 and CONTRACTOR's proposal as set forth in ATTACHMENT A attached hereto.
- 2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the CONTRACTOR.
- 3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of **\$dollars.cents**, plus NMGRT. Invoices issued by the CONTRACTOR shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

BOHANNAN HUSTON, INC.

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-032
Survey Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Cobb, Fendley & Associates, Inc., of 3820 Academy Parkway North NE, Albuquerque, New Mexico, 87109, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Surveying services on an as-needed basis via Project Assignment Agreements (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-032, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-032, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30, 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
- c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
- d. Coverage must be primary and non-contributory.
- e. Coverage must be per project or per location.
- f. Coverage must be on an occurrence form.
- g. Subrogation must be waived.
- 2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
- 3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
- 4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Tony Trevino, PE, CFM

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Cobb, Fendley & Associates, Inc.
3820 Academy Parkway North NE
Albuquerque, NM 87109
ATTENTION: Sean Wolfe, PG

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.

COBB, FENDLEY & ASSOCIATES,
INC.

CITY OF LAS CRUCES

BY: _____
Sean Wolfe, PG
Senior Vice President

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

City Attorney  6/20/2023

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Surveyor a detailed project description, including scope of work and any other special instructions needed by the Surveyor to prepare items such as preliminary and final cost estimates, complete project plans and specifications, project reports, and other related surveying services. The preferred Surveyors shall provide surveying services that may include but not be limited to, the following:

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12. Other Survey Related Services
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1. Lump Sum
2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
3. An alternative unit cost breakdown

- C. Deliverables

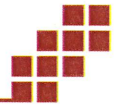
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2. Survey drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Surveying firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF

format of the survey for Department and Purchasing Section use.

- a. Legal descriptions and certified plats of survey (in accordance with the laws of the State, 12.8.2 Minimum Standards for Surveying in New Mexico, and City of Las Cruces Municipal Code), closure sheets, etc.
- b. Digital copies of field notes or printouts of field notes from electronic data collector.
- c. Sketches, plots (computer, overlay, and hand-drawn), serial photographs, or other drawings, on the medium and to the scale specified.
- d. Hard copies containing results including coordinates of items located or set in the field or calculated.
- e. ASCII file of all survey points in CSV format.
- f. Copy of other digital files (e.g. Trimble collector .JOB files, Trimble Business Center, raw scan files)
- g. Full scale PDF or DWF copy of all final product drawings, plats of survey, etc.
- h. Locations and descriptions of monuments set or reset, such as benchmarks, baseline control points, property corners, etc.
- i. Project reports, including boundary survey report, right-of-way report, control survey report, and survey accuracy statements.
- j. Computer discs containing results as stated above,
- k. Reproducible as-built drawings.
- l. Any other item specified in the contract for that project.
- m. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey and report shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:
 - Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey
 - Equipment/crew names used to conduct the Survey
 - Horizontal and vertical control marks used to tie the survey to the City approved control
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used
- n. "RECORD DRAWINGS" shall be clearly labeled on each sheet
- o. Preferred CAD format is the latest version of Autodesk Civil 3D (C3D) utilizing City-developed C3D templates, styles, and point codes to facilitate survey / engineering standards and field-to-finish workflows
- p. Topographic surveys shall utilize field-to-finish workflows that facilitate high precision TIN models
- q. All survey work performed for City projects will utilize City Coordinate System / horizontal/vertical datum, and use AutoCAD template settings
- r. Project reports (e.g. Control, Boundary)
- s. Any other item specified in the contract for that project

CobbFendley Cost Proposal



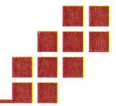
DIRECT LABOR		
CLASSIFICATION	RATE*	UNIT
Survey/SUE Principal	\$330.00	Hour
Survey/SUE Project Manager	\$199.00	Hour
Senior Surveyor	\$250.00	Hour
Design Surveyor	\$172.00	Hour
Intern Surveyor	\$119.00	Hour
Utility Specialist	\$142.00	Hour
SUE Supervisor	\$121.00	Hour
Utility Coordinator	\$109.00	Hour
Survey/SUE Field Technician	\$102.00	Hour
Survey/SUE Drafting Technician	\$75.00	Hour
Survey Crew (2 Person)**	\$164.00	Hour
SUE Crew (2 Person)	\$194.00	Hour
Administrative/Clerical	\$91.00	Hour
DIRECT EXPENSES		
TRAVEL	RATE	UNIT
Per Diem	Current IRS Rate	Day
Lodging	Current IRS Rate	Night
Vehicle Mileage	Current IRS Rate	Mile
IN-HOUSE REPRODUCTION	RATE*	UNIT
Black and White Prints (up to 11" x 17")	\$0.15	Sheet
Color Prints (up to 11" x 17")	\$1.50	Sheet
Color Prints (Larger than 11" x 17")	\$3.00	Sheet
Mylar Prints	\$12.00	Sheet
OTHER REIMBURSABLES	RATE	UNIT
Surveyor Field Data Device	\$40.00	Hour/Unit
Traffic Control Devices (Specialty Outside Contractor)	Cost + 10%	N/A
Title/Plat Charges	Cost + 10%	N/A
Special Equipment Rental	Cost + 10%	N/A
Permits (NMDOT, Railway, etc.)	Cost + 10%	N/A
Other Misc. Project Related	To Be Negotiated	N/A

* Rates include all overhead costs

** Survey crew rates DO NOT include GPS, Drones, and Total Station or Robotic Equipment

3/10/13

CobbFendley Cost Proposal



SUBSURFACE UTILITY ENGINEERING RATES		
CLASSIFICATION	RATE	UNIT
Quality Level C and D (Without QL B)	\$0.40	Utility Linear Foot
Quality Level B Designation (Without QL C and D)	\$1.20	Utility Linear Foot
Ground Penetrating Radar	\$296.00	Hour
Quality Level A Test Hole (Pothole)		
0 to 4 Feet Deep	\$970.00	Each
4 to 8 Feet Deep	\$1,120.00	Each
8 to 12 Feet Deep	\$1,600.00	Each
12 to 16 Feet Deep	\$2,150.00	Each
Greater than 16 Feet	\$335.00	Hour

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-032 SURVEYING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-032 dated _____, 20__ between the CITY and Cobb, Fendley & Associates, Inc., (CONTRACTOR), as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

1. In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-032 and CONTRACTOR's proposal as set forth in ATTACHMENT A attached hereto.
2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the CONTRACTOR.
3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of **\$dollars.cents**, plus NMGR. Invoices issued by the CONTRACTOR shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

COBB, FENDLEY & ASSOCIATES, INC.

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-032
Survey Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Construction Survey Technologies, of 277 E. Amador, Las Cruces, New Mexico, 88004, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Surveying services on an as-needed basis via Project Assignment Agreements (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-032, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

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The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-032, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30, 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
- a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers' Compensation and Employers Liability
- a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Tony Trevino, PE, CFM

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Construction Survey Technologies, Inc.
277 E. Amador
Las Cruces, NM 88004
ATTENTION: David Acosta, PS

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.

CONSTRUCTION SURVEY
TECHNOLOGIES, INC.

CITY OF LAS CRUCES

BY: _____
David Acosta, PS
President

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

City Attorney 6/20/2023

~~EXHIBIT~~
ATTACHMENT A

8/14

8/14

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Surveyor a detailed project description, including scope of work and any other special instructions needed by the Surveyor to prepare items such as preliminary and final cost estimates, complete project plans and specifications, project reports, and other related surveying services. The preferred Surveyors shall provide surveying services that may include but not be limited to, the following:

1. Boundary Surveys
2. Right-of-Way/Easement Surveys
3. Construction Layout Surveys
4. Engineering Design Surveys
5. Route Surveys
6. NMDOT survey & mapping
7. As-Built Surveys
8. Topographic Surveys
9. Control Surveys
10. Terrestrial or Drone scanning/imagery
11. Monument preservation and restoration
12. Other Survey Related Services
13. Subsurface utilities exploration (ASCE 38-22)
14. Expert witness in a judicial and/or quasi-judicial setting

- B. Project Assignment Agreements

A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Surveyor proposing to do the work. The cost proposal may utilize one of the following pricing formats:

1. Lump Sum
2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
3. An alternative unit cost breakdown

- C. Deliverables

Each project contract will require a list of deliverables, timeline and method of payment. The Surveyor may be required to supply to the City the following items, when specified and as requested on the Scope of Work for each individual project.

1. Preliminary report containing schedule of work and cost estimate.
2. Survey drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Surveying firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF

8/9/14

format of the survey for Department and Purchasing Section use.

- a. Legal descriptions and certified plats of survey (in accordance with the laws of the State, 12.8.2 Minimum Standards for Surveying in New Mexico, and City of Las Cruces Municipal Code), closure sheets, etc.
- b. Digital copies of field notes or printouts of field notes from electronic data collector.
- c. Sketches, plots (computer, overlay, and hand-drawn), serial photographs, or other drawings, on the medium and to the scale specified.
- d. Hard copies containing results including coordinates of items located or set in the field or calculated.
- e. ASCII file of all survey points in CSV format.
- f. Copy of other digital files (e.g. Trimble collector .JOB files, Trimble Business Center, raw scan files)
- g. Full scale PDF or DWF copy of all final product drawings, plats of survey, etc.
- h. Locations and descriptions of monuments set or reset, such as benchmarks, baseline control points, property corners, etc.
- i. Project reports, including boundary survey report, right-of-way report, control survey report, and survey accuracy statements.
- j. Computer discs containing results as stated above,
- k. Reproducible as-built drawings.
- l. Any other item specified in the contract for that project.
- m. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey and report shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:
 - Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey
 - Equipment/crew names used to conduct the Survey
 - Horizontal and vertical control marks used to tie the survey to the City approved control
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used
- n. "RECORD DRAWINGS" shall be clearly labeled on each sheet
- o. Preferred CAD format is the latest version of Autodesk Civil 3D (C3D) utilizing City-developed C3D templates, styles, and point codes to facilitate survey / engineering standards and field-to-finish workflows
- p. Topographic surveys shall utilize field-to-finish workflows that facilitate high precision TIN models
- q. All survey work performed for City projects will utilize City Coordinate System / horizontal/vertical datum, and use AutoCAD template settings
- r. Project reports (e.g. Control, Boundary)
- s. Any other item specified in the contract for that project



6501 Americas Parkway NE, Suite 400, Albuquerque, NM 87110

505-917-8921

johndgallegos@cstiinc.com

February 21, 2023

Re: Rate Sheet

Survey

Principal Surveyor-PLS	250.00/hr
PLS Survey Manger	225.00/hr
Survey One-Man Crew	185.00/hr
Survey Two-Man	210.00/hr
Drafting Technician	155.00/hr
Adminstartor	125.00/hr

GPR (Ground Penetrating Radar)

GPR Manager	225.00/hr
GRP Technician	200.00/hr

SUE (Subsurface Utility Engineering) and Locating Services

SUE Manager	225.00/hr
SUE Technician 1	155.00/hr
SUE Technician 2	185.00/hr
SUE Technician 3	200.00/hr
SUE Level D Services	185.00/hr

SUE Level C Services	195.00/hr	
SUE Level B Services	200.00/hr	
SUE Level A		
Cost Test Hole in Soil up to 6' in depth max	\$	700.00
Cost Test Hole in Asphalt-Concrete with repair and 6' in depth max	\$	850.00
Each additional 1' increases in depth pass 6'	\$75.00 per additional foot	
Mobilization Cost	\$	750.00

Travel

Travel	
Per-Diem GSA	162/Day per person
Mileage GSA	0.53/Mile

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-032 SURVEYING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-032 dated _____, 20__ between the CITY and Construction Survey Technologies Inc., (CONTRACTOR), as amended and incorporated herein by reference, the City and Contractor hereby agree on this _____ day of _____, 20__, as follows:

1. In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-032 and CONTRACTOR's proposal as set forth in ATTACHMENT A attached hereto.
2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the CONTRACTOR.
3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of **\$dollars.cents**, plus NMGR. Invoices issued by the CONTRACTOR shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

CONSTRUCTION SURVEY
TECHNOLOGIES, INC.

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



CONSSUR-01

TOLIVE

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

11/15/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER License # 0757776 HUB International Insurance Services (SOW) 6565 Americas Parkway Suite 720 Albuquerque, NM 87110	CONTACT NAME: PHONE (A/C, No, Ext): (505) 828-4000 FAX (A/C, No): (866) 487-3972 E-MAIL ADDRESS: INSURER(S) AFFORDING COVERAGE INSURER A : Valley Forge Insurance Company 20508 INSURER B : Continental Casualty Company 20443 INSURER C : The Continental Insurance Company 35289 INSURER D : Hartford Fire Insurance Company 19682 INSURER E : INSURER F :
INSURED Construction Survey Technologies, Inc. PO Box 65395 Albuquerque, NM 87193	

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	☒ COMMERCIAL GENERAL LIABILITY ☐ CLAIMS-MADE ☒ OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: ☒ POLICY ☐ PROJECT ☐ LOC OTHER:	☒	☒	6074615533	7/30/2022	7/30/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 4,000,000 \$
A	AUTOMOBILE LIABILITY ☐ ANY AUTO OWNED AUTOS ONLY ☐ SCHEDULED AUTOS ☒ HIRED AUTOS ONLY ☒ NON-OWNED AUTOS ONLY			6074615533	7/30/2022	7/30/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
B	☒ UMBRELLA LIAB ☒ OCCUR ☐ EXCESS LIAB ☐ CLAIMS-MADE ☐ DED ☒ RETENTION \$ 10,000			6074615547	7/30/2022	7/30/2023	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000 \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) ☐ Y/N ☐ N/A If yes, describe under DESCRIPTION OF OPERATIONS below		☒	6025189666	4/1/2022	4/1/2023	☒ PER STATUTE ☐ OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
D	Errors & Omissions			34OH0408535-22	9/27/2022	9/27/2023	Each Claim \$ 2,000,000
D	Errors & Omissions			34OH0408535-22	9/27/2022	9/27/2023	Aggregate \$ 2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

City of Las Cruces PO Box 20000 Las Cruces, NM 88004	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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BLANKET ADDITIONAL INSURED AND LIABILITY EXTENSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS LIABILITY COVERAGE FORM
BUSINESSOWNERS COMMON POLICY CONDITIONS

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I.	Blanket Additional Insured Provisions
A.	Additional Insured – Blanket Vendors
B.	Miscellaneous Additional Insureds
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2.	Additional Insured – Extended Coverage
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A.	Bodily Injury – Expanded Definition
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F.	Personal and Advertising Injury – Discrimination or Humiliation
G.	Personal and Advertising Injury – Broadened Eviction
H.	Waiver of Subrogation – Blanket

I. BLANKET ADDITIONAL INSURED PROVISIONS

A. ADDITIONAL INSURED – BLANKET VENDORS

Who Is An Insured is amended to include as an additional insured any person or organization (referred to below as vendor) with whom you agreed under a **"written contract"** to provide insurance, but only with respect to **"bodily injury"** or **"property damage"** arising out of **"your products"** which are distributed or sold in the regular course of the vendor's business, subject to the following additional exclusions:

1. The insurance afforded the vendor does not apply to:
 - a. **"Bodily injury"** or **"property damage"** for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
 - f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
 - g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or

10020003380746155334831



h. **"Bodily injury"** or **"property damage"** arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:

- (1) The exceptions contained in Subparagraphs **d.** or **f.**; or
- (2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.
3. This provision 2. does not apply to any vendor included as an insured by an endorsement issued by us and made a part of this Policy.
4. This provision 2. does not apply if **"bodily injury"** or **"property damage"** included within the **"products-completed operations hazard"** is excluded either by the provisions of the Policy or by endorsement.

B. MISCELLANEOUS ADDITIONAL INSURED

1. **Who Is An Insured** is amended to include as an insured any person or organization (called additional insured) described in paragraphs 3.a. through 3.j. below whom you are required to add as an additional insured on this policy under a **"written contract."**
2. However, subject always to the terms and conditions of this policy, including the limits of insurance, we will not provide the additional insured with:
 - a. A higher limit of insurance than required by such **"written contract;"**
 - b. Coverage broader than required by such **"written contract"** and in no event greater than that described by the applicable paragraph a. through k. below; or
 - c. Coverage for **"bodily injury"** or **"property damage"** included within the **"products-completed operations hazard."** But this paragraph c. does not apply to the extent coverage for such liability is provided by paragraph 3.j. below.

Any coverage granted by this endorsement shall apply only to the extent permitted by law.

3. Only the following persons or organizations can qualify as additional insureds under this endorsement:

a. Controlling Interest

Any persons or organizations with a controlling interest in you but only with respect to their liability arising out of:

- (1) such person or organization's financial control of you; or
- (2) Premises such person or organization owns, maintains or controls while you lease or occupy these premises;

provided that the coverage granted to such additional insureds does not apply to structural alterations, new construction or demolition operations performed by or for such additional insured.

b. Co-owner of Insured Premises

A co-owner of a premises co-owned by you and covered under this insurance but only with respect to the co-owners liability for **"bodily injury," "property damage"** or **"personal and advertising injury"** as co-owner of such premises.

c. Grantor of Franchise

Any person or organization that has granted a franchise to you, but only with respect to such person or organization's liability for **"bodily injury," "property damage,"** or **"personal and advertising injury"** as grantor of a franchise to you.

d. Lessor of Equipment

Any person or organization from whom you lease equipment, but only with respect to liability for **"bodily injury," "property damage" or "personal and advertising injury"** caused in whole or in part by your maintenance, operation or use of such equipment, provided that the **"occurrence"** giving rise to such **"bodily injury" or "property damage"** or the offense giving rise to such **"personal and advertising injury"** takes place prior to the termination of such lease.

e. Lessor of Land

Any person or organization from whom you lease land, but only with respect to liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of the ownership, maintenance or use of that specific part of the land leased to you, provided that the **"occurrence"** giving rise to such **"bodily injury" or "property damage"** or the offense giving rise to such **"personal and advertising injury,"** takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

f. Lessor of Premises

An owner or lessor of premises leased to you, or such owner or lessor's real estate manager, but only with respect to liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of the ownership, maintenance or use of such part of the premises leased to you, and provided that the **"occurrence"** giving rise to such **"bodily injury" or "property damage"** or the offense giving rise to such **"personal and advertising injury,"** takes place prior to the termination of such lease. The insurance hereby afforded to the additional insured does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

g. Mortgagee, Assignee or Receiver

A mortgagee, assignee or receiver of premises but only with respect to such mortgagee, assignee, or receiver's liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of the ownership, maintenance, or use of a premises by you. This insurance does not apply to structural alterations, new construction or demolition operations performed by, on behalf of or for such additional insured.

h. State or Political Subdivisions

A state or government agency or subdivision or political subdivision that has issued a permit or authorization, but only with respect to such government agency or subdivision or political subdivision's liability for **"bodily injury," "property damage" or "personal and advertising injury"** arising out of:

- (1) The following hazards in connection with premises you own, rent, or control and to which this insurance applies:
 - (a) The existence, maintenance, repair, construction, erection, or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoistaway openings, sidewalk vaults, street banners, or decorations and similar exposures; or
 - (b) The construction, erection, or removal of elevators; or
 - (c) The ownership, maintenance or use of any elevators covered by this insurance; or
- (2) The permitted or authorized operations performed by you or on your behalf. But the coverage granted by this paragraph does not apply to:
 - (a) **"Bodily injury," "property damage" or "personal and advertising injury"** arising out of operations performed for the state or government agency or subdivision or political subdivision; or
 - (b) **"Bodily injury" or "property damage"** included within the **"products-completed operations hazard."**

With respect to this provision's requirement that additional insured status must be requested under a **"written contract,"** we will treat as a **"written contract"** any governmental permit that requires you to add the governmental entity as an additional insured.



i. Trade Show Event Lessor

With respect to your participation in a trade show event as an exhibitor, presenter or displayer, any person or organization whom you are required to include as an additional insured, but only with respect to such person or organization's liability for **"bodily injury," "property damage,"** or **"personal and advertising injury"** caused by:

- a. Your acts or omissions; or
- b. Acts or omissions of those acting on your behalf;

in the performance of your ongoing operations at the trade show premises during the trade show event.

j. Other Person or Organization

Any person or organization who is not an additional insured under paragraphs **a.** through **i.** above. Such additional insured is an insured solely for **"bodily injury," "property damage"** or **"personal and advertising injury"** for which such additional insured is liable because of your acts or omissions.

The coverage granted by this paragraph does not apply to any person or organization:

- (1) For **"bodily injury," "property damage,"** or **"personal and advertising injury"** arising out of the rendering or failure to render any professional services;
- (2) For **"bodily injury"** or **"property damage"** included in the **"products-completed operations hazard."** But this provision (2) does not apply to such **"bodily injury"** or **"property damage"** if:
 - (a) It is entirely due to your negligence and specifically results from your work for the additional insured which is the subject to the **"written contract"**; and
 - (b) The **"written contract"** requires you to make the person or organization an additional insured for such **"bodily injury"** or **"property damage"**; or
- (3) Who is afforded additional insured coverage under another endorsement attached to this policy.

C. ADDITIONAL PROVISIONS PERTINENT TO ADDITIONAL INSURED COVERAGE

- 1. With respect only to additional insured coverage provided under paragraphs **A.** and **B.** above:
 - a. The **BUSINESSOWNERS COMMON POLICY CONDITIONS** are amended to add the following to the Condition entitled **Other Insurance**:

This insurance is excess of all other insurance available to an additional insured whether primary, excess, contingent or on any other basis. However, if a **"written contract"** requires that this insurance be either primary or primary and noncontributing, then this insurance will be primary and non-contributory relative solely to insurance on which the additional insured is a named insured.
 - b. Under **Liability and Medical Expense Definitions**, the following definition is added:

"Written contract" means a written contract or agreement that requires you to make a person or organization an additional insured on this policy, provided the contract or agreement:

 - (1) Is currently in effect or becomes effective during the term of this policy; and
 - (2) Was executed prior to:
 - (a) The **"bodily injury"** or **"property damage;"** or
 - (b) The offense that caused the **"personal and advertising injury"**;
 for which the additional insured seeks coverage.
- 2. With respect to any additional insured added by this endorsement or by any other endorsement attached to this Coverage Part, the section entitled **Who Is An Insured** is amended to make the following natural persons insureds.

If the additional insured is:

 - a. An individual, then his or her spouse is an insured;



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-032
Survey Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Frank X. Spencer and Associates, Inc., of 1130 Montana Ave. , El Paso, Texas, 79902, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Surveying services on an as-needed basis via Project Assignment Agreements (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-032, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-032, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30, 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
- c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
- d. Coverage must be primary and non-contributory.
- e. Coverage must be per project or per location.
- f. Coverage must be on an occurrence form.
- g. Subrogation must be waived.
- 2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
- 3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
- 4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Tony Trevino, PE, CFM

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Frank X. Spencer and Associates, Inc.
1130 Montana Ave.
El Paso, TX 79902
ATTENTION: Frank X. Spencer, PE, RPLS

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.

FRANK X. SPENCER AND
ASSOCIATES, INC.

CITY OF LAS CRUCES

BY: _____
Frank X. Spencer, PE, RPLS
Senior Vice President

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 6/28/23

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Surveyor a detailed project description, including scope of work and any other special instructions needed by the Surveyor to prepare items such as preliminary and final cost estimates, complete project plans and specifications, project reports, and other related surveying services. The preferred Surveyors shall provide surveying services that may include but not be limited to, the following:

1. Boundary Surveys
2. Right-of-Way/Easement Surveys
3. Construction Layout Surveys
4. Engineering Design Surveys
5. Route Surveys
6. NMDOT survey & mapping
7. As-Built Surveys
8. Topographic Surveys
9. Control Surveys
10. Terrestrial or Drone scanning/imagery
11. Monument preservation and restoration
12. Other Survey Related Services
13. Subsurface utilities exploration (ASCE 38-22)
14. Expert witness in a judicial and/or quasi-judicial setting

- B. Project Assignment Agreements

A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Surveyor proposing to do the work. The cost proposal may utilize one of the following pricing formats:

1. Lump Sum
2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
3. An alternative unit cost breakdown

- C. Deliverables

Each project contract will require a list of deliverables, timeline and method of payment. The Surveyor may be required to supply to the City the following items, when specified and as requested on the Scope of Work for each individual project.

1. Preliminary report containing schedule of work and cost estimate.
2. Survey drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Surveying firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF

format of the survey for Department and Purchasing Section use.

- a. Legal descriptions and certified plats of survey (in accordance with the laws of the State, 12.8.2 Minimum Standards for Surveying in New Mexico, and City of Las Cruces Municipal Code), closure sheets, etc.
- b. Digital copies of field notes or printouts of field notes from electronic data collector.
- c. Sketches, plots (computer, overlay, and hand-drawn), serial photographs, or other drawings, on the medium and to the scale specified.
- d. Hard copies containing results including coordinates of items located or set in the field or calculated.
- e. ASCII file of all survey points in CSV format.
- f. Copy of other digital files (e.g. Trimble collector .JOB files, Trimble Business Center, raw scan files)
- g. Full scale PDF or DWF copy of all final product drawings, plats of survey, etc.
- h. Locations and descriptions of monuments set or reset, such as benchmarks, baseline control points, property corners, etc.
- i. Project reports, including boundary survey report, right-of-way report, control survey report, and survey accuracy statements.
- j. Computer discs containing results as stated above,
- k. Reproducible as-built drawings.
- l. Any other item specified in the contract for that project.
- m. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey and report shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:
 - Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey
 - Equipment/crew names used to conduct the Survey
 - Horizontal and vertical control marks used to tie the survey to the City approved control
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used
- n. "RECORD DRAWINGS" shall be clearly labeled on each sheet
- o. Preferred CAD format is the latest version of Autodesk Civil 3D (C3D) utilizing City-developed C3D templates, styles, and point codes to facilitate survey / engineering standards and field-to-finish workflows
- p. Topographic surveys shall utilize field-to-finish workflows that facilitate high precision TIN models
- q. All survey work performed for City projects will utilize City Coordinate System / horizontal/vertical datum, and use AutoCAD template settings
- r. Project reports (e.g. Control, Boundary)
- s. Any other item specified in the contract for that project



Frank X. Spencer & Associates, Inc.

1130 Montana Ave., El Paso, Texas 79902

Ph: (915) 533.4600 | F: (915) 533.4673

TBPLS #100490-00 | TBPE # F-3584

COST PROPOSAL | HOURLY RATES

2/21/2023

Classification	Base Rate	Audited Overhead Rate	Profit *	Loaded Rate
Principal Surveyor	\$ 79.09	156.28%	0.00%	\$ 202.69
Project Surveyor/Project Manager	\$ 73.32	156.28%	0.00%	\$ 187.90
Senior Surveyor	\$ 67.37	156.28%	0.00%	\$ 172.65
Design Surveyor	\$ 56.01	156.28%	0.00%	\$ 143.54
Surveyor Intern	\$ 40.86	156.28%	0.00%	\$ 104.72
Surveyor Technician	\$ 37.00	156.28%	0.00%	\$ 94.82
Drafting Technician	\$ 36.00	156.28%	0.00%	\$ 92.26
Survey Crew	\$ 60.50	156.28%	0.00%	\$ 155.05
Construction Inspector/Observer	\$ 45.67	156.28%	0.00%	\$ 117.05
Administrative/Clerical	\$ 21.64	156.28%	0.00%	\$ 55.45
Field Testing & Investigations	\$ 39.36	156.28%	0.00%	\$ 100.87
Abstractor (Property Deed Researcher, Courthouse or Internet research)	\$ 54.09	156.28%	0.00%	\$ 138.62
SUE Field Coordinator	\$ 40.87	156.28%	0.00%	\$ 104.74
Senior SUE Engineer	\$ 50.00	156.28%	0.00%	\$ 128.14
SUE Technician	\$ 44.71	156.28%	0.00%	\$ 114.58
SUE Designating Person	\$ 40.86	156.28%	0.00%	\$ 104.72
SUE Crew	\$ 60.00	156.28%	0.00%	\$ 153.77
Drone Pilot	\$ 28.85	156.28%	0.00%	\$ 73.94
GIS Analyst	\$ 50.00	156.28%	0.00%	\$ 128.14
Professional Surveyor Expert Witness, Depositions (per day)				\$ 2,000

* Profit will be negotiated for each task order



Frank X. Spencer & Associates, Inc.

1130 Montana Ave., El Paso, Texas 79902
Ph: (915) 533.4600 | F: (915) 533.4673
TBPLS #100490-00 | TBPE # F-3584

2/21/2023

SUBSURFACE UTILITY ENGINEERING

Subsurface Utility Engineering & Coordination Services		
Services To Be Provided	Unit	Rate
SUE Quality Level C and D		
Includes labor and equipment for records research, CADD, and mapping.	LF	\$ 0.68
SUE Quality Level B - Utility Designation		
Includes labor and equipment for records research, designating, engineering, surveying, CADD mapping and limited traffic control.	LF	\$ 1.55
SUE Quality Level A - Utility Locate, Test Holes		
Includes labor and equipment for vacuum excavation, engineering, surveying, CADD, and limited traffic control. These prices reflect that a Quality Level B service has been provided.		
Level A: 0 to 5 ft.	each	\$ 1,075.00
Level A: > 5 to 8 ft.	each	\$ 1,450.00
Level A: > 8 to 13 ft.	each	\$ 1,800.00
Level A: > 13 to 20 ft.	each	\$ 2,300.00
Level A: > 20 ft.	VF	\$ 205.00
SUE Mobilization/Demobilization		
These costs are intended to be a one-time expense compensation for mobilizing/demobilizing personnel and equipment portal to portal. Vacuum excavation truck (non-local)	Mile	\$ 4.75

OTHER DIRECT EXPENSES

2/21/2023

Other Direct Expenses		Unit	Max Rate	Fixed/Max	ODE Rate
Lodging/Hotel (Taxes/fees not included)		Day/Person	Current State Rate		
Meals (Excluding alcohol & tips) (Overnight stay required)		Day/Person	Current State Rate		
Mileage		Mile	Current State Rate		
SUV or ATV Rental (Includes taxes and fees; Insurance costs will not be reimbursed)		Day			185.00
Rental Car Fuel		Gallon			5.00
Rental Car (Includes taxes and fees; Insurance costs will not be reimbursed)		Day			100.00
Air Travel - In State - Short Notice (Coach)		Rd Trip/Person			530.00
Air Travel - In State - 2+ Wks Notice (Coach)		Rd Trip/Person			950.00
Air Travel - Out of State - 2+ Wks Notice (Coach)		Rd Trip/Person			1,000.00
Air Travel - Out of State - Short Notice (Coach)		Rd Trip/Person			1,500.00
Oversize, special handling or extra baggage airline fees		Each			100.00
Taxi/Cab fare		Each/Person			45.00
Parking		Day			35.00
Toll Charges		Each			50.00
Standard Postage		Letter	Current Postal Rate		
Certified Letter Return Receipt		Each	Current Postal Rate		
Overnight Mail - letter size		Each	Current Postal Rate		
Overnight Mail - oversized box		Each			100.00
Materials and Shipping		Package			100.00
Courier Services		Each			48.00
Photocopies B/W (8 1/2" X 11")		Each			0.25
Photocopies B/W (11" X 17")		Each			0.35
Photocopies Color (8 1/2" X 11")		Each			1.00
Photocopies Color (11" X 17")		Each			1.25
Cardstock Color (8 1/2" X 11")		Each			2.00
Digital Ortho Plotting		Sheet			3.00
Plots (B/W on Bond)		Square Foot			1.00
Plots (Color on Bond)		Square Foot			1.75
Plots (Color on Photographic Paper)		Square Foot			5.00
Color Graphics on Foam Board		Square Foot			20.00
Presentation Boards 30" X 40" Color Mounted		Each			35.00
Report Printing		Each			10.00
Report Binding and tabbing		Each			15.00
Drawing Binders (variable depth for 11" X 17" paper)		Each			35.00
Notebooks		Each			10.00
Reproduction of CD/DVD		Each			5.00
CDs/DVDs		Each			2.50
4" X 6" Digital Color Print		Picture			5.00
TMA (1 TMA with Driver)		Per Day			1,250.00
TCP for Surveying Services		Per Day			1,000.00

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-032 SURVEYING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-032 dated _____, 20__ between the CITY and Frank X. Spencer and Associates, Inc., (CONTRACTOR), as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

1. In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-032 and CONTRACTOR's proposal as set forth in ATTACHMENT A attached hereto.
2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the CONTRACTOR.
3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of **\$dollars.cents**, plus NMGR. Invoices issued by the CONTRACTOR shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

FRANK X. SPENCER AND ASSOICATES,
INC.

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-032
Survey Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and High Mesa Consulting Group, of 6010-B Midway Park Blvd. NE, Albuquerque, New Mexico, 87109, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Surveying services on an as-needed basis via Project Assignment Agreements (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-032, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-032, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30, 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
- c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
- d. Coverage must be primary and non-contributory.
- e. Coverage must be per project or per location.
- f. Coverage must be on an occurrence form.
- g. Subrogation must be waived.
- 2. Commercial Auto Liability
 - a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
- 3. Workers' Compensation and Employers Liability
 - a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
- 4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Tony Trevino, PE, CFM

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: High Mesa Consulting Group
6010-B Midway Park Blvd. NE
Albuquerque, NM 87109
ATTENTION: Joseph M. Solomon Jr.

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.

HIGH MESA CONSULTING GROUP

CITY OF LAS CRUCES

BY: _____
Joseph M. Solomon Jr.
Principal

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 6/20/2003

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Surveyor a detailed project description, including scope of work and any other special instructions needed by the Surveyor to prepare items such as preliminary and final cost estimates, complete project plans and specifications, project reports, and other related surveying services. The preferred Surveyors shall provide surveying services that may include but not be limited to, the following:

1. Boundary Surveys
2. Right-of-Way/Easement Surveys
3. Construction Layout Surveys
4. Engineering Design Surveys
5. Route Surveys
6. NMDOT survey & mapping
7. As-Built Surveys
8. Topographic Surveys
9. Control Surveys
10. Terrestrial or Drone scanning/imagery
11. Monument preservation and restoration
12. Other Survey Related Services
13. Subsurface utilities exploration (ASCE 38-22)
14. Expert witness in a judicial and/or quasi-judicial setting

- B. Project Assignment Agreements

A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Surveyor proposing to do the work. The cost proposal may utilize one of the following pricing formats:

1. Lump Sum
2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
3. An alternative unit cost breakdown

- C. Deliverables

Each project contract will require a list of deliverables, timeline and method of payment. The Surveyor may be required to supply to the City the following items, when specified and as requested on the Scope of Work for each individual project.

1. Preliminary report containing schedule of work and cost estimate.
2. Survey drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Surveying firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF

format of the survey for Department and Purchasing Section use.

- a. Legal descriptions and certified plats of survey (in accordance with the laws of the State, 12.8.2 Minimum Standards for Surveying in New Mexico, and City of Las Cruces Municipal Code), closure sheets, etc.
- b. Digital copies of field notes or printouts of field notes from electronic data collector.
- c. Sketches, plots (computer, overlay, and hand-drawn), serial photographs, or other drawings, on the medium and to the scale specified.
- d. Hard copies containing results including coordinates of items located or set in the field or calculated.
- e. ASCII file of all survey points in CSV format.
- f. Copy of other digital files (e.g. Trimble collector .JOB files, Trimble Business Center, raw scan files)
- g. Full scale PDF or DWF copy of all final product drawings, plats of survey, etc.
- h. Locations and descriptions of monuments set or reset, such as benchmarks, baseline control points, property corners, etc.
- i. Project reports, including boundary survey report, right-of-way report, control survey report, and survey accuracy statements.
- j. Computer discs containing results as stated above,
- k. Reproducible as-built drawings.
- l. Any other item specified in the contract for that project.
- m. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey and report shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:
 - Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey
 - Equipment/crew names used to conduct the Survey
 - Horizontal and vertical control marks used to tie the survey to the City approved control
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used
- n. "RECORD DRAWINGS" shall be clearly labeled on each sheet
- o. Preferred CAD format is the latest version of Autodesk Civil 3D (C3D) utilizing City-developed C3D templates, styles, and point codes to facilitate survey / engineering standards and field-to-finish workflows
- p. Topographic surveys shall utilize field-to-finish workflows that facilitate high precision TIN models
- q. All survey work performed for City projects will utilize City Coordinate System / horizontal/vertical datum, and use AutoCAD template settings
- r. Project reports (e.g. Control, Boundary)
- s. Any other item specified in the contract for that project

2022/2023 Rates
(Effective 8-1-22 through 7-31-23)

<u>Surveying Services</u>		<u>Engineering Services</u>	
Principal Surveyor (PS)	\$200.00 Hour	Principal Engineer	\$200.00 Hour
Project Manager (PS)	\$175.00 Hour	Senior Staff Engineer	\$140.00 Hour
Professional Surveyor (PS)	\$140.00 Hour	Staff Engineer	\$115.00 Hour
Senior Survey Crew Chief	\$115.00 Hour	Engineering Technician I	\$95.00 Hour
Survey Crew Chief	\$95.00 Hour	Engineering Technician II	\$80.00 Hour
Land Surveyor Intern (LSI)	\$95.00 Hour	Construction Observer	\$95.00 Hour
Field Surveying Technician	\$80.00 Hour	Expert Witness Testimony	\$300.00 Hour
Robotic/GPS/GIS Total Station	\$30.00 Hour		
Expert Witness Testimony	\$300.00 Hour		
<u>Subsurface Utility Services</u>		<u>Support Services</u>	
Subsurface Utility Principal	\$200.00 Hour	Principal	\$200.00 Hour
Senior Utility Line Spotter	\$115.00 Hour	CAD Tech I	\$95.00 Hour
Utility Line Spotter / Tech I	\$95.00 Hour	CAD Tech II	\$75.00 Hour
Utility Line Spotter / Tech II	\$85.00 Hour	Project Coordinator	\$80.00 Hour
Vacuum Excavator & Crew Rate (Trailer-Mounted Unit)	\$2,160.00 Daily	Administrative Staff	\$80.00 Hour
Trailer-Mounted Vacuum Excavator	\$65.00 Hour	UAV Mission Charge	\$500.00
Vacuum Excavator & Crew Rate (TruVac Vacuum Excavator)	\$2,640.00 Daily	UAV Point Cloud Base Rate	\$100.00
Vacuum Excavator (TruVac Vacuum Excavator)	\$125.00 Hour	Third Party Services	Cost + 20%
Mala CX11 Concrete Scanner	\$45.00 Hour	Reprographic Charges	Cost + 20%
LMX100 GPR Unit	\$55.00 Hour		
<u>Miscellaneous</u>		<u>Mileage</u>	
Lodging and Meals	Cost + 20%	Light Duty Truck	\$0.90 Mile
		Heavy Duty Truck (W/Trailer Mounted Vacuum Excavator)	\$1.75 Mile
		TruVac Vacuum Excavator	\$2.00 Mile

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-032 SURVEYING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-032 dated _____, 20__ between the CITY and High Mesa Consulting Group, (CONTRACTOR), as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

1. In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-032 and CONTRACTOR's proposal as set forth in ATTACHMENT A attached hereto.
2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the CONTRACTOR.
3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of \$**dollars.cents**, plus NMGR. Invoices issued by the CONTRACTOR shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

HIGH MESA CONSULTING GROUP

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-032
Survey Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Libbin Underwood Engineering & Surveying, LLC, of 1430 West Amador, Las Cruces, New Mexico, 88005, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Surveying services on an as-needed basis via Project Assignment Agreements (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-032, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

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CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

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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.

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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.

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CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

16. ASSIGNMENT

CONTRACTOR shall perform all the services under this Agreement and shall not assign any interest in this Agreement or transfer any interest in same or assign any claims for money due or to become due under this Agreement without the prior written consent of the CITY.

17. INSURANCE

CONTRACTOR shall obtain and maintain insurance at its own cost and expense during the life of this Agreement, and shall require Subcontractors, if any, to maintain during the life of his subcontract:

1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
 - g. Subrogation must be waived.
2. Commercial Auto Liability
- a. \$1,000,000 per occurrence
 - b. Coverage must be for "owned, leased, hired, and non-owned autos" or "any autos."
3. Workers' Compensation and Employers Liability
- a. Statutory Limits
 - b. Employer liability – \$1,000,000 each accident, \$1,000,000 each employee by disease, \$1,000,000 policy limit
 - c. Subrogation must be waived.
4. Professional Liability: \$1,000,000 per claim

Endorsements for additional insured coverage and waivers of subrogation must be provided as a condition of this Agreement and shall be noted on the certificate.

CONTRACTOR shall furnish the CITY with a certificate(s) of insurance showing CONTRACTOR and Subcontractors, if any, have complied with this Article. The CONTRACTOR shall provide insurance certificates before work is to start on the project and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

CONTRACTOR shall indemnify, defend, and hold harmless the CITY from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused in whole or in part by, resulting in whole or in part from, or arising in whole or in part out of the negligent acts, errors, or omissions of CONTRACTOR, its officers, employees, agents, or representatives in the performance of SERVICES under this agreement.

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

CONTRACTOR shall abide and be governed by all applicable state law, CITY ordinances, and laws regarding the CONTRACTOR'S services or any work done pursuant to this Agreement, including anti-discrimination.

20. BREACH

In the event CONTRACTOR breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the CITY shall give CONTRACTOR written notice of such breach. In the event CONTRACTOR fails to remedy the breach within five (5) working days of receiving such written notice, the CITY, at its sole discretion, without any obligation to do so and in addition to other remedies available under applicable law, may remedy CONTRACTOR'S breach and recover any and all costs and expenses in so doing from CONTRACTOR.

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Tony Trevino, PE, CFM

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Libbin Underwood Engineering & Surveying, LLC
1430 West Amador
Las Cruces, NM 88005
ATTENTION: Zack Libbin, PE

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.

LIBBIN UNDERWOOD
ENGINEERING & SURVEYING, LLC

CITY OF LAS CRUCES

BY: _____
Zack Libbin, PE
Principal Engineer & CEO

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

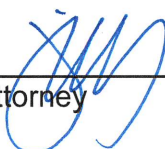
City Attorney  10/20/2023

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Surveyor a detailed project description, including scope of work and any other special instructions needed by the Surveyor to prepare items such as preliminary and final cost estimates, complete project plans and specifications, project reports, and other related surveying services. The preferred Surveyors shall provide surveying services that may include but not be limited to, the following:

1. Boundary Surveys
2. Right-of-Way/Easement Surveys
3. Construction Layout Surveys
4. Engineering Design Surveys
5. Route Surveys
6. NMDOT survey & mapping
7. As-Built Surveys
8. Topographic Surveys
9. Control Surveys
10. Terrestrial or Drone scanning/imagery
11. Monument preservation and restoration
12. Other Survey Related Services
13. Subsurface utilities exploration (ASCE 38-22)
14. Expert witness in a judicial and/or quasi-judicial setting

- B. Project Assignment Agreements

A Project Assignment Agreement for each specific project will be negotiated and executed on a case-by-case basis and will include a cost proposal from the Surveyor proposing to do the work. The cost proposal may utilize one of the following pricing formats:

1. Lump Sum
2. Unit pricing to include:
 - a. Hourly rate for various types of services requested by the City
 - b. Charges for miscellaneous items such as blueprints, data, discs, rental of special equipment, etc.
 - c. A statement of the billing procedures including minimum billing units, if any.
 - d. Cost of sub-consultants, if any
3. An alternative unit cost breakdown

- C. Deliverables

Each project contract will require a list of deliverables, timeline and method of payment. The Surveyor may be required to supply to the City the following items, when specified and as requested on the Scope of Work for each individual project.

1. Preliminary report containing schedule of work and cost estimate.
2. Survey drawings and documents. Electronic drawings shall be on CD drawn in AutoCAD format. The Surveying firm(s) shall verify the latest software, version, and update in use by the City to ensure compatibility. Provide hard copies and PDF

format of the survey for Department and Purchasing Section use.

- a. Legal descriptions and certified plats of survey (in accordance with the laws of the State, 12.8.2 Minimum Standards for Surveying in New Mexico, and City of Las Cruces Municipal Code), closure sheets, etc.
- b. Digital copies of field notes or printouts of field notes from electronic data collector.
- c. Sketches, plots (computer, overlay, and hand-drawn), serial photographs, or other drawings, on the medium and to the scale specified.
- d. Hard copies containing results including coordinates of items located or set in the field or calculated.
- e. ASCII file of all survey points in CSV format.
- f. Copy of other digital files (e.g. Trimble collector .JOB files, Trimble Business Center, raw scan files)
- g. Full scale PDF or DWF copy of all final product drawings, plats of survey, etc.
- h. Locations and descriptions of monuments set or reset, such as benchmarks, baseline control points, property corners, etc.
- i. Project reports, including boundary survey report, right-of-way report, control survey report, and survey accuracy statements.
- j. Computer discs containing results as stated above,
- k. Reproducible as-built drawings.
- l. Any other item specified in the contract for that project.
- m. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey and report shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:
 - Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey
 - Equipment/crew names used to conduct the Survey
 - Horizontal and vertical control marks used to tie the survey to the City approved control
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used
- n. "RECORD DRAWINGS" shall be clearly labeled on each sheet
- o. Preferred CAD format is the latest version of Autodesk Civil 3D (C3D) utilizing City-developed C3D templates, styles, and point codes to facilitate survey / engineering standards and field-to-finish workflows
- p. Topographic surveys shall utilize field-to-finish workflows that facilitate high precision TIN models
- q. All survey work performed for City projects will utilize City Coordinate System / horizontal/vertical datum, and use AutoCAD template settings
- r. Project reports (e.g. Control, Boundary)
- s. Any other item specified in the contract for that project

Cost Proposal

Libbin Underwood Engineering & Surveying provides the following table as the hourly rate cost proposal for projects in response to City Surveying Services
RFP NO.: 22-23-032

<u>Professional Services</u>	<u>Hourly Rate</u>
Principal Surveyor	\$100
Principal Engineer, Project Management	\$100
Civil -Survey Technician/Drafting	\$75
Two Person Survey Crew and Equipment	\$170

EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-032 SURVEYING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-032 dated _____, 20__ between the CITY and Libbin Underwood Engineering & Surveying, LLC, (CONTRACTOR), as amended and incorporated herein by reference, the City and Contractor hereby agree on this _____ day of _____, 20__, as follows:

1. In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-032 and CONTRACTOR's proposal as set forth in ATTACHMENT A attached hereto.
2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the CONTRACTOR.
3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of **\$dollars.cents**, plus NMGR. Invoices issued by the CONTRACTOR shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

LIBBIN UNDERWOOD ENGINEERING &
SURVEYING, LLC

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



CITY OF LAS CRUCES

PROFESSIONAL SERVICES AGREEMENT

22-23-032
Survey Services

THIS AGREEMENT, made and entered into on this 1st day of July, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Miller Engineers, Inc. d/b/a Souder, Miller & Associates, of 3500 Sedona Hills Parkway, Las Cruces, New Mexico, 88011, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Surveying services on an as-needed basis via Project Assignment Agreements (Exhibit B) during the term of this AGREEMENT.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as proposed in response to the CITY'S RFP No.22-23-032, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

The terms of this Agreement are contingent on sufficient appropriations and authorization being made by the City Council for the performance of this Agreement. If sufficient appropriations and authorizations are not made by the City Council, this Agreement shall terminate upon written notice given by the CITY to CONTRACTOR. The CITY'S decision as to whether sufficient appropriations and authorizations exist shall be accepted by CONTRACTOR and shall be final.

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement as proposed in response to RFP 22-23-032, as outlined in Exhibit A, attached hereto and made part of this agreement. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed for each assigned project from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices upon completion of the project. CITY shall pay invoices Net 30 days upon receipt of undisputed invoice.

CONTRACTOR is responsible for payment of State of New Mexico Gross Receipts Tax levied on the amounts payable under this Agreement. CONTRACTOR agrees to comply with all federal and state tax payments and report all items of gross receipts as income from the operations of its business.

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of projects that are required by the CITY and it will serve the CITY diligently and faithfully, and according to its best ability in all respects and will promote the best interests of the CITY.

6. TERM AND SCHEDULE

This Agreement shall become effective on July 1, 2023 for a term of one year through June 30, 2024 and, pending mutual written agreement, may be extended annually thereafter for up to four (4) additional one (1)-year terms.

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

7. EXTENSIONS, CHANGES, AND AMENDMENTS

This Agreement shall not be extended, changed, or amended except by instrument in writing executed by the parties. The CITY shall not be liable for payment of any extra services nor shall CONTRACTOR be obligated to perform any extra services except upon such written agreement. Such written approval shall indicate the date said extension, change, or amendment is effective and shall be signed by the parties to this Agreement. In the event that the parties cannot reach agreement as to a particular change, the issue shall be resolved pursuant to Article 21.

8. CHANGES AND EXTRA SERVICES BY THE CITY

The CITY may make changes within the general scope of the SERVICES plus may also request CONTRACTOR to perform other extra services not incorporated within the Services set forth in this Agreement. If the CONTRACTOR is of the opinion that such change causes an increase or decrease in the cost and/or the time required for performing the changes or other services required by the City, CONTRACTOR shall so notify the CITY of that fact within five (5) business work days from the date of receipt of change by the CITY. The CITY shall provide written response to the CONTRACTOR within five (5) business work days from the date of receipt of CONTRACTOR'S written notification.

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

In the event a condition is identified by the CONTRACTOR which, in the opinion of the CONTRACTOR, changes the services, costs, and/or time required for performance under this Agreement, the CONTRACTOR shall provide written notification to the CITY within five (5) business work days of such identification. The CITY shall respond in writing to such notification within five (5) business work days from the date of receipt of CONTRACTOR'S notification.

10. DELAYS

In the event that performance of SERVICES is delayed by causes beyond reasonable control of CONTRACTOR, and without the fault or negligence of CONTRACTOR, the time and total compensation for the performance of the SERVICES may be equitably adjusted by written agreement to reflect the extent of such delay. CONTRACTOR shall provide the CITY with written notice of delay pursuant to Article 9 including therein a description of the delay and the steps contemplated or actually taken by CONTRACTOR to mitigate the effect of such delay. The CITY will make the final determination as to reasonableness of delays.

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in accordance with the terms of this Agreement through no fault of the terminating party. This Agreement may also be terminated by the CITY for its convenience or because the PROJECT has been permanently abandoned, but only upon fifteen (15) calendar days written notice to CONTRACTOR.

In the event of termination, CONTRACTOR shall be compensated for all services performed and costs incurred up to the effective date of termination for which CONTRACTOR has not been previously compensated.

Upon receipt of notice of termination from the CITY, CONTRACTOR shall discontinue the SERVICES unless otherwise directed and upon final payment from the CITY deliver to the CITY the required number of copies of all data, drawings, reports, estimates, summaries, and such other information and materials as may have been accumulated by CONTRACTOR in the performance of this Agreement, whether completed or in process.

12. RECORDS AND AUDITS

CONTRACTOR will maintain records indicating dates, length of time, and services rendered. The CITY has the right to audit billings both before and after payment, and contest any billing or portion thereof. Payment under this Agreement does not foreclose the CITY'S right to recover excessive or illegal payments. CONTRACTOR will retain records for five (5) years after the completion of the project.

13. DISCLOSURE AND OWNERSHIP OF DOCUMENTS, PRODUCTS, DESIGN, ELECTRONIC FILES

All technical data, electronic files, and other written and oral information not in the public domain or not previously known, and all information, electronic files, and data obtained, developed, or supplied by the CITY will be kept confidential and CONTRACTOR will not disclose to any other party, directly or indirectly, without the CITY'S prior written consent unless required by lawful order.

All technical data, electronic files, products developed, operational parameters, blueprints, and other information and work of the CONTRACTOR shall be the sole property of the CITY and shall be delivered to the CITY when requested and at the end of the Agreement.

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

To the extent that CONTRACTOR employs any employees, CONTRACTOR shall be solely responsible for providing its own form of insurance for its employees and in no event shall CONTRACTOR's employees be covered under any policy of the CITY.

CONTRACTOR'S retention hereunder is not exclusive. Subject to the terms and provisions of this Agreement: (i) CONTRACTOR is able, during the Term hereof, to perform services for other parties; and (ii) CONTRACTOR may perform for its own account other professional services outside the scope of this Agreement.

CONTRACTOR is and shall be an Independent Contractor and shall be responsible for the management of its business affairs. In the performance of the work under this Agreement, CONTRACTOR will at all times be acting and performing as an Independent Contractor, as that term is understood for federal and state law purposes, and not as an employee of the CITY. Without limitation upon the foregoing, CONTRACTOR shall not accrue sick leave, jury duty pay, retirement, insurance, bonding, welfare benefits, or any other benefits, which may or may not be afforded employees of the CITY. CONTRACTOR will not be treated as an employee for purposes of: Workers' Compensation benefits; the Federal Unemployment Tax Act; Social Security; other payroll taxes, federal or any state income tax withholding; or the employee benefit provisions described in the Internal Revenue Code of 1986, as amended. Neither the CITY, nor its agents or representatives, shall have the right to control or direct the manner, details or means by which CONTRACTOR accomplishes and performs its services. Nevertheless, CONTRACTOR shall be bound to fulfill the duties and responsibilities contained in the Agreement.

15. NO JOINT VENTURE OR PARTNERSHIP

Nothing contained in this Agreement shall create any partnership, association, joint venture, fiduciary or agency relationship between CONTRACTOR and CITY. Except as otherwise specifically set forth herein, neither CONTRACTOR nor CITY shall be authorized or empowered to make any representation or commitment or to perform any act which shall be binding on the other unless expressly authorized or empowered in writing.

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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.

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1. Commercial General Liability Insurance
 - a. \$1,000,000 per occurrence / \$2,000,000 aggregate

- b. Coverage must include premises and operations, products and completed operations, and personal and advertising injury.
 - c. The City of Las Cruces must be named as an Additional Insured for all coverages listed above on endorsements acceptable to the City.
 - d. Coverage must be primary and non-contributory.
 - e. Coverage must be per project or per location.
 - f. Coverage must be on an occurrence form.
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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.

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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: Tony Trevino, PE, CFM

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Miller Engineers, Inc. d/b/a Souder, Miller & Associates
3500 Sedona Hills Parkway
Las Cruces, NM 88011
ATTENTION: Darryl D. Coster, PS

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.

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MILLER ENGINEERING, INC. d/b/a
SOUDER, MILLER & ASSOCIATES

CITY OF LAS CRUCES

BY: _____
Darryl D. Coster, PS
Associate Vice President

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 1/20/2023

City Attorney

EXHIBIT A

SERVICES

- A. Project assignment is initiated by the City providing the selected Surveyor a detailed project description, including scope of work and any other special instructions needed by the Surveyor to prepare items such as preliminary and final cost estimates, complete project plans and specifications, project reports, and other related surveying services. The preferred Surveyors shall provide surveying services that may include but not be limited to, the following:

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- m. As-built drawings on electronic media and reproducible prints. Electronic drawings shall be on CD drawn in AutoCAD format. All horizontal and vertical location datum information shall be coordinated with the City Surveyor. The utility location information shall be tied to project control monuments and referenced to project construction stationing. The project control survey and report shall be certified by a New Mexico Registered Land Surveyor. Metadata or "data about the data" shall be submitted with each as-built electronic file, preferably as a separate text file on the electronic submittal media, and shall include:
 - Name, address and phone number of the responsible land surveyor.
 - Date of completion of survey
 - Equipment/crew names used to conduct the Survey
 - Horizontal and vertical control marks used to tie the survey to the City approved control
 - Transformation factors needed to reduce Ground (local coordinate system) to Grid and combined scale factor used
- n. "RECORD DRAWINGS" shall be clearly labeled on each sheet
- o. Preferred CAD format is the latest version of Autodesk Civil 3D (C3D) utilizing City-developed C3D templates, styles, and point codes to facilitate survey / engineering standards and field-to-finish workflows
- p. Topographic surveys shall utilize field-to-finish workflows that facilitate high precision TIN models
- q. All survey work performed for City projects will utilize City Coordinate System / horizontal/vertical datum, and use AutoCAD template settings
- r. Project reports (e.g. Control, Boundary)
- s. Any other item specified in the contract for that project

PREFERRED PROFESSIONAL FEE SCHEDULE - EFFECTIVE January 2023

PROFESSIONAL SERVICES

Professional Staff

Principal	\$ 240.00 per hour
Senior Manager III	\$ 225.00 per hour
Senior Manager II	\$ 210.00 per hour
Senior Manager I	\$ 200.00 per hour
Senior Engineer/Scientist/Surveyor III	\$ 190.00 per hour
Senior Engineer/Scientist/Surveyor II	\$ 180.00 per hour
Senior Engineer/Scientist/Surveyor I	\$ 165.00 per hour
Project Engineer/Scientist/Surveyor III	\$ 150.00 per hour
Project Engineer/Scientist/Surveyor II	\$ 140.00 per hour
Project Engineer/Scientist/Surveyor I	\$ 130.00 per hour
Staff EIT/Scientist/LSIT III	\$ 125.00 per hour
Staff EIT/Scientist/LSIT II	\$ 120.00 per hour
Staff EIT/Scientist/LSIT I	\$ 110.00 per hour

Technical Staff

Engineering/Design/Survey/Field Tech VIII	\$ 175.00 per hour
Engineering/Design/Survey/Field Tech VII	\$ 155.00 per hour
Engineering/Design/Survey/Field Tech VI	\$ 135.00 per hour
Engineering/Design/Survey/Field Tech V	\$ 120.00 per hour
Engineering/Design/Survey/Field Tech IV	\$ 105.00 per hour
Engineering/Design/Survey/Field Tech III	\$ 80.00 per hour
Engineering/Design/Survey/Field Tech II	\$ 80.00 per hour
Engineering/Design/Survey/Field Tech I	\$ 70.00 per hour
Technical Intern II	\$ 60.00 per hour
Technical Intern I	\$ 50.00 per hour
Construction Observer IV	\$ 120.00 per hour
Construction Observer III	\$ 100.00 per hour
Construction Observer II	\$ 80.00 per hour
Construction Observer I	\$ 60.00 per hour

Support Staff

Project Financial/Manager Assistant II	\$ 100.00 per hour
Project Financial/Manager Assistant I	\$ 75.00 per hour
Administrative Assistant IV	\$ 120.00 per hour
Administrative Assistant III	\$ 100.00 per hour
Administrative Assistant II	\$ 80.00 per hour
Administrative Assistant I	\$ 60.00 per hour

EXPENSES

All project-related expenses will be billed at rates determined with respect to current market pricing; a complete list of expense rates is available upon request.

OTHER SERVICES

Telephone/facsimile/postage @ actual cost
Mileage @ \$0.655 per mile (or current IRS rate)
Per diem \$155.00 per day (or max per-diem rate per USGSA)
Other travel (car rental, air, etc.) @ actual cost

SUBCONTRACTED SERVICES

Subconsultants, analytical laboratories, drilling services & general subcontractors @ cost+10%

Applicable tax applies to all billable hours, expenses and other charges for which such tax has not previously been paid. Overtime will be charged at a rate of 1.5x on time & materials contracts with prior written acknowledgement of the client for services in excess of 8 hours in a day, on weekends or holidays. A 1.5% interest charge per month will be applied to all invoices not paid within 30 days.

EXPENSE FEE SCHEDULE - EFFECTIVE NOVEMBER 2022

Survey Equipment

High Precision GPS	\$30/hour
UAV Rotary	\$350/day
UAV Fixed Wing	\$420/day
UAV Post Processing	\$50/hour
Auto-Reading Level	\$20/hour
Total Station	\$30/hour
Terrestrial Laser Scanner	\$60/hour

GIS Hosting & Resource Grade

Data Collection

ArcGIS Online	\$1,500/year
Additional ArcGIS Online Account	\$1,000/year
Bad Elf GNSS Surveyor	\$250/m

Sampling Collecting Equipment

Slide Hammer & Probe	\$25/day
Soil Auger - Hand	\$10/day
Soil Auger- Power	\$40/day
Quart Mason Jars	\$1/each
Disposable Bailer	\$10/each
Tedlar Bags	\$15/each
VOC Samplers	\$1/each
2" x 6" Soil Samplers	\$5/each

Health & Safety Equipment

Respirator	\$20/day
Respirator Cartridges	\$6/each
Latex/Nitrile Gloves	\$1/pair
Tyvek Jumpsuit	\$20/suit
Tyvek Boot Covers	\$5/pair
Level D PPE (alternative to itemization)	\$20/day
Level C PPE	\$60/day
Level C PPE (Mercury Cleanup)	\$75/day
Level B PPE	\$100/day
Personal H2S Monitor	\$25/day
Personal 4-Gas Monitor	\$35/day
db Meter w/ Data Logger	\$75/day

Vapor Sampling Equipment

PID	\$75/day
3- or 4-Gas Meter	\$75/day
Explosimeter	\$40/day
MSA (Draeger) Detector Tubes	\$5/tube
Tedlar Bags	\$15/each
SVE Pilot Test Unit	\$1,500/day

Water Testing Equipment

pH Meter	\$10/day
eH Meter	\$10/day
TDS Meter	\$10/day
Conductivity Meter	\$10/day
Multi-Parameter Water Meter	\$40/day
D. O. Meter	\$55/day
Chloride-4500 Titration Test	\$15/sample
Hach DO Samples	\$3/each
Hach SO4 Samples	\$3/each
Hach Fe Samples	\$3/each
Hach NO3 Samples	\$3/each
Hach PO4 Samples	\$3/each
Product Interface Probe	\$65/day
Well Sounder	\$65/day
Hermit Data Logger	\$85/d \$460/w \$1,200/m
Transducer w/ 350' cable	\$40/d \$185/w \$570/m
Transducer w/ 500' cable	\$60/d \$260/w \$980/m
Grundfos Pump	\$200/day
Watera Pump	\$65/day
Geotech (Peristaltic) Geopump	\$35/d \$85/w
Geopump Filters	\$12/each
DC Purge Pump (High Capacity)	\$45/day
DC Purge Pump (Low Capacity)	\$15/day
Flexible Tubing	\$1.50/foot
Foot Valve (Nylon)	\$20/each
Foot Valve (Stainless Steel)	\$40/each

Miscellaneous Support Equipment

Generator	\$100/day
Magnehelic Gauges (set)	\$20/day
Padlock (P812)	\$10/each
Drums (55 Gallon)	\$35/each
HazCat Kit	\$100/day
HazCat Reagents	\$35/sample
Mercury Recovery Kit	\$30/unit
Mercury Vapor Monitor	\$175/day
PetroFlag Kit	\$75/day
PetroFlag Reagents	\$20/sample
Digital Camera	\$20/day
Reciprocating Saw	\$80/day
Steam Cleaner	\$60/day
Cordless Drill	\$20/day
Pipe Locator	\$30/day
All-Terrain Vehicle w/ Trailer	\$100/day
525 Gallon Tank	\$40/day
Equipment Trailer	\$40/day
Utility Locator (Metrotech 810 or equal)	\$100/day



EXHIBIT B

PROJECT ASSIGNMENT AGREEMENT TEMPLATE



CITY OF LAS CRUCES

PROJECT ASSIGNMENT AGREEMENT

22-23-032 SURVEYING SERVICES

PROJECT NAME

Pursuant to terms and conditions of City of Las Cruces (CITY) Contract No. 22-23-032 dated _____, 20__ between the CITY and Miller Engineers, Inc. D/B/A Souder, Miller & Associates, (CONTRACTOR), as amended and incorporated herein by reference, the City and Contractor hereby agree on this ____ day of _____, 20__, as follows:

1. In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES as proposed in response to the CITY's RFP No. 22-23-032 and CONTRACTOR's proposal as set forth in ATTACHMENT A attached hereto.
2. The estimated completion date is **number** days after a Notice to Proceed is issued by the CITY to the CONTRACTOR.
3. In consideration for the satisfactory completion of the work agreed to herein, compensation shall be made in the amount of **\$dollars.cents**, plus NMGR. Invoices issued by the CONTRACTOR shall be made **monthly / upon completion of project** with payment by the CITY being made within 30 days upon receipt of undisputed invoice.

MILLER ENGINEERS, INC. dba SOUDER,
MILLER & ASSOCIATES

CITY OF LAS CRUCES

By: _____
Signature Date

By: _____
Signature Date

Print Name and Title

Alicia Hernandez, Purchasing Manager

Requisition No. **XXXXXXXX**



City Council Action and Executive Summary

3041; Council Bill 23-035

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☐ 1	☐ 2	☐ 3	☒ 4	☐ 5	☐ 6	☐ N/A
1st Reading:	June 20, 2023			Adopted:	July 3, 2023		
Drafter:	Vince Banegas			Department:	Community Development		
Program:	Community Planning			Line of Business:	Community Planning		
Title:	AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1C (COMMERCIAL LOW INTENSITY - CONDITIONAL) TO C-1C (COMMERCIAL LOW INTENSITY - CONDITIONAL) TO REMOVE AN EXISTING CONDITION RESTRICTING BUILDING USE FOR NON-RESIDENTIAL PURPOSES FOR PROPERTY ± 0.20 ACRES IN SIZE AND LOCATED AT 1024 SOUTH MAIN STREET.						

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 38-13A. of the 2001 Las Cruces Zoning Code, as amended. A zoning district is a specifically delineated area where land use regulations uniformly govern the use, placement, spacing, density, bulk, height, and size of buildings and/or land.

The applicant is requesting a zone change from C-1C (Commercial Low Intensity - Conditional) to C-1C (Commercial Low Intensity - Conditional) primarily to remove an existing condition that restricts the use of the building in terms of non-commercial activity. As per Ordinance #587, dated 2/19/85, the subject property was rezoned from R-4 (High-Density Residential and Limited Office) to C-1C. The condition restricted the use of the building to no more than 600 square feet for non-residential use and the remaining square footage for residential use only. The intent was to minimize potential commercial/office impacts to the neighborhood in that most of the area was of a residential use/zoning designation with only limited lots having a small office uses/zoning in place. The existing building is ± 2,059 square feet. The 600 square feet was intended for small retail use at that time.

Since the zone change in 1985, the property was used in various capacities ranging from retail to office with many of those subsequent uses utilizing the entire building to accommodate their business needs. When this took place, use of the property violated Ordinance #587. To the best of staff's knowledge, use in this capacity did not raise any significant concerns/complaints from the neighborhood. In 1996, parking-related variances were approved for the property to help accommodate a retail use that occupied the property for several years. These variances run with the land and were subsequently used to accommodate other uses including the latest called Bryan's Green Care. Bryan's Green Care (BGC) has applied for and received conditional approval for a special use permit to operate a cannabis dispensary at the subject location. One SUP condition required that they submit for a zone change to eliminate the use restriction in that BGC's operational plan seeks to utilize the entire building for their CBD and THC related sales. The other conditions speak to site design/development code compliance given that the property sat vacant for one year or longer and that the use changed from office

Agenda Item #9.6.

to commercial. Per code, and per the conditions of the SUP approval, code compliance is required. To this end, staff has been working with the business owner to address the nonconforming issues.

On February 28, 2023, the zone change request was heard by the Planning and Zoning Commission (P&Z) at their regular meeting. The zone change request received a recommendation of conditional approval by a vote of 4-0-0 (one Commissioner absent, two seats vacant). The conditions speak to the need to replat all lots or portions thereof used for the business into one lot, install all auto parking pursuant to code and previously approved variances, install bicycle parking per code, install landscaping to the extent possible, and to complete either the improvements or a compliance plan prior to the issuance of a full business registration/license.

Prior to the P&Z meeting, staff received one phone call voicing concern over the use/zone change. The individual was concerned that the use would become a 24-hour operation. The business owner clarified the hours/days of operation which satisfied the concern.

SUPPORT INFORMATION:

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

[EXHIBIT "B" - Conditions](#)

[EXHIBIT "C" - Findings of Fact](#)

[ATTACHMENT "A" - 1024 S Main Street Staff Rpt.](#)

[ATTACHMENT "B" - P&Z Approved Minutes, 2/28/23](#)

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 1024 South Main Street will be rezoned from C-1C (Commercial Low Intensity - Conditional) to C-1C (Commercial Low Intensity - Conditional).

2. Vote "No"; this will deny the Ordinance and will reject the recommendation made by P&Z. The current zoning designation will remain in place along with the condition that restricts the amount of non-residential use allowed.

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 3041; COUNCIL BILL 23-035

AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1C (COMMERCIAL LOW INTENSITY - CONDITIONAL) TO C-1C (COMMERCIAL LOW INTENSITY - CONDITIONAL) TO REMOVE AN EXISTING CONDITION RESTRICTING BUILDING USE FOR NON-RESIDENTIAL PURPOSES FOR PROPERTY ± 0.20 ACRES IN SIZE AND LOCATED AT 1024 SOUTH MAIN STREET.

The City Council is informed that:

WHEREAS, Victoria Bruce, Business Co-Owner - Bryan's Green Care, has submitted a request for a zone change from C-1C (Commercial Low Intensity - Conditional) to C-1C (Commercial Low Intensity - Conditional); and

WHEREAS, said request is made seeking to eliminate the current condition established by Ordinance #587, dated 2/19/85, restricting the use of the building on the subject property to not more than 600 square feet of non-residential use; and

WHEREAS, Bryan's Green Care wishes to utilize all available building square footage (± 2,059) for business operations; and

WHEREAS, the proposed zone change is consistent with the Urban Neighborhood Place Type per 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 February 28, 2023, recommended that the zone change request be approved by a vote of 4-0-0 (one Commissioner absent, two seats vacant).

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

(I)

THAT the land as reflected in Exhibit "A", attached hereto and made part of this Ordinance, is hereby zoned C-1C (Commercial Low Intensity - Conditional).

(II)

THAT the conditions stipulated are identified in Exhibit "B", attached hereto and made part of this Ordinance.

(III)

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

(IV)

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

(V)

Agenda Item #9.6.

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

EXHIBIT “A” – Vicinity Map

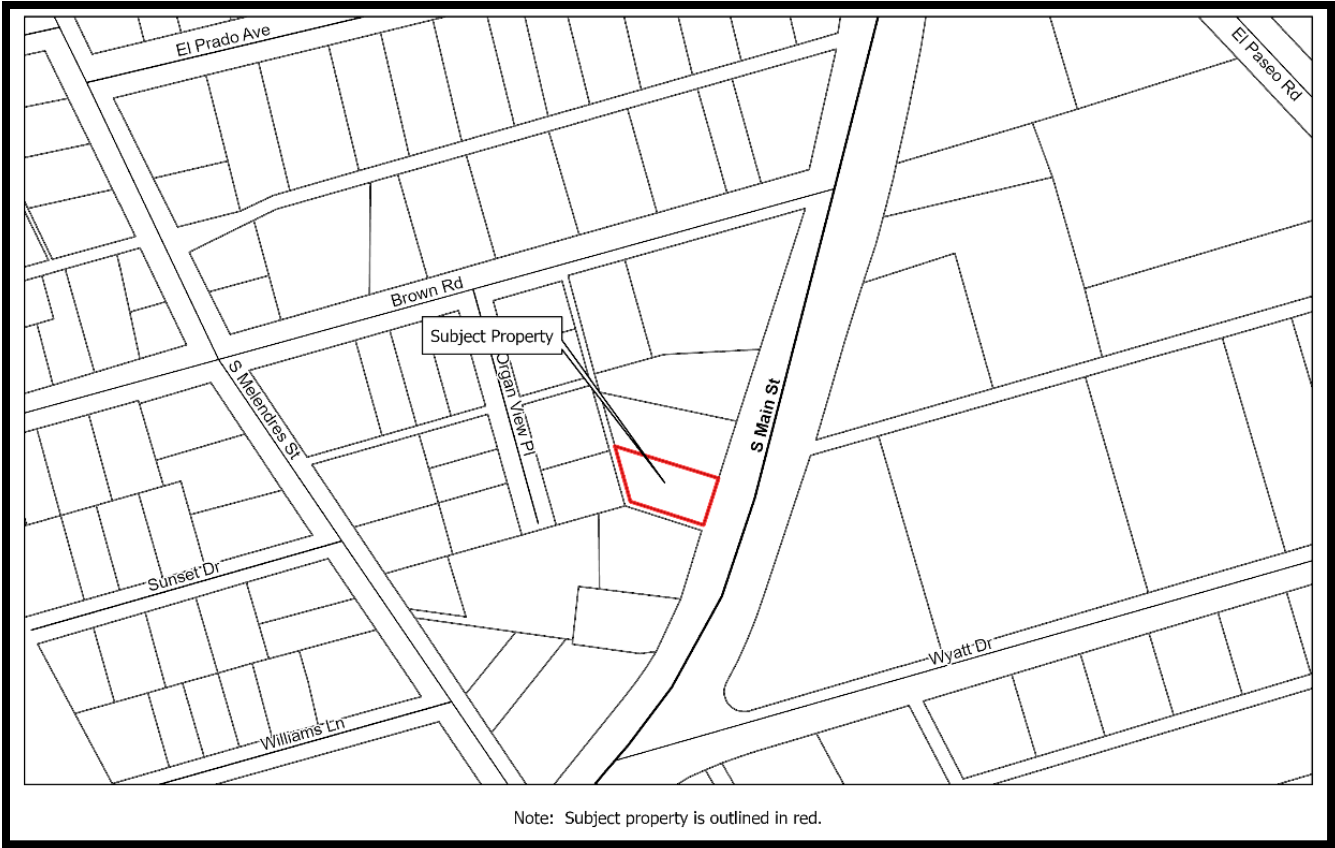


EXHIBIT “B” - Conditions

Conditions for approval are as follows:

1. The business owner working with the property owner shall replat the existing lots (1, 2, and part of lots 3 and 14) into one parcel.
2. The business owner shall provide all necessary parking pursuant to the 2001 LC Zoning Code, as amended, and prior variances approving reduced parking stall width and backup/driving aisle depth, and parking stall quantity for all 90-degree parking located on-site.
3. Bicycle parking shall be installed in accordance with code.
4. Landscaping and the required irrigation system shall be installed to the extent possible given the build-out and configuration of the site.
5. All related improvements shall be completed prior to the issuance of a business registration for the proposed use if approved. A compliance plan may be used to facilitate completion of all necessary improvements.

EXHIBIT “C” – Findings of Fact

1. As per Ordinance #587, dated 2/19/85, the subject property was rezoned from R-4 to C-1C establishing conditions for the building on the property to be capped at 600 sq. ft. for non-residential uses and required at least 1,000 sq. ft. of the building to be used for residential purposes.
2. The zone change request will seek to eliminate the conditions on the parcel to allow full use of the building for retail purposes at the lowest of three commercial use intensities possible.
3. The subject property is intended to be used for the retail sale of CBD and Cannabis product. All buffer requirements related to cannabis except for the separation to single-family zoning districts are met. This is being addressed under a separate SUP application.
4. The subject parcel as it exists is surrounded by office uses (north and south), and retail and office (east).
5. Zoning in the area immediately adjacent to the subject property is O-2C (north), C-1 (south), C-2 and C-3 (east) and R-1a (west).
6. The subject parcel's proposed zoning and use will be compatible with several other non-residential properties with frontage along S. Main St.
7. The site is oriented to attract vehicular business from S. Main St. having little impact on the single-family properties located due west.
8. A small $\pm$ 8.5-foot irrigation channel, zoned R-1a (Single-Family Medium Density) provides a buffer that helps separate single-family residential uses from the subject property.
9. Variance requests involving parking stall width, stall quantity and backup/driving aisle depth was approved on 1/9/1996, which helps facilitate commercial use of the property.
10. The property is within the Urban Neighborhood place type characterized by having a variety of residential housing types at medium-to-high densities and areas of supporting neighborhood commercial development.
11. The proposed zone change is supported by the Elevate Las Cruces Comprehensive Plan (see goals, policies, and actions in attached staff report) and meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
12. All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended, and those stipulated by the State of New Mexico must be adhered to for subsequent operation of the proposed business. The subject property meets the distance separation requirements from any school, nursery/day care, and similar cannabis retail establishments.



City of Las Cruces
MOUNTAINS OF OPPORTUNITY

Planning & Zoning Commission 02/28/2023
CASE 23ZO0500011: ZONE CHANGE

STAFF CONTACT:	Vincent Banegas, (575) 541-3058, vbanegas@las-cruces.org
OWNER:	Jerome O'Connell, Managing Member, 1024 South Main, LLC
REPRESENTATIVE:	Victoria Bruce, Business Co-owner – Bryan's Green Care
DISTRICT:	District #4
SITE ADDRESSES:	1024 S. Main St.
EXISTING ZONING:	C-1C (Commercial Low Intensity-Conditional)
REQUEST:	A zone change from C-1C (Commercial Low Intensity-Conditional) to C-1 (Commercial Low Intensity).
RELATED APPLICATIONS:	22ZO1000134
STAFF RECOMMENDATION:	Conditional Approval

SUMMARY OF CASE 23ZO0500011: The proposed zone change from C-1C (Commercial Low Intensity-Conditional) to C-1 (Commercial Low Intensity) seeks to remove the conditions established when the property underwent a zone change from its' original R-4 (High Density Residential and Limited Office District) zoning designation. Doing so will facilitate the use of the existing building for the sale of cannabis in addition to the CBD products already sold. The subject property encompasses ± 0.20 acres.

SUMMARY OF RECOMMENDATION: Staff is recommending **CONDITIONAL APPROVAL** based on the findings listed below:

- As per Ordinance #587, dated 2/19/85, the subject property was rezoned from R-4 to C-1C establishing conditions for the building on the property to be capped at 600 sq. ft. for non-residential uses and required at least 1,000 sq. ft. of the building to be used for residential purposes.
- The zone change request will seek to eliminate the conditions on the parcel to allow full use of the building for retail purposes at the lowest of three commercial use intensities possible.
- The subject property is intended to be used for the retail sale of CBD and Cannabis product. All buffer requirements related to cannabis except for the separation to single-family zoning districts are met. This is being addressed under a separate SUP application.

- The subject parcel as it exists is surrounded by office uses (north and south), and retail and office (east).
- Zoning in the area immediately adjacent to the subject property is O-2C (north), C-1 (south), C-2 and C-3 (east) and R-1a (west).
- The subject parcel's proposed zoning and use will be compatible with several other non-residential properties with frontage along S. Main St.
- The site is oriented to attract vehicular business from S. Main St. having little impact on the single-family properties located due west.
- A small $\pm$ 8.5-foot irrigation channel, zoned R-1a (Single-Family Medium Density) provides a buffer that helps separate single-family residential uses from the subject property.
- Variance requests involving parking stall width, stall quantity and backup/driving aisle depth was approved on 1/9/1996, which helps facilitate commercial use of the property.
- The property is within the Urban Neighborhood place type characterized by having a variety of residential housing types at medium-to-high densities and areas of supporting neighborhood commercial development.
- The proposed zone change is supported by the Elevate Las Cruces Comprehensive Plan and meets the purpose and intent requirements of Section 38-2 of the 2001 Zoning Code, as amended.
- All applicable requirements as outlined in the 2001 Las Cruces Zoning Code, as amended, and those stipulated by the State of New Mexico must be adhered to for subsequent operation of the proposed business.

The staff recommended **condition** for approval is as follows:

- The business owner working with the property owner shall replat the existing lots (1, 2, and part of lots 3 and 14) into one parcel.
- The business owner shall provide all necessary parking pursuant to the 2001 LC Zoning Code, as amended, and prior variances approving reduced parking stall width and backup/driving aisle depth, and parking stall quantity for all 90-degree parking located on-site.
- Bicycle parking shall be installed in accordance with code.
- Landscaping and the required irrigation system shall be installed to the extent possible given the build-out and configuration of the site.
- All related improvements shall be completed prior to the issuance of a business registration for the proposed use if approved. A compliance plan may be used to facilitate completion of all necessary improvements.

PROPOSAL AND LAND USE HISTORY

DETAILED DESCRIPTION:

The applicant is seeking approval for a zone change from C-1C to C-1 to remove conditions that limit the use of the existing building for proposed retail purposes. The conditions established during the last rezoning action (1985) placed a 600 square foot cap on the amount of building square footage that can be used for non-residential purposes. The remainder was to be for residential use.

In early 1996, variances to parking related matters were granted which authorized a variance of 6 stalls to the 15 required, an 11-foot variance to the minimum 27-foot backup/driving aisle, and a 1-foot variance to the minimum 9-foot stall width required (90-degree stalls). These variances run with the land and will be applied for parking compliance purposes as applicable. In that current parking provisions require less stalls for the proposed use, the lessor of the number of stalls required will be utilized.

Presently, the subject location is where the applicant retails CBD product. The addition of cannabis product sales is proposed, which is why a Special Use Permit (SUP) is processing under a separate application. Retail activity is proposed to use all of the existing building square footage requiring the proposed rezoning action. For reference, the subject building was constructed in 1930 and is presently ± 2,059 square feet in size.

The property has seen various uses throughout the years. Uses have included office and retail and prior to its current occupancy, sat vacant for over one year. Change in use, vacancy, and current zoning place restrictions on the property that the proposed zone change action and associated proposed conditions will address allowing full use of the property in accordance with code and the applicant’s vision.

LAND USE HISTORY:

The property was commercially zoned in 1985. The property was created via the Brown Pueblo Addition Subdivision 269. The building presently sits on two lots (1, 2, and part of lots 3 and 14) resulting in an overall lot size of ± 0.20 acres. One of the conditions for approval speaks to the need to replat the subject property into one lot.

ZONING DECISION CRITERIA AND POLICIES

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

NEIGHBORHOOD CHARACTER AND COMPATIBILITY:

The property is located within an area containing a mix of zoning districts. These districts include R-1a (Single-Family Medium Density), O-1 (Office, Neighborhood – Limited Retail Service), O-2 (Office, Professional – Limited Retail Service), C-1 (Commercial Low Intensity), C-2 (Commercial Medium Intensity), and C-3 (Commercial High Intensity). Non-residential uses primarily exist north, south, and east of the subject location. Single-family residential uses within the R-1a zoning district are located directly west of the subject property with no direct access to it.

An approximate 8-foot-wide irrigation channel separates the subject property from the nearest single-family use. This channel is zoned R-1a and helps to serve as a buffer separating non-residential and residential uses. Should additional buffer/screening be required, it will be addressed during applicable review for site compliance.

South Main Street, a designated Principal Arterial roadway per the Metropolitan Planning Organization's (MPO) Future Thoroughfare Map and Elevate Las Cruces, provides the sole ingress/egress to the property. This is also how adjacent properties obtain access.

Based on area land use, zoning and transportation facilities, staff's perspective is that the proposed zone change will not impose any significant impacts on the surrounding neighborhood. In fact, the zone change will facilitate correction of zoning and land use related issues with the property that were only recently found to be problematic. Additionally, by limiting the zone change to the lowest commercial district designation, impacts to adjacent properties will be minimized.

COMPLIANCE WITH ELEVATE LAS CRUCES COMPREHENSIVE PLAN:

- Community Environment:
 - Goal CE-3: Centers and Corridors – Support community growth through concentrated development at activity centers and along key corridors.
 - Policy CE-3.2 – Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts.
 - Goal CE-4: Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.
 - Policy CE-4.2 – Incorporate employment and shopping nodes into new and redeveloping neighborhoods to provide residents with convenient access to services.
- Community Prosperity
 - Goal CP-2: Economic Equity – Generate employment opportunities that create economic security for all residents.
 - Policy CP-2.2 – Support efforts to connect vulnerable populations to job opportunities.
 - Action CP -2.2.2 – Identify and promote places of employment to minimize commutes and increase accessibility to other transportation modes to create a job-housing balance.
 - Goal CP-4: Diversification - Seek a balance of business recruitment, retention, and expansion to diversify economic opportunities.
 - Policy CP-4. - Support efforts to be regionally and nationally competitive in regard to retaining and growing businesses, jobs, and students.

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 SUP include:

- A. Ensure that all development is in accordance with this Code and the Elevate Las Cruces Comprehensive Plan and its elements.
- C. Give reasonable consideration to the character of each zoning district and its peculiar suitability for particular uses.
- D. Encourage mixed land uses to decrease the length of trips for work and/or shopping and encourage the consolidation of trips and alternative modes of travel.
- F. Control and abate the unlawful use of structures, buildings, or land.
- L. Ensure that development proposals are sensitive to the character of existing neighborhoods.
- M. Foster a more rational relationship between different land uses for the mutual benefit of all.
- N. Conserve the value of buildings and land.

CRITERIA FOR DECISIONS:

- Impairment of adequate supply of light and air to adjacent property;
- Unreasonable increase in potential traffic;
- Increase the danger of fire or endanger the public safety;
- Determent of orderly and phased growth;
- Impairment of the public health, safety, or general welfare of the city;
- Establishment of a spot zone; or the
- Contradiction of the purpose and intent of the zoning code, sign code, design standards and other companion codes.

Based upon a review of the proposal and applicable regulations and policies, City Staff did not consider any of the aforementioned criteria as a significant concern in context to the subject request. Additionally, several comprehensive plan goals, policies and actions support the proposal in that the policies speak to provisions for mixed-use neighborhoods, expanding economic opportunities to remain competitive both regionally and nationally, locating business along key corridors and major thoroughfares, and expanding employment opportunities to increase resident economic security. In terms of the proposed use, the business will function as any other retailer selling goods within the city. Operation of the business will be compliant with all applicable zoning and building codes (to the extent possible) and should not be a detriment to the public's health, safety, and general welfare. As such, the proposed use will be in harmony with the purpose and intent of the 2001 Zoning Code, as amended and the Elevate Las Cruces Comprehensive Plan.

DEVELOPMENT STANDARDS

SITE COMPLIANCE FOR USES UNDER CURRENT ZONING:

The subject property is currently zoned C-1C (Commercial Low Intensity-Conditional) and is ± 0.20 acres. A building on-site is designed to accommodate limited retail uses. Business use on the property has in the past, required consideration of variances and said variances will be put into play with any pending use. Having said that, the site does not currently meet all applicable development regulations and will require the attention of the business/property owners for compliance purposes. Deficiencies found will be rectified through subsequent permitting and business registration processes as applicable.

SITE SUITABILITY FOR USES UNDER PROPOSED ZONING:

The proposed use will be in keeping with several other commercial properties in the vicinity. The site should serve the proposed use reasonably well in that originally it was developed as a residential use and later converted for residential/retail purposes. As such, access, limited parking, and other limited development requirements remain in place.

FLOOD PLAIN:

The subject property is located within the AE Flood Zone. This zone is the 100-year FEMA base flood value meaning that areas in the AE zone stand a 1% chance of being flooded every year.

ADEQUACY OF PUBLIC FACILITIES AND SERVICES:

City water, gas and sewer already serve the site and are adequate for the proposed use. South Main St. is designated as a principal arterial roadway and this roadway serves as access to the subject property. S. Main St. includes all applicable street design elements.

STAFF AND PUBLIC COMMENTS

PUBLIC NOTIFICATION AND INPUT:

Notice of a Public Hearing was mailed to all property owners within 500 feet of the subject property on or around 2/5/23. To date, staff has not received any surrounding property owner input.

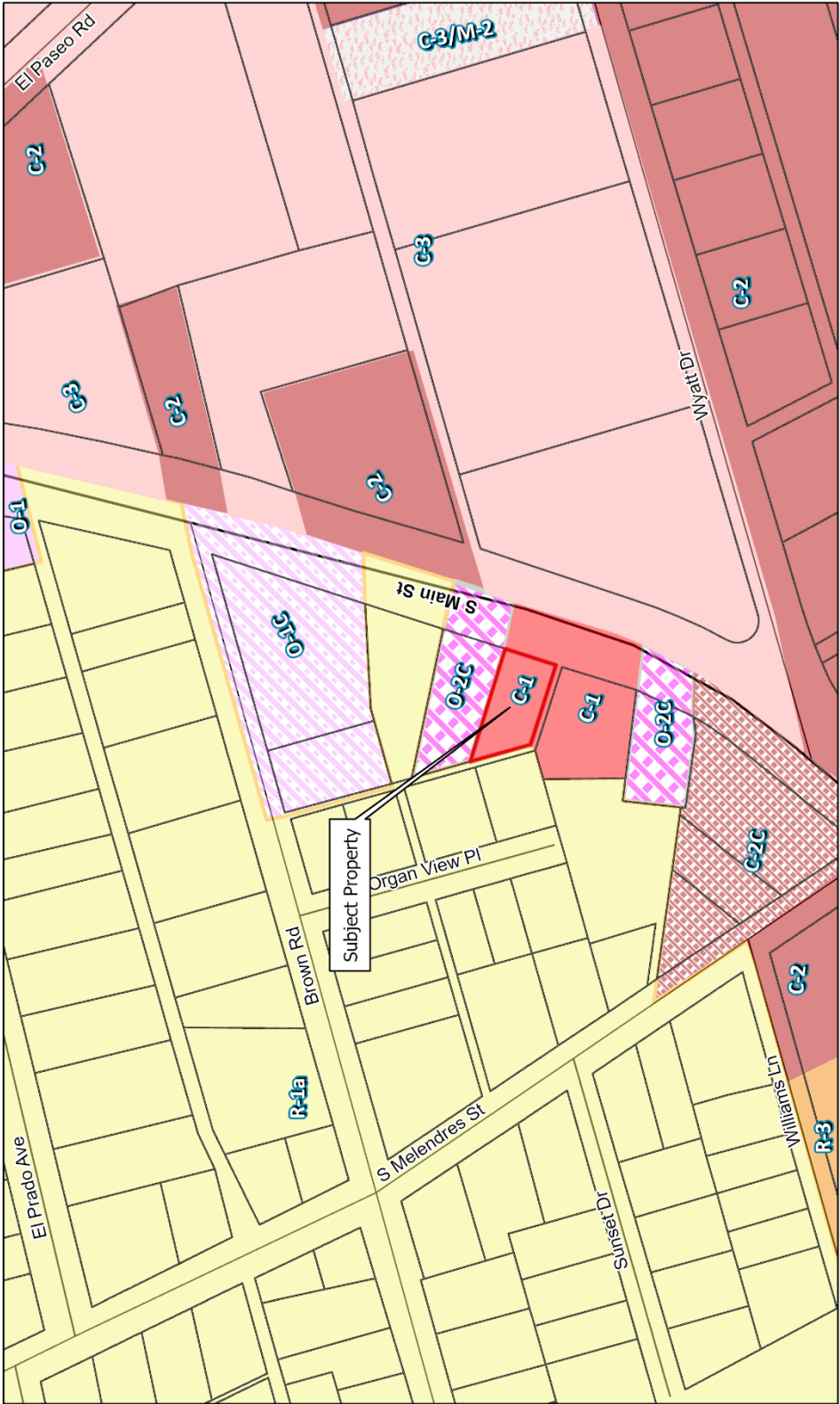
STAFF COMMENTS:

The proposed zone change is consistent with Elevate Las Cruces Comprehensive Plan and the 2001 Las Cruces Zoning Code, as amended. In that the zone change will help resolve a zoning map error and facilitate uses proposed for the property, some of which have taken place since 1985, staff feels approval with the stated conditions is warranted.

ATTACHMENTS:

1. Zoning Map
2. Aerial Map
3. Site Plan
4. Request Letter
5. Development Review Comments

ATTACHMENT 1
Zoning Map



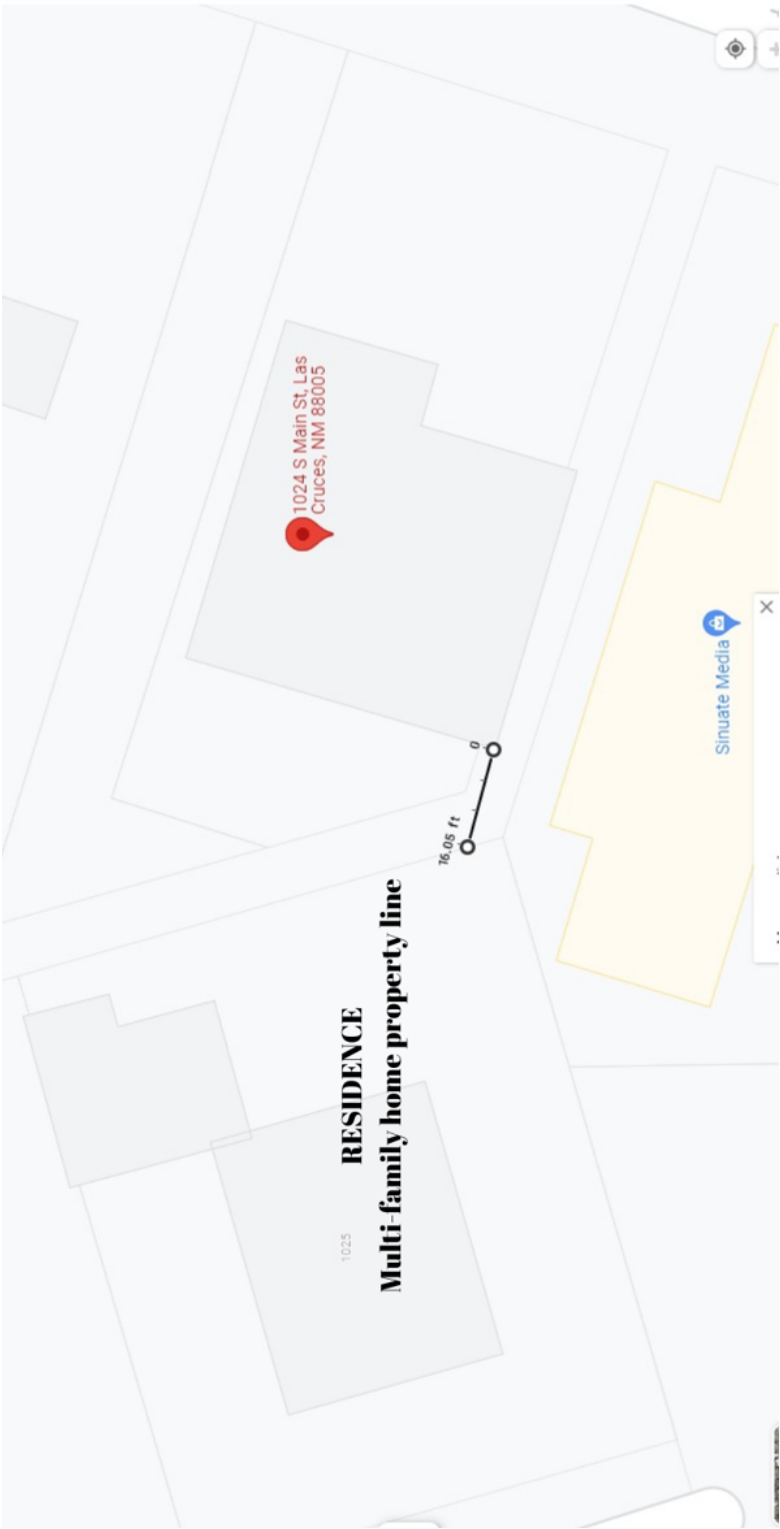
Note: Subject property is outlined in red.

ATTACHMENT 2
Aerial Map



Note: Subject property is outlined in red.

ATTACHMENT 3
Site Plan



ATTACHMENT 4

Request Letter



JUSTIFICATION LETTER

To Whom it May Concern:

My name is Victoria Bruce, Director of Operations and Co-owner of Bryan's Green Care. We are a small women, minority and veteran owned cannabis company. We have a growing facility, a production facility and three other retail locations within southeast New Mexico. We have been in El Paso, Texas for the last five years as a licensed hemp retailer. We are hoping to open a retail cannabis company at the proposed premises of 1024 South Main in Las Cruces.

We are requesting a zone request change from C1C as we have been informed is a conditional C1. We would request our premises be changed from a C1C to a C1. Our policy and procedures addressing security, neighboring properties, identification verification, and crime prevention techniques ensure adequate safety and security to the premises. We are requesting to be considered for a variance regarding this zoning. Thank you for your time, hard work, and consideration regarding this matter.

Fondly,

Victoria Bruce, Director of Operations
Bryan's Green Care
1308 West Broadway
Hobbs, NM 88240
(575)441-2030

ATTACHMENT 5

Department Review

Comments

Department: Engineering

Status: NOT REQUIRED

Department: Planning

Status: APPROVED W/ CONTINGENCIES

- The business owner working with the property owner shall replat the existing lots (1, 2, and part of lots 3 and 14) into one parcel.
- The business owner shall provide all necessary parking pursuant to the 2001 LC Zoning Code, as amended, and prior variances approving reduced parking stall width and backup/driving aisle depth, and parking stall quantity for all 90-degree parking located on-site.
- Bicycle parking shall be installed in accordance with code.
- Landscaping and the required irrigation system shall be installed to the extent possible given the build-out and configuration of the site.
- All related improvements shall be completed prior to the issuance of a business registration for the proposed use if approved. A compliance plan may be used to facilitate all necessary improvements.
- Proposed facility use will require rezoning to C-1 to remove existing conditions currently in place.
-

Department: Fire

Status: APPROVED W/ CONTINGENCIES:

- Minimum 2-hour fire separation required between any residential portion and mercantile occupancy.

Department: UTILITIES

Status: APPROVED

Department: Transportation

Status: NOT REQUIRED

Department: Flood

Status: APPROVED W/ CONTINGENCIES

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

BOARD MEMBERS PRESENT:

Scott Kaiser, Chair
Vanessa Vega, Secretary
James Bennett, Member
Enrico Smith, Member

BOARD MEMBERS ABSENT:

Joaquin Acosta, Member

STAFF PRESENT:

Larry Nichols, Director Community Development Department, CLC
Adam Ochoa, Senior Planner/Building Inspection Supervisor
Vincent Banegas, Interim Planner
John Castillo, CLC Planner
Christina Abeyta-Corella, CLC Planner
Jocelyn Garrison, CLC Senior Assistant City Attorney
Becky Baum, Recording Secretary, RC Creations, LLC

1. CALL TO ORDER (6:00)

Kaiser: All right. Good evening ladies and gentlemen and welcome to the February 28th Planning and Zoning Commission meeting. Before we get started, we do have one Commissioner who wishes to participate via phone tonight, so we do need to make a motion and vote on that. So I'll make a motion to allow Commissioner Vega to participate by phone.

Bennett: I make a motion to allow Commission Commissioner Vega to participate by phone.

Kaiser: And I'll second.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Member Kaiser.

1
2 Kaiser: Yes.

3
4 Baum: Board Member Vega.

5
6 Vega: Yes.

7
8 Baum: Thank you.

9
10 **2. CONFLICT OF INTEREST**

11
12 Kaiser: All right. So we'll move to conflict of interest. Does anyone on the
13 Commission have a conflict of interest this evening? Seeing none.

14
15 **POSTPONEMENTS**

16
17 **1160 Encino Avenue Variance Request:** A variance of $\pm$ 19 feet to the
18 required 25-foot secondary front yard setback required for a proposed
19 attached carport located at 1160 Encino Avenue. The property is
20 approximately 0.137 acres in size, zoned R-1a (Single Family Medium
21 Density Residential) and is within Council District #1. Submitted by Mark
22 Torres on behalf of Jo E. Sr. and Mary A. Sellers, property owners. (Case #
23 22VO0500159)

24
25 Kaiser: All right, so we're going to make a slight change to today's agenda before
26 we accept the agenda. At the advice of the City's Attorney's office, we're
27 going to move the postponements up, so we'll take care of that and then
28 we'll approve the agenda with those items removed. We do have two
29 postponements tonight; my understanding is item 6.1 is going to be
30 postponed and 8.1 will also be postponed. So beginning with item 6.1. Do
31 we have a date certain on that or is that?

32
33 Banegas: Mr. Chairman, Members of the Commission. Vincent Banegas. We are
34 shooting for next month's regularly scheduled meeting. There's some
35 information that's lacking that we need to receive.

36
37 Kaiser: Understood. Thank you. So I will go ahead and make a motion to postpone
38 item 6.1 until the March 28 meeting. Can I get a second?

39
40 Bennett: I'll second.

41
42 Baum: Board Member Vega.

43
44 Vega: Yes.

45
46 Baum: Board Member Smith.

1
2 Smith: Yes.
3
4 Baum: Board Member Bennett.
5
6 Bennett: Yes.
7
8 Baum: Chair Kaiser.
9
10 Kaiser: Yes.
11

12 **Metro Square Final Site Plan:** A request for approval of a Final Site Plan
13 known as Metro Square located within the Metro Verde Planned Unit
14 Development (PUD). The proposed subdivision encompasses 7.36 ± acres,
15 is zoned PUD (Planned Unit Development), and is located on the southeast
16 corner of Red Hawk Golf Road and the future development of Prospect
17 Lane. The Final Site Plan proposes 72 mixed-use lots, one tract of land
18 dedicated for drainage and one tract of land dedicated for a park. Submitted
19 by Sierra Norte Development Inc., property owners. (Case # 23ZO3000149)
20

21 Kaiser: And our second postponement tonight is going to be item 8.1, and that will
22 be postponed to next month's meeting as well. So I'll go ahead and make
23 a motion to postpone item 8.1 until the March 28th meeting.
24

25 Vega: Second.
26

27 Baum: Board Member Vega.
28

29 Baum: Yes.
30

31 Baum: Board Member Smith.
32

33 Smith: Yes.
34

35 Baum: Board Member Bennett.
36

37 Bennett: Yes.
38

39 Baum: Chair Kaiser.
40

41 Kaiser: Yes.
42

43 Baum: Thank you.
44

45 Kaiser: All right. That does it for our postponements tonight.
46

3. ACCEPTANCE OF THE AGENDA

Kaiser: So now we'll go ahead and approve tonight's agenda. Can I get a motion and a second?

Bennett: I make a motion to approve tonight's consent agenda.

Smith: Second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

4. ELECTION OF OFFICERS

Kaiser: We are not doing election of officers tonight. We've been advised to continue to push that off until we get a full board.

5. APPROVAL OF MINUTES – January 24, 2022

Kaiser: So we will move on to the approval of the meeting minutes from January 24th. Before we do that, does anybody have a comment or corrections to make? All right, hearing none. I'll go ahead and make a motion to approve the meeting minutes from January 24th.

Smith: Second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

1
2 Baum: Board Member Bennett.

3
4 Bennett: Yes.

5
6 Baum: Chair Kaiser.

7
8 Kaiser: Yes.

9
10 Baum: Passes.

11
12 **6. POSTPONEMENTS**

13
14 MOVED TO BEFORE ACCEPTANCE OF THE AGENDA, AS PER City ATTORNEY.

15
16 **7. PUBLIC PARTICIPATION**

17
18 Kaiser: Okay, moving to a public participation. Is there anybody in tonight's
19 audience who wishes to speak on an item that is not on tonight's agenda?
20 I have this gentleman right here. Would you please come forward and state
21 your name for the record?
22

23 Shervanick: Gregory Shervanick, S-H-E-R-V-A-N-I-C-K, Mr. Chairman.

24
25 Kaiser: All right, Mr. Shervanick. Do you swear or affirm that the testimony you're
26 about to give is the truth and nothing but the truth under penalty of law?
27

28 Shervanick: I do.

29
30 Kaiser: All right. I will give you three minutes.

31
32 Shervanick: Thank you. Mr. Chairman, thank you for allowing me to address you and
33 the Commission and City staff. Since this body handles a variety and many
34 types of issues from the carport to multi story apartments to PUDs based
35 on the City's strategic plans, the ones that you accept or deny guide the
36 City's present tense and future tense ability to grow. I am asking that you
37 ask your City representatives as well as City staff to remand this body's to
38 be recorded verbatim each time it meets. At this particular time it has been
39 removed from being recorded in such a manner and live streamed. And as
40 you saw at the last meeting in January, there were ninety people. And
41 based on the number of anachronisms that we use, it would be fair and
42 transparent to have that record recorded, along with the recording being
43 taken at this time from this microphone. So I ask as citizens and as
44 representatives of our elected officials, that you asked the City staff to
45 remand this body's work, which is never challenged when it gets to City

Council and is needed to move the City forward in every manner, and in the future. Thank you very much.

Kaiser: Thank you, sir.

8. CONSENT AGENDA

8.1 Metro Square Final Site Plan: MOVED TO POSTPONEMENTS

8.2 White Sage at Sonoma Ranch North Phase 1 Replat No. 4: A non-administrative replat known as White Sage at Sonoma Ranch North Phase 1 Replat No. 4 located at 4155 White Sage Arc. The proposed subdivision encompasses 4.014 ± acres and is zoned C-3 (Commercial High Intensity). The subdivision will replat the existing commercial lot into six (6) commercial lots that vary in size from 0.509 ± to 0.947± acres in size. Submitted by Pillar Engineering LLC., representative. (Case # 22CS0500107)

Kaiser: All right, moving to tonight's consent agenda. We now only have one item, that is item 8.2. That was the agenda. So we've got one item on the consent agenda tonight. Looking for a motion to approve tonight's consent agenda.

Smith: I move that we approve tonight's consent agenda.

Bennett: I'll second.

Baum: Board Member Vega.

Vega: Yes.

Baum: Board Member Smith.

Smith: Yes.

Baum: Board Member Bennett.

Bennett: Yes.

Baum: Chair Kaiser.

Kaiser: Yes.

Baum: Passes.

9. OLD BUSINESS

Kaiser: Okay, we do not have any old business.

1
2
3
4 **10. NEW BUSINESS**
5

6 **10.1 1602 Lohman Avenue Special Use Permit Request:** A Special Use
7 Permit (SUP) to allow a cannabis dispensary (retailer) less than the required
8 300-foot buffer distance from another cannabis dispensary (retailer). The
9 subject property is located at 1602 E Lohman Avenue and is zoned C-2
10 (Commercial Medium Intensity) and is 0.215 ± acres in size. Submitted by
11 Euphora Group LLC, representative. (Case # 22ZO1000141)
12

13 **Kaiser:** So moving on to new business. Our next item is item 10.1, a Special Use
14 Permit at 1602 Lohman Avenue to allow a cannabis dispensary within the
15 required 300 foot buffer distance from another cannabis dispensary. So I
16 will turn it over to staff.
17

18 **Castillo:** Good evening. My name is John Castillo, Planner with the City of Las
19 Cruces. Good evening, Mr. Chair, Commission. Today we're going to be
20 discussing a Special Use Permit located at 1024 South Main Street. This
21 is to allow for a cannabis establishment next to another cannabis
22 establishment.
23

24 The current conditions of the property, it's currently zoned C-2 which is our
25 commercial medium intensity. It was originally developed as a small auto
26 truck repair shop. And the property is located at 1602 East Lohman at the
27 corner of Lohman and, I forgot what the other street was. I'm sorry. The
28 property is approximately 0.215 acres in size. The surrounding
29 neighborhood is generally retail and office. There are single-family
30 residential homes within the area, but these were a part of the zoning as
31 they came in.
32

33 As we can see here from the zoning map, it is largely C-2. This is an aerial
34 map of the property highlighted in yellow as we can see over here to the
35 left. These are some single-family homes as well as commercial
36 businesses or commercial land uses. So the proposal for this SUP is to sell
37 cannabis within the development of a cannabis retail store that's going to
38 be developed. The buffer distance between the cannabis retail area
39 perimeter and closest cannabis retail area perimeter boundary is
40 approximately 78 feet. According to our municipal code it does require a
41 300 foot buffer distance. All other buffer distances are to be met between
42 single-family residential zoning districts, as well as schools and daycares.
43

44 The proposal will also follow all City of Las Cruces and State of New Mexico
45 regulations governing cannabis related retail activity. As we can see from
46 the photos here, this is the former Maese's Auto Repair store that will now

1 become the proposed cannabis retail establishment. In the photo, beneath
2 it you can see the existing Organ Mountain Cannabis retailer that's there.

3
4 Public notice was sent to surrounding properties within 500 feet. Staff did
5 receive one phone call that was in opposition of the establishment being
6 proposed. All relevant staff reviewed the application and provided any
7 comments. Today staff recommends a conditional approval, as part of this
8 condition the property will be required to complete an administrative replat
9 bringing three properties into one property before the issuance of a
10 Certificate of Occupancy. As it sits right now its legal description is made
11 up of three properties. Previous maps showed that it was just one but those
12 are what we would consider a tax parcel. The findings for approval are
13 going to be, except for the distance to another cannabis retail
14 establishment, proposed use meets all other distance requirements. The
15 subject property is compatible with other fronting properties along Lohman
16 Avenue. The ingress and egress on site through Lohman or Lujan has very
17 little to no traffic impacts to other surrounding commercial uses. And then
18 it meets the purpose and intent of Section 38-2 of the Zoning Code, it will
19 meet all requirements outlined in the Zoning Code and those stipulated by
20 the State of New Mexico will be followed. This also meets the intent and
21 purpose of Elevate Las Cruces Comprehensive Plan, as it's located along
22 a mixed use corridor and located in the regional commercial place type.
23 Today, your options are going to be to vote "yes" to approve, vote "no" to
24 deny, or vote "yes" with conditions, or vote to table.

25
26 Kaiser: All right. Thank you. Are there any questions from the Commission?

27
28 Smith: I have one question. Just want to confirm that these two businesses aren't
29 connected to each other. Are they two separate businesses?

30
31 Castillo: They are two separate businesses.

32
33 Kaiser: So you mentioned that there are three parcels that would need to be
34 replatted into one, but looking at the map that's on the screen and in the
35 staff report, it just shows one parcel. Can you just explain that a little bit
36 more?

37
38 Castillo: Yes, as this is an older portion of the City that may have come in through, I
39 forget what the subdivision name is, but it was through an older subdivision
40 that was stated in the staff report. It's made up of three lots, lots of one
41 through three of the subdivision due to county tax parcels or being all owned
42 as one property as we share data with the county and vice versa. A lot of
43 these are what we call underlying lot lines or in a sense they would be
44 nonconforming lots and as a new development that's coming and we would
45 bring it into conformity.

1 Kaiser: Got it. Thank you. And then just to clarify, this is a current vacant property
2 or not vacant but the building itself is ...
3
4 Castillo: Yes, the business has been, not vacant but hasn't been in use for about
5 three years.
6
7 Kaiser: Okay, and is there any other nonconforming status associated with this
8 parcel?
9
10 Castillo: With the new business that's coming in, they would have to bring the entire
11 property into conformance. So they would have to provide all development
12 standards such as landscaping, parking requirements, and the rest.
13
14 Kaiser: Understood. Thank you. Any other questions from the Commission?
15 Commissioner Vega, did you have any questions?
16
17 Vega: No, thank you.
18
19 Kaiser: I'll turn to the public now. Is there anybody in the audience who wishes to
20 speak on this item? All right, please come forward. And if you could state
21 your name, I'll swear you in.
22
23 Hebert: Yes sir. Sorrel Hebert.
24
25 Kaiser: And do you swear or affirm that the testimony you're about to give is the
26 truth and nothing but the truth under penalty of law?
27
28 Hebert: Yes sir.
29
30 Kaiser: I'll give you three minutes. Go ahead.
31
32 Hebert: Okay, I'm part owner and here representing Organ Mountain Cannabis,
33 which is located directly next door to. I urge you to vote no on this Special
34 Use Permit. Precedent was already established in October of 2022, by the
35 City Council that you were going to leave the current buffer zone in place.
36 We were one of the first dispensaries that was able to open on April 1st of
37 last year. And it just seems like this would be a step backwards making it
38 a little more difficult for a small business. They already allow unlimited
39 licenses throughout the state. I urge you to keep the buffer zone in place.
40 We are a locally owned small business and this would you know be kind of
41 a devastation. Wouldn't be good for any of the businesses. Yes, we've
42 employed numerous people, paid tons of taxes or collected tons of taxes
43 and we would love to continue to operate in the Las Cruces community.
44 Thank you.
45

1 Kaiser: Thank you. Is there anybody else in the audience that wishes to speak on
2 this item tonight? Seeing none. I'm going to actually ask staff to maybe
3 address that comment and the Council's direction or non-direction, as my
4 understanding is the Special Use Permit process is still allowed, correct?
5
6 Castillo: Mr. Chair, Commission. The Special Use Permit is still allowed as City
7 Council did not approve to amend the ordinances regarding the conditions
8 set forth.
9
10 Kaiser: Thank you.
11
12 Nichols: Mr. Chairman, if I may.
13
14 Kaiser: Please.
15
16 Nichols: Nichols, for the record. We're discovering that, I think at this point in time,
17 we have about 46 cannabis businesses that have business registrations in
18 the City. What we have discovered about businesses going into business,
19 all of those have been in existing structures. Many of them were vacated,
20 not being in use. But what happens with an existing structure you will find
21 many times that if it's in a commercial district, that it will be close to other
22 commercial businesses, or it will be close to a residential neighborhood.
23 Because of that, locating in existing structures has brought about many of
24 these requests for Special Use Permits. And distancing is all part of that. I
25 think you'll recall that there have been several requests for distancing
26 reductions, and I believe nearly every one of them have been granted based
27 on the fact that the businesses are similar to other retail businesses,
28 competing with other retail businesses. As this would pretty much be the
29 case in this condition. Thank you Mr. Chairman.
30
31 Kaiser: Okay, are there any other comments from the Commission? I see, this
32 gentleman would like to speak. So I'll go ahead and reopen public comment
33 here. If you can state your name for the record.
34
35 Martin: Bret Martin.
36
37 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
38 and nothing but the truth under penalty of law?
39
40 Martin: I do sir.
41
42 Kaiser: I'll give you three minutes. Please go ahead.
43
44 Martin: So once again just going back to the precedent was already established by
45 this Council back in October to maintain the buffering zones for the
46 businesses. So I understand that there is a special use in place, and if there

1 is a special use granted for this business, that is right next door, as the
2 picture showed, right next door to another business, I would like to have a
3 good justification why that Special Use Permit is granted. I do not see why
4 there should be a special use, especially for another business that is the
5 same, does the same retail located right next door, literally right next door
6 to one and another.

7
8 So once again, we established our location. We preleased our location for
9 one year prior to opening because of the zoning laws that were in effect.
10 So we didn't get any special treatment. And I would like to have a good
11 justification from this Council if you guys do vote in favor of the special use.
12 I just, I don't see it. And it's especially egregious when the location is right
13 next door to the other location. How was that special? Why is that a special
14 use. It is going to set a dangerous precedent throughout the City and
15 possibly the state that's going to completely inundate the industry with more
16 and more companies coming from out of state. I said, we are locally owned.
17 And we adhere to all the rules that you've established. So I want to get, I
18 would like to have a good justification if it is determined that the special use
19 is going to be granted. Because right now from our perspective, it's going
20 to have nothing but devastating impacts on our business, our new business.
21 That once again we followed all the zoning rules. We followed all the rules
22 to establish ourselves. So we didn't ask for any special treatment, special
23 use. So potential adverse effects on the businesses. I mean it's really, it's
24 kind of hard to comprehend. I mean there could be many potential
25 devastating impacts when you have one retail store located right next to the
26 other one, there's potential for price wars. And then our clientele is going
27 to already decrease. Like we established our store on April 1st, and now
28 there are 10 dispensaries, 10 within a square, a quarter mile radius. It's
29 completely inundated. So and then to consider establishing another retail
30 store right next door to one that's already established that's trying to further
31 establish ourselves, I mean we're not on our feet. We've had to pay a lot,
32 \$238,000 this last calendar year to the state and the City. So I just urge you
33 to vote no, because you're setting a dangerous precedent that is going to
34 have negative impacts on the industry, especially for the new businesses
35 who follow the rules and are trying to still establish ourselves. Thank you.

36
37 Kaiser: Thank you. Is staff wishing to make a comment or?

38
39 Castillo: Mr. Chair, Commission. Just to reiterate as to what Mr. Nichols said, we
40 have already approved several SUPs regarding distance to other cannabis
41 retailers, especially those located along the corner of Wyatt and El Paseo.

42
43 Kaiser: Thank you. All right, coming back to the Commission. Any comments,
44 additional questions? I'll just go ahead and give my perspective on this
45 issue. As staff mentioned, this body has unanimously, I'm pretty sure
46 unanimously passed every single Special Use Permit for cannabis retailers

1 that's come before us. The way I see it, there's a lot of businesses that are
2 very similar. You have restaurants throughout the City, you have
3 restaurants right next door to each other. Some of those restaurants are in
4 the same genre of cuisine. You've got bars that are right next door to each
5 other downtown, they all sell alcohol, some have different beer selections
6 than others but the nature of the reality is, is that you know the market is
7 going to determine you know unfortunately, who stays and who goes. The
8 rules allow us to grant a Special Use Permit in this case to allow the distance
9 variance. And so from my perspective, I don't see this any differently than
10 if it was a restaurant and a restaurant, a bar and a bar, a disco club and a
11 disco club, a bowling alley and a bowling alley. If the rules allow us to grant
12 this request then we're allowed to do that, And like I said this body has in
13 the past already granted these requests over and over again. So that's just
14 my perspective. I'm going to go ahead and look for a motion and a second.

15
16 Vega: I make a motion to approve.

17
18 Kaiser: I believe we've got a condition here Commissioner Vega.

19
20 Vega: *(inaudible)*. I move to approve item 10.1 with the conditional approval and
21 *(inaudible)*.

22
23 Bennett: I'll second.

24
25 Baum: Board Member Vega.

26
27 Vega: Yes.

28
29 Baum: I need your reasoning behind that. Thank you.

30
31 Vega: Yes, based on staff's recommendations and site visit.

32
33 Baum: Board Member Smith.

34
35 Smith: I vote no based on the fact that 222 for a variance really skirts the boundary
36 of having a 300 foot buffer. If it was the opposite I think it would be fair to
37 support this this Special Use Permit but I think 78 feet is pretty close. It
38 almost negates us even having a buffer at that point. So I vote no.

39
40 Baum: Board Member Bennett.

41
42 Bennett: I vote yes based on staff recommendation.

43
44 Baum: Chair Kaiser.

1 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
2 Cruces.
3
4 Baum: Passes three to one.
5
6 **10.2 1024 S. Main Street Special Use Permit Request:** A Special Use Permit
7 (SUP) to allow a cannabis retail establishment within the required buffer
8 distance between said establishment and a single-family residential zoning
9 district boundary. The subject property is $\pm$ 0.210 acres in size, located in
10 Council District #4, zoned C-1C (Commercial Low Intensity Conditional),
11 and located at 1024 S. Main Street. Submitted by Victoria Bruce, Co-Owner
12 Bryan's Green Care. (Case # 22ZO1000134)
13
14 Kaiser: Okay, now we've got item 10.2, a Special Use Permit to allow cannabis
15 retail establishment within the required buffer distance between the
16 establishment and a single-family residential zoning district. Mr. Banegas,
17 go ahead,
18
19 Banegas: Mr. Chairman, Members of the Commission. If I may, Vincent Banegas,
20 Interim Planner. If I could request that the Commission suspend the rules
21 and allow item 10.2 and 10.3 to be heard concurrently. I will do my
22 presentation, then we could unsuspend the rules, and then vote on them
23 independently as you wish.
24
25 Kaiser: Okay, do we need a vote on that now? Okay.
26
27 Banegas: Yes, to suspend the rules.
28
29 Kaiser: I'll make a motion to suspend the rules to allow item 10.2 and 10.3 to be
30 presented concurrently.
31
32 Bennett: I'll second.
33
34 Baum: Board Member Vega.
35
36 Vega: Yes.
37
38 Baum: Board Member Smith.
39
40 Smith: Yes.
41
42 Baum: Board Member Bennett.
43
44 Bennett: Yes.
45
46 Baum: Chair Kaiser.

1
2 Yes.

3
4 Baum: Passes.

5
6 Banegas: Mr. Chairman, Members of the Commission. This is two cases dealing with
7 the same property. It's located at 1024 South Main Street. It involves a
8 Special Use Permit for the use of the property, in part anyway as a cannabis
9 dispensary. It is located in relative close proximity to an R-1a zoning district
10 which is a single-family zoning district pursuant to our code. And it also
11 involves a zone change request from the C-1C designation that the property
12 now has, and I'll get into that a little bit. And an attempt to eliminate those
13 conditions that were placed on it previously that would restrict the use of the
14 building in the manner in which the applicant wishes to proceed.

15
16 And current conditions are as follows. As indicated, the property is zoned
17 C-1C. I'll show you one of the maps, our zoning map that we typically use
18 on our presentations. It does show a C-1 designation that is an error. But
19 regardless, there is some conditions that are applied to the current zoning
20 that is in place. And the conditions that are stipulated talk to the use of the
21 building in terms of a cap for nonresidential use at 600 square feet. And
22 then the remaining square footage to be used for residential purposes. That
23 was carried out pursuant to an ordinance number 587 back in 1985. And
24 what we have in place at this point in time is a map zoning inconsistent with
25 the actual ordinance. I found that by chance just on an offshoot trying to
26 determine what the original zoning was, and that's when I came across that
27 that issue.

28
29 The property has also been issued a number of parking variances back in
30 the day. We have in place variances related to the backup and driving
31 aisles, stall width, and the number of stalls overall. Those all pertain to 90
32 degree parking on site. Those variances run with the land and not with any
33 of the previous businesses or the applicants for those businesses that
34 originally applied for those variances. The property is located on South
35 Main Street, basically between Brown Road and Wyatt Drive and is roughly
36 0.2 acres in size. It does consist of two full lots, as I understand it pursuant
37 to our parcel maps. Lots one and two, and then I believe there's parts of lot
38 three and 14 that make up the property in question. And there's also an 8.5
39 foot irrigation channel that separates the R-1a, our single-family zoned
40 properties, from the subject property. There's also some landscaping and
41 an approximate seven foot rock wall, a shed, some fencing, and some
42 additional landscaping that serve as a buffer and screen between the
43 residential portion on the west side and of course the subject property on
44 the east side.
45

1 The surrounding neighborhood is office uses, both on the north and south
2 of the subject property. Office and retail exist to the east. And of course,
3 the residential to the west. Zoning that supports those uses include those
4 that are listed below R-1a, O-2C, C-1, C-2, and C-3. CBD is currently sold
5 on the premises, there is an active business license in place,. The applicant
6 has sought to include THC or cannabis into the product offering as part of
7 the business operation. And it is because of this that the Special Use Permit
8 is called into play, and also the need for the rezoning. The distance
9 separation, in this case to the single-family zone, which is part of that
10 irrigation canal, is roughly 12 feet. And as a result of that there's a need to
11 consider the neighborhood impacts per the Special Use Permit provisions
12 pursuant to the code.

13
14 Hours of operation, in talking with the applicant, basically 9:00 a.m. to 9:00
15 p.m. Monday through Saturday. And certainly if I got that wrong, we'll have
16 the applicant speak to that. And 9:00 a.m. to 6:00 p.m. on Sunday. And
17 the reason why I stipulate those hours of operation is we did receive a call
18 from a concerned citizen who was concerned about a 24 hour operation.
19 And they were hoping that that wasn't the case. And I told the individual
20 that I would include this information to allay any fears that the individual had.
21 I also submitted in front of you copies of an e-mail from the same individual
22 that had some additional concerns regarding crime and so forth. But hours
23 of operation was definitely one of them, and that is a current condition at
24 this time.

25
26 So here's the zoning map, you can see that our existing zoning map is
27 showing the zoning of the property incorrectly, there should be a C at the
28 backside of that one. So it should be C-1C. But adjacent to the subject
29 property, you have C-1 to the south, O-2C to the north. Further north you
30 have O-1C, further south you have O-2C, C-2C, etc. And then a plethora
31 of commercial designations off to the east. It is this R-1a area that has
32 drawn the need, again for this Special Use Permit issue or consideration.

33
34 Aerial view showing the parcel in question outlined in red again. The
35 channel in question basically runs along this backside of the property. along
36 the south side of the property, and then I would imagine connects at the
37 center of Main Street where the irrigation canal exists. And parking is
38 primarily provided in front, and there appears to be some parking, at least
39 historically speaking, in the rear of the property.

40
41 So from a historical perspective, the property is part of the Brown Pueblo
42 Addition basically circa 1929. About a year later the building was
43 constructed. Currently based on my measurements using some of the
44 aerial maps provided to staff, I came up with roughly 2,059 square feet of
45 building area, that does not include any of the covered patios, portals,
46 pergolas, whatever you want to refer to those as, it's just the enclosed area

1 where operation would take place. 1985 as indicated earlier, it was rezoned
2 from R-4 which is a multifamily district in the code at that time, to the C-1C
3 designation we have in place today. The property certainly has been used
4 for office and retail and there's been kind of a flipping of that use in the past
5 history. And it sat vacant for a little over a year until its current occupancy,
6 which is Bryan's Green, I forget the name of the business. Excuse me.
7 Green Care. So they are in place now and selling CBD as previously
8 mentioned.

9
10 So, to help with the proposal aspect, I broke out the Special Use Permit side
11 and I'll break out the zoning code side a little bit. But the SUP, the purpose
12 for that is for retail cannabis at the 1024 location. CBD sales will continue
13 on site. And their emphasis is to utilize the entire square footage of the
14 building for all operations. So therein lies, at least going back to the zoning
15 side, a need to clear up some of those conditions. But the SUP is needed
16 for cannabis. The buffer distance between the R-1a zone and the building
17 is approximately 12 feet. And that, of course involves or requires us to
18 examine a neighborhood impacts via the SUP process as a result of that
19 distance. All other buffer distances were met. And of course with the CBD
20 or the cannabis related activity that may occur there, should you approve it,
21 they will follow all CLC and State of New Mexico regulations regarding
22 cannabis retail activity.

23
24 In terms of the zone change, I've already mentioned the ordinance in
25 question that changed it to C-1C. Those conditions certainly restrict
26 nonresidential uses and so there is a need to consider elimination of those
27 conditions, hence the zone change. By considering the zone change it'll
28 correct not only the map error, the zoning map error, it'll bring into
29 compliance the map, the ordinance, and of course land use over time that
30 has existed. It's my understanding that there may have been use of the
31 property in its entirety, the building in its entirety for nonresidential uses. So
32 we'll try to correct all that through the zone change aspect.

33
34 This is a site plan that I received today, just kind of showing the property in
35 question and I'm pointing to the corners of the property along the basically
36 north side, and point to point down here to circle point there. That is the
37 property in question. The parking exists along the front, that's where
38 variances were granted previously. This is an ADA parking stall. They do
39 have, at least it appears as if there are some parking stalls in the back. That
40 is some angled parking. And we're going to need to take a look at the
41 parking if it does exist back there to make sure it complies with current code.
42 That is part of the reason for the site plan is so that we can work with the
43 applicant and determine what exactly needs to take place, pursuant to code,
44 in order to make operation successful and aligned with current code.

1 A couple of photos showing the building in question. It's this reddish or
2 orange looking building I guess. I don't know what color I'd call that. But
3 nonetheless you have an enclosed entryway here. None of these canopies,
4 covered patios are part of the square footage in question. It was all the
5 enclosed area that I took into consideration for that 2,059 square foot figure.
6 So again, we will take a look at parking, see how the variances were applied,
7 see what we can make work. Here's another photo looking north, showing
8 some of the other offices and/or nonresidential uses. Shot looking south,
9 there's a couple of property, or at least three or so properties that are also
10 nonresidential in terms of use. And one trying to capture the buffer screen
11 that I mentioned earlier in the presentation. It appears as if that rock wall
12 that exists all along the backside stopping right at this point is roughly seven
13 feet, six and a half, seven feet. They got some landscaping This is a shed
14 located on the backside property that helps with that buffer. So the property
15 itself, at least from the residential perspective, is well buffered, well
16 screened. Access coming from North Main Street, staff didn't see any
17 significant concern in terms of traffic to the residential neighborhood.
18

19 Public notice input was sent pursuant to code. I already touched on the fact
20 that I did receive a call and the e-mail that I provided you a copy of both
21 came from the same individual. And hours of operation, safety, crime in the
22 area, that kind of thing were all related concerns, increased pedestrian and
23 auto traffic. But the pedestrian traffic as I understood it was from the
24 perspective of the crime element. That's how I understood the discussion.
25

26 So recommendation and findings, this is for both cases, we recommend
27 approval with conditions. You will find that the conditions are being
28 requested on both cases, the SUP and zoning, they are the same. The
29 business property owner shall replat the existing lots that make up the
30 subject property, and what I understood to be lot one and two and parts of
31 three and 14, those should be replatted into one parcel. The same situation
32 exists as the previous case, they're parcels that are underlying lots from
33 long ago and due to common ownership, the county would rather send out
34 one tax bill as opposed to four tax bills and parts thereof, that kind of thing.
35 So they show them as one but they're not platted as one. The business
36 owner shall also provide necessary parking pursuant to the 2001 Zoning
37 Code as amended. And of course, at that time, we will take into
38 consideration any previously approved variances since they run with the
39 land not with the business. Bicycle parking will need to be installed in
40 accordance with code. And landscaping and the required irrigation system
41 will be installed or shall be installed to the extent possible given the build
42 out and configuration of the site. And I say that because as you saw in the
43 photos, there's a lot of asphalt, the building's quite large, so there's limited
44 room for landscaping. All related improvements shall be completed prior to
45 the issuance of a business registration or license if approved. And
46 compliance plan may be used to facilitate completion of improvements. The

findings for both cases are as follows, I'm referencing the ordinance 587. Changing the zoning from R-4 to C-1C and those conditions causing limitations on the use of the building. The zone change seeks to eliminate the conditions regarding use sized to the lowest intensity commercial district possible, in this case the C-1 designation, which will become C-1C if these conditions are attached and City Council agrees with them. But nonetheless there will be different conditions. And then all buffer requirements are met except for the single-family zoning.

Subject property is surrounded by office and retail on the north and south and east side, residential of course exists on the west. The proposed zoning is compatible to several neighboring properties along South Main Street. The ingress and egress is from South Main Street having little or no impacts to the subject residential neighborhood. The channel, the rock wall fencing, landscaping, all provide buffer screens from the subject property to the residential uses which has been determined to be a plus. Variances were approved in 1996 and will be applied to facilitate the parking demand on site. And the requirements outlined in the Zoning Code and those stipulated by the State of New Mexico will be followed to or as applicable. There are several goals, policies, and actions that support both the SUP and the zone change request, all of which are consistent with the Urban Neighborhood Place type which this property falls within. The Urban Neighborhood, as you may recall, seeks to provide a variety of residential housing types at medium to high densities with supporting neighborhood commercial development. Mixed use neighborhoods are some of the items that are identified in those goals, policies, and actions. Expanding economic opportunities, increasing employment, and employment security, etc. And all those elements help support and justify the recommended approval with conditions staff has brought forward. Your options this evening Commissioners are to vote "yes" and approve, vote "no" and deny. If you deny, please provide your findings of facts that differ from staff, in that they all support the request. You can vote "yes" with conditions, or vote to table. And that concludes staffs presentation this evening. I'll be happy to stand for questions. And I am aware that the applicant is in attendance and may have some information to share with you.

Kaiser: Thank you very much. Does the applicant wish to speak? You're not obligated to. Okay. All right. Any questions or comments from the Commission?

Smith: I have a comment to make. I just want to address the e-mail from Ms. Stevenson and her concerns. I'm very familiar with this neighborhood. I've lived right around the corner for almost 24 years, long before cannabis was introduced as businesses in Las Cruces. There was crime and there still is. I was a victim of crime just in December you know when they were stealing catalytic converters. So I just want to just you know help Ms. Stevenson

1 understand that this business going from CBD to THC should not have an
2 impact on the amount of crime in our neighborhood. Most people will be
3 coming and going you know off Main Street. They'll drive into the parking
4 area and you know make their purchase. And what we've seen and what
5 I've seen personally, with the CBD businesses, that most of them, the
6 customers generally just go inside, make their purchase and leave. It's not
7 like a bar. It's not like a strip club or liquor store. They're not hanging
8 around, and you know consuming their product outside, or I'm not sure
9 (*inaudible*) inside. So I just wanted to address that one aspect from a crime
10 perspective, because 24 years of living around the corner, I'm very, very
11 familiar with crime in that area.

12
13 Kaiser: All right. Any other questions? Commissioner Vega, do you have any
14 questions or comments?

15
16 Vega: Not at this time. Thank you.

17
18 Kaiser: Great. I've got a couple of questions. If you could go back to the conditions
19 slide. Yes, so the landscaping requirements, is that because this is in some
20 way a nonconforming use or what's triggering that particular requirement?

21
22 Banegas: Mr. Chairman, Commissioners. That is correct. The property has sat
23 vacant for a year and also has changed use. So because of both those
24 elements that triggers the nonconforming provisions of the Zoning Code.

25
26 Kaiser: Okay, but it's currently; they're currently using the building now to sell, so it
27 was vacant until that point. When did they start selling or when did they
28 establish their business? I'm just trying to understand at what point were
29 they no longer vacant?

30
31 Banegas: I'll let them. I don't know the date that's listed on the license. But let's see.

32
33 Kaiser: Before you answer, I have to swear you and so could you state your name?

34
35 Monteverdi: Dominic Monteverdi.

36
37 Kaiser: Do you swear or affirm that the testimony you're about to give is the truth
38 and nothing but the truth under penalty of law?

39
40 Monteverdi: Yes.

41
42 Kaiser: Please, sir.

43
44 Monteverdi: We started selling CBD if I remember correctly at the beginning of
45 December.
46

1 Kaiser: Okay, so very recently.

2

3 Monteverdi: Fairly recently.

4

5 Kaiser: Okay.

6

7 Monteverdi: Yes. We've had our business license, gone through that whole ordeal with
8 the City to be able to sell CBD. And we're just waiting for the SUP to go
9 through so we can just add our inventory is all. So yes, we've been
10 operating, that building we moved into actually at the beginning of
11 November, so we been there a month prior. And then now we've been open
12 for business for at least two and a half months.

13

14 Kaiser: Okay. Thank you. That's helpful. So going back to the landscaping
15 requirement then, the way that it's currently written here to the extent
16 possible, wouldn't they need to come into compliance and if they weren't
17 able to meet those requirements would they then need to request a variance
18 or - I'm just a little thrown off by this. Well, they're out of, their
19 nonconforming use and so we're going to make them come into compliance,
20 but we're only going to do it if it works is kind of where I'm getting hung up.

21

22 Banegas: Mr. Chairman, Members of the Commission. The way that was written was
23 to address primarily from the Special Use Permit side of things. In looking
24 at the subject property, in fact, this one might be a better, yes. In looking at
25 the subject property all the parking, which, again has some variances
26 attached to it, take up all the front side of the existing asphalt area. In fact,
27 the driving aisle or the backup file has been reduced as part of that variance
28 request. So basically from right-of-way into the property where you see the
29 parking stops there, that's all taken care of in terms of parking. If we put
30 any landscaping there, it's going to cause issues with parking. The only
31 areas really where landscaping can be provided for is in front. Here, there's
32 some small areas over to here, and that is probably about it. That was one
33 of the reasons why we wanted to receive a surveyed plat showing the
34 property as it exists with dimensions, etc, so we could determine how much
35 landscaping they can truly provide. At this point of time, we don't know what
36 that is.

37

38 Kaiser: Okay, and should they not meet the requirements that's in the code, would
39 they need to request a variance from that in front of this body or is?

40

41 Banegas: The Special Use Permit, if approved, would cover that. Yes, there would
42 be no need to come forth with a variance.

43

44 Kaiser: Okay. Thank you. And then I think my last question is related to the
45 replatting. You mentioned parts of lots three and 14. Does that mean,

1 somebody else owns the other portions of those lots or how is that planning
2 out?
3
4 Banegas: Mr. Chairman, Members of the Commission. It's my understanding that the
5 property owner for this property also owns this property. And I'm not quite
6 sure how the underlying lots are oriented, but it appears as if somewhere in
7 this vicinity there's the portions of other lots that make up this whole. So
8 basically, what we're asking is for whatever lots, whatever configuration that
9 exists for the lots that make up the subject property, that they be replatted
10 into one legal lot.
11
12 Kaiser: Okay. Just want to make sure we're not making a decision on someone's
13 property that is not represented here in this room so.
14
15 Banegas: Mr. Chairman. They are aware. They've been in contact with the property
16 owner on all these conditions.
17
18 Kaiser: Got it. Thank you. That's all I have. We will go ahead and, are there any
19 members of the public that wish to speak on this item tonight? All right.
20 Seeing none. I'll come back to the Commission, any final comments or
21 thoughts? All right, looking for a motion.
22
23 Banegas: Mr. Chairman. Point of order. If we can unsuspend the rules, motion and
24 the second, vote unsuspending the rules, and then we can.
25
26 Kaiser: Okay. Do we need to vote on unsuspending?
27
28 Banegas: Yes.
29
30 Kaiser: Okay. I'll make a motion to unsuspend the rules so that we can vote on
31 items 10.2 and 10.3 separately.
32
33 Smith: I second.
34
35 Baum: Board Member Vega.
36
37 Vega: Yes.
38
39 Baum: Board Member Smith.
40
41 Smith: Yes.
42
43 Baum: Board Member Bennett.
44
45 Bennett: Yes.
46

1 Baum: Board Member Kaiser.
2
3 Kaiser: Yes.
4
5 Baum: Thank you.
6
7 Kaiser: Okay, now we will go ahead and take motions for item, agenda item 10.2.
8
9 Bennett: I make a motion to approve 10.2 with conditions stated in the packet.
10
11 Kaiser: I'll second.
12
13 Baum: Board Member Vega.
14
15 Vega: *(inaudible)* approval noted by staff.
16
17 Baum: Board Member Smith. Sorry.
18
19 Vega: *(inaudible)*.
20
21 Baum: My apologies. Board Member Smith.
22
23 Smith: I vote yes with conditions based on staff recommendation.
24
25 Baum: Board Member Bennett.
26
27 Bennett: I vote yes based on staff recommendation.
28
29 Baum: Chair Kaiser.
30
31 Kaiser: Yes, based on staff recommendation and consistency with Elevate Las
32 Cruces.
33
34 Baum: Passes four zero. Thank you.
35
36 **10.3 1024 S. Main Street Special Use Permit Request:** A zone change from
37 C-1C (Commercial Low Intensity-Conditional) to C-1 (Commercial Low
38 Intensity) for property located at 1024 S. Main Street. The property is ±
39 0.210 acres and is within Council District #4. Submitted by Victoria Bruce,
40 Co-Owner Bryan's Green Care. (Case # 23ZO0500011)
41
42 Kaiser: All right. We will now go to item 10.3. Looking for a motion and a second.
43
44 Bennett: I make a motion to approve 10.3 with the conditions stipulated in the packet.
45
46 Smith: I second.

1
2 Baum: Board Member Vega.

3
4 Vega: Yes (*inaudible*).

5
6 Baum: Board Member Smith.

7
8 Smith: I vote yes based on staff recommendations.

9
10 Baum: Board Member Bennett.

11
12 Bennett: I vote yes based on staff recommendation.

13
14 Baum: Chair Kaiser.

15
16 Kaiser: Yes. Based on staff recommendation and consistency with Elevate Las
17 Cruces

18
19 Baum: Passes four/zero.

20
21 **11. DISCUSSION**

22
23 Kaiser: Okay, going on to discussion.

24
25 **12. STAFF ANNOUNCEMENTS**

26
27 Kaiser: And staff announcements tonight.

28
29 Nichols: Mr. Chair. Nichols for the record. I have no staff comment from my desk.
30 I don't know if Adam has anything from his desk.

31
32 Ochoa: Adam Ochoa, for the record. No sir, we have nothing for you all tonight. I
33 don't think we've ever introduced our new planner. This is Christina. We
34 will be bringing her before the coliseum here starting next month. She'll be
35 handling most of our variances and infill proposals as well. We're going to
36 groom her as best we can and have her ready for you all. So hopefully
37 everything, I'm sure will work out. We're more than confident that it will, but
38 just want to welcome Christina. And you'll be seeing her in the near future
39 here.

40
41 Kaiser: Welcome, Christina. Hopefully, our questions will not scare you away.

42
43 Ochoa: That's all we have, sir. Thank you.

44
45 **13. ADJOURNMENT (7:00)**

1 Kaiser: All right. Go ahead and make a motion to adjourn tonight's meeting. Can I
2 get a second?

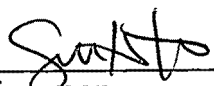
3
4 Smith: I second.

5
6 Kaiser: All in favor.

7
8 MOTION PASSES UNANIMOUSLY.

9
10 Kaiser: Thank you everyone. Have a good night.

11
12
13
14
15
16



Chairperson