

CITY COUNCIL AGENDA

Mayor
Ken Miyagishima

Mayor Pro Tem
Kasandra Gandara

Councilors
Tessa Abeyta
Becki Graham
Johana Bencomo
Becky Corran
Yvonne Flores

Monday, March 20, 2023 at 1:00 PM

Council Chambers



City of Las Cruces®

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

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

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CONSENT AGENDA

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

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1. OPENING CEREMONIES

- 1.1. Pledge of Allegiance - Councilor 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 March 13, 2023, Closed Meeting Statement into the record.

5. ACCEPTANCE OF AGENDA

6. CITY COUNCIL MINUTES

- 6.1. Work Session of February 13, 2023. 4 - 16
[Work Session - Feb 13 2023 - Minutes - Pdf](#)
- 6.2. Regular City Council Meeting of February 21, 2023. 17 - 37
[City Council - Feb 21 2023 - Minutes - Pdf](#)
- 6.3. Special Work Session (Budget Retreat) of February 22, 2023. 38 - 47
[Special Work Session - Feb 22 2023 - Minutes - Pdf](#)

- 6.4. Special Work Session (Budget Retreat) of February 23, 2023. 48 - 54
[Special Work Session - Feb 23 2023 - Minutes - Pdf](#)

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

- 7.1. RESOLUTION NO. 23-105: A RESOLUTION APPROVING A CONTRACT FOR LEGAL SERVICES RELATED TO EL PASO ELECTRIC COMPANY AND ALTERNATIVE ENERGY SOURCES BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION AND THE NEW MEXICO SUPREME COURT WITH ANASTASIA S. STEVENS dba STEVENS LAW, LLC OF SANTA FE, NEW MEXICO IN AN AMOUNT NOT TO EXCEED \$400,000.00 ANNUALLY, PLUS APPLICABLE TAXES FOR A TERM OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR TWO (2) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND BUDGET APPROPRIATIONS (PROCUREMENT NUMBER 22-23-047). 55 - 66
[Resolution No. 23-105 - Pdf](#)
- 7.2. RESOLUTION NO. 23-106: A RESOLUTION TO APPROVE AN AMENDMENT TO THE FY22 CONTRACT WITH ANASTASIA S. STEVENS dba STEVENS LAW, LLC OF SANTA FE, NEW MEXICO FOR LEGAL SERVICES IN MATTERS BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION AND THE NEW MEXICO SUPREME COURT, INCREASING THE CONTRACT TO AN AMOUNT NOT TO EXCEED \$500,000.00 ANNUALLY, PLUS APPLICABLE TAXES AND CLARIFYING THE SCOPE OF SERVICES WITHIN THE AGREEMENT. 67 - 79
[Resolution No. 23-106 - Pdf](#)
- 7.3. RESOLUTION NO. 23-107: A RESOLUTION APPROVING THE UPDATED ROADRUNNER TRANSIT PUBLIC TRANSPORTATION AGENCY SAFETY PLAN (PTASP). 80 - 126
[Resolution No. 23-107 - Pdf](#)

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

- 8.1. RESOLUTION NO. 23-108: A RESOLUTION APPROVING A HOME INVESTMENTS PARTNERSHIP (HOME) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR AFFORDABLE HOUSING DEVELOPMENT IN THE METRO VERDE PUD. 127 - 166
[Resolution No. 23-108 - Pdf](#)
- 8.2. **PUBLIC HEARING REQUIRED.** RESOLUTION NO. 23-109: A RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS PURSUANT TO THE METROPOLITAN REDEVELOPMENT CODE, AND DESIGNATING THE EL PASEO & SOUTH SOLANO, AND WEST PICACHO METROPOLITAN REDEVELOPMENT AREAS. 167 - 290
[Resolution No. 23-109 - Pdf](#)
- 8.3. RESOLUTION NO. 23-110: A RESOLUTION APPROVING A PRE-DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SIERRA NORTE LAND HOLDINGS, LLC FOR THE 291 - 305

DEVELOPMENT, DESIGN, AND PURSUIT OF FEDERAL FUNDING
FOR THE MESA GRANDE DRIVE PROJECT.

[Resolution No. 23-110 - Pdf](#)

- 8.4. COUNCIL BILL NO. 23-022; ORDINANCE NO. 3028: AN ORDINANCE 306 - 405
SUPPORTING INVESTMENT OF \$897,596 IN AN ECONOMIC
DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF
LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN,
AUTHORIZING A PROJECT PARTICIPATION AGREEMENT
BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., AND
ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT
FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO
EXCEED \$3,000,000 IN THE PROJECT.

[Ordinance No. 3028 - Pdf](#)

9. **BOARD APPOINTMENTS**

10. **NOTICE OF PROPOSED ORDINANCE(S)**

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

- 10.1. COUNCIL BILL NO. 23-023; ORDINANCE NO. 3029: AN ORDINANCE 406 - 413
AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, AS
AMENDED (LCMC), SECTIONS 2-496 THROUGH 2-499 TO REVISE
THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND
ADVISORY COMMITTEE, RESPECTIVELY, WITHIN CHAPTER 2,
ARTICLE IV, DIVISION 3, NONSTANDARD BOARDS DIVISION OF
THE LCMC.

[Ordinance No. 3029 - Pdf](#)

11. **CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT**

12. **CITY MANAGER REPORT**

13. **ADJOURNMENT**

City of Las Cruces
MINUTES

Work Session

Monday, February 13, 2023 @ 1:00 PM
City Council Chambers, City Hall

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

ABSENT:

1. PETS OF THE WEEK

1.1

Jennifer Martinez, Communications Office presented Pets of the Week.

2. JOBS OF THE WEEK

2.1

Irene Parra, Economic Development presented Jobs of the Week.

3. AGENDA ITEM

3.1 PEDESTRIAN SAFETY.

Srijana Basnyat, Innovation and Strategy Manager introduced the topic.

Trung Vo, Tool Design gave the overhead presentation.

Mayor Miyagishima said I think what prompted a lot of this Work Session item was obviously there has been a few fatalities as well as people getting injured. Have we identified the actual locations of where they were and perhaps what are their ages? Do we have the various streets where they have been hit and maybe if they were killed? I saw that there were a couple of streets that were going to start as a pilot project but is there some particular areas where we need to address right now?

Srijana Basnyat said we do have the actual data collected by and presented in report format by Mesilla Valley MPO and I think their staff is here and they can speak to that. Once they are done talking about that I maybe suggest that our Senior Planner Mark Miller come up here and talk about what we can do with the data and what the data does and does not really say.

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Dominic Loya, Transportation Planner said every year we do collect data for the region. We do put it out in a report format. If you were to go to our website you can actually see the actual report itself. We have not posted this year's yet that will be coming up here in April. Since 2018 we have done a safety report for Las Cruces and the surrounding area.

Mayor Miyagishima asked so we don't have that right now?

Dominic Loya said we don't have this years and the other thing to too remember is the way NMDOT does crash reporting, we get the data 2 years back so basically this year we would be looking at 2021 data as opposed to what is currently happening. So, any of the tragedies that have happened this past year would not be included in that data.

Councilor Bencomo said Councilor Corran, Graham and I sit on the MPO and just last week we got a report on lighting safety which I just sent to Christine if she could share that with you all. So just on the point of the data, at MPO we have discussed lobbying NMDOT about this 2-year delay of data because it is frankly not okAy. It delays a lot of safety conversations that we can be having, and I know that we were potentially working with other MPOs across the state to sign onto something similar. The El Paso MPO gets data pretty consistently, so we have heard many excuses as to why that is but I think it should be something that is remedied. Additionally, Mayor, I did just last week ask for the same thing. Can we get some raw data from last year? From my research from the Sun News, I think there were seven fatalities. Pedestrian fatalities last year and the locations are all over the place. The one I remember mostly is on West Picacho, but I did ask the MPO if they could provide some of that for us. The presentation noted that there were five focus areas regarding lighting. Can you share with us what those are?

Soogyu Lee, Traffic Operations Administrator, said there is a five focus area. One is downtown, one on the east of the downtown area, and all the historical area that is the second, another area further north of US 70 and the west of Elks, and another location is far east and that is the five focus area.

Councilor Bencomo asked will you send that information to us at some point today?

Soogyu Lee said we have a map to show exactly the five locations.

Councilor Bencomo said I really appreciated that framework you laid out in the beginning of the conventional versus systemic. I thought that was a great frame to start this conversation and keep moving forward and I very clearly heard you say this moving away from the hot spots versus the entire system which is of course ideal. That is where we want to be and I also think it is important that we start somewhere. Like these five focus areas and then the couple of pilot projects. What is your suggestion as expert there, where do we begin?

Trung Vo said where a lot of communities start to think about where to prioritize their limited funds. There is only so much time. There is only so much funding, there are only so many resources and there is only so much energy and part of

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the process when we start thinking about systemic safety is imaging where we are going to get the just the most return on our investment of funding and so a lot of communities will identify what they call an HIN or a High Injury Network. They are generally created with a lot of data and analysis behind them. Anybody could guess where crashes are occurring the most and where we are seeing the most fatalities and serious injuries. If we identify those corridors as part of the HIN we are saying hey we need to prioritize funding on these corridors or if there is a project proposal to redesign or address safety or do something along those corridors we should give extra attention and maybe allocate more funding to those locations. Sometimes what folks will do is they will imagine a project, maybe its Main Street or maybe it is something else. They are going to say we are going to design this roadway in the design phase and we are going to design this roadway to have zero traffic fatalities and serious injuries and we are going to monitor that. What if we just started focusing on what we can focus on which is one corridor that we can have an immediate impact on something like that. There are multiple ways to do it. You will also see at the state level the NMDOT is about to put on advanced effort to develop a vulnerable road user safety assessment and part of the requirements are VRUSA is to identify these priority locations. Maybe they are not hot spots but they are places where we're expecting communities and partners to prioritize their funding.

Councilor Bencomo said for next pedestrian safety conversations I would like to see more of flushed out budget plan. The budget we would need to improve lighting safety across the city. What would that actually cost and where do we start? What is the big cost to reducing speed limits? I actually do think this is a key priority pedestrian safety given the numbers of fatalities last year and then every year. That is something that I would like to see moving forward especially as we head into a budget retreat where I would like to understand what to advocate for. As the presentation was going on I was thinking about the many constituent driven asks for road diets and speed limit changes and I am curious if there is space to advocate to remove the very lengthy process. I am curious about that process for Public Works if that can be relooked at and how can we make it easier for constituents to begin road diet speed limit processes that are brought on by constituents.

Tony Trevino, Deputy Director Public Works said we have actually been talking about that. The process we have where speed tables and so forth and the way it is, and I believe Srijana is already working on that also. With Realize Las Cruces coming through and the design standards as part of the process that we are looking at.

Mayor Miyagishima said perhaps PIO can do a campaign for or to let people know if you're going to be walking at night or riding a bike at night you might want to use a light or some type of material like that. We may want to put it out on media as well as in print.

Councilor Gandara said you made mention specifically the area with the road diet around Alameda and Picacho. Honestly that took a significant amount of time and people to address this and I know that we are better for it for sure but this happened pre-Covid and it was a very lengthy process. I would agree with

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Councilor Bencomo. I would like to see it shortened because when you hear about the crashes and you hear pedestrian deaths those are always very alarming to all of us and I often feel with a lot of our JPOs that there is sort of a gap in the information that is being shared at one time with council. I was going to wait to talk to Ifo at my individual staffing with him but I understand at our retreat that maybe city staff will be the only ones presenting regarding the number of maybe priorities that need to take place and we are not going to hear necessarily from our JPOs and I think that I would like to see the presentation from our Animal Service Center. Those boards that we share in common with others and I would like to request, I was really looking forward to hearing the data specific to the area where the crashes were at. I know you were working on this for a significant amount of time and the data is here and data is there but I think that it also feels like there is a lot of gaps. We again don't hear that information specifically and you're asking us to go into a website to look at the data without any conversation about that data. To me, that is not the way to go. I feel like if we are going to do this we need to have the partners here prepared to have those conversations, answer questions. I am wondering if this went through our transportation PRC or health. Those are opportunities to bring everybody together and really hash out some of this stuff and that way we have that information prior to these sorts of Work Sessions. My question was do we have an inventory of the speed limits across the city in those areas where you're connecting higher level of crashes or pedestrian deaths? Do we have that currently and the second question would be is that how or one of the factors that you selected those five areas that you just spoke of?

Mayor Miyagishima said Ifo was able to find some data although it is a couple of years old, 2019. It is interesting. It is a combination of whether it was a car crash or a pedestrian or a bicycle. You can see various parts throughout the city and these were the fatal crashes in 2019.

Soogyu Lee said we have the data to show the speed limit and where the accident happened and there is two different approach we are trying to do. One is find out how we can address for the long term. As everybody has mentioned we are focused on the short term, mid term and long term. So, we are looking at the long term and how and how we can make a different code to make it safer the old user, including the vulnerable user, bicyclist and pedestrian. The second is how we can address the issue reactively which is what we also doing it so whenever we have an accident happen traffic engineer, we have been notified from the police and we look at the cause and unfortunately more than 95% of the time it is not the engineering or anything we can address because it is more for the drivers or pedestrians' mistakes. Still we are trying to find how we can minimize the damage or reduce the damage. At this point we are focused on the three corridors. One is the El Paseo. We also see what is going on Roadrunner, that is also a city street and we would like to see how we can make an improvement on University. There are two other corridors which do not belong to the city, which is the NMDOT. One on the North Main and the most recent fatality happened at that location and the other one is on Picacho. That is actually the NMDOT. So, we closely work with the NMDOT and we express how our concern is and how can we work together with the DOT because we cannot work alone so that is the reason we continue to work together. Also trying to find the funding because sometimes we are not able to

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do even the analysis, like Councilor Bencomo asked about the cost. The presentation I included in the presentation for the intersection safe analysis with the AI is about \$10,000, so to cover the entire city we would need about \$1 million. The speed study alone along the major corridor is about \$200,000 to \$300,000 cost and even the time is about 6 months to about a year. That is why it takes a long time to analyze what is going on and how we can address and figure out the issue and then take the time to do the design and once we figure out the design then find the way to funding. The other difficult part as everybody has mentioned about the procedure but unfortunately our code specifically spells out how to do it and the process. So, we cannot skip the process.

Councilor Gandara said I am not asking you to skip a process. If there is a code we want to follow it. I am not asking that at all. I don't know very specific in terms of for example, speed tables. I don't believe there is a process spelled out with a timeframe that it takes to do that. There is a process that internally that was suggested and that is what it is like and is what you advertise when people come with concerns about speeding in their neighborhoods. It doesn't come to Council so that Council gives it a stamp of approval. I am not suggesting that you not follow a process what I am asking is and it is very helpful for me to understand from day one to six months to a year to analyze all of the information. Understanding how costly it is and what those more long term solutions or strategies are and how to basically advocate to us and maybe grants that you will need to go for to be able to do all of this. Will you have this information at our Strategic Session, our Budget Retreat? How far along are we in terms of providing the information, the analytics to then develop the strategy moving forward?

Srijana Basnyat said if you are talking overall about all of the data that can go into something like this for example you mentioned some of the traffic calming, speed tables, you mentioned that. In order for us to be more proactive and not simply react to requests and as when they are noticed or for areas that maybe do have the biggest voice as opposed to areas that really do need it but just don't have time to show up to City Council maybe and express their views. We want this to be a holistic approach as much as possible. We do want to have the best possible solution with that being said I am kind of lingering on this slide a little bit because this was the last slide to the presentation. You have already established a City Council policy direction for us. You have already said we prioritize pedestrians and cyclist and transit users and so we have taken things like your comprehensive plan and active transportation plan. I think what we are missing is what you have said repeatedly here, there are gaps as to how policy is implemented and I think one of the visionary things that our City Manager has done is to recognize that gap and create something, an actual line of business to the city that is called planning and implementation. We are actively working on identifying the data, analyzing it, and creating solutions. It is just a little more time consuming than you would like, however the goal is to catch as many things as we can with one solution. In the CIP Retreat my hope is that you all will have a more hands on experience in looking at this information and digesting it and asking the questions that you need to ask in order for us to have a really good process moving forward.

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Mark Miller, Senior Planner said this is through our Open Gov platform, the transparency platform that we do have. Here we have an active story as it is related to active transportation. It is kind of our one stop story where we can see all the different bits of data that we are trying to actively track and regularly update. The most recent year you will see on this is 2021/2022. We are currently trying to update this as we speak. You can see the amount of bike lanes we have across the city, how much stripped bike lanes do we have? Where are our sidewalk gaps? This is an effort that has been worked on with Public Works, an intradepartmental effort to try to track in real time where our gaps are, where they are being filled, whether they are being filled partially or wholesale. We also have a few different key measures related to the right-of-way. How many trees do we have in the right-of-way? The sustainability aspects of trees, the right-of-way of street trees. We also are tracking pedestrian and cyclist crashes. You will notice that this is more recent data than what was in the presentation. The reason for this is because these are straight numbers from PD. This isn't going through the process that you guys were discussing a minute ago. That 2-year lag and what the MPO relies on the drawback is that this isn't spatial. It is not mapped out currently. There is that verification process. In preparation for this Work Session we did utilize that MPO data, that historical data I believe up to 2019 We are working on right now and the delay in presenting this to you is because of the complexity and the nuance of really trying to spatially and statistically analyze it in a way that we can bring you a finding. There are so many different variables to the why related to the where of these crashes that doesn't live in the data that isn't collected necessarily. We hope to try to develop this a bit further and then make this available. This is the raw data. This does not cover Mayor to your point, those most recent crashes because this is relying on the MPO's crash reports which is only up to 2019 as Dominic highlighted. We did just want to put this in front of you and show you that this is something that we are working on and trying to bring that policy connection.

Mayor Miyagishima said I already found the seven. One was at Idaho and Locust, one was at Picacho and 17th Street that was jaywalking, one was at Bataan Memorial East near Organ Mountain High School, one of them was in the Target parking lot, another one was I-10 south of Las Cruces near Vado, one was at Spruce and Virginia and another near Amador and West Picacho and I guess a train hit a pedestrian. Those were the seven in 2022. I just wanted Council to have an idea of where these happen so that we can see where this project or pilot that you all want to do and how they correlate with this. It really is important to let the public know the driver can't see you. I want to say the Department of Transportation did some type of a program 10-12 years ago about the same issue. You can't be seen. It was a statewide campaign. Maybe if we did that here locally. Something to highlight and let the skateboarders, the people who ride the bicycles, the people just walking the streets say hey you might want to wear something that is reflective.

Councilor Flores said it seems to me that we had 2 to 3 bicycle incidents weeks or months of each other, and we recognize that we have streets that are not really safe. Roadrunner Parkway for example I cringe. I don't understand how any planner in his or her right mind would have put an elementary school on a road that is really arterial. The sidewalks there on Roadrunner Parkway are so

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narrow you can hardly walk with a dog on there. It seems to me that you would look at a situation, to correct a situation that caused a death or there had been several deaths that are similar and try to rectify that. Even if it is a small section. You are looking at the entire city and you're looking at each and every incident safety issue but it seems to me that there are issues that are definitely life or death. We have more bicyclists on the streets now and we still haven't done anything to make bike trails safer. I think the data is there and that is part that boggles my mind that year after year and there is no movement. I share the concern and questions a lot of people do in the city. To me one person dying because of something that could have been prevented as a result of a relatively minor fix it. Whatever contributed to that particular accident.

Councilor Corran asked if we could go to the triangle slide again? This is actually what a lot of us are getting at. I think we are looking at hopefully we can think up in this pyramid and I think that is the expectation and accountability that we have to our community to reengineer things as we can. Change the things that we need to and address systemic things like a culture of speeding or cultures of not stopping at red lights and really focus all of our attention and I think the idea of having a more adaptable code. I really do hope that the Realize code will enable us to shift how we change these things and I appreciate you all alluding to that so that we can be more adaptable and change our roadways as we can and address systemic issues. I would argue even looking at one year of crash data is really hard to put in an epidemiological context and I appreciate you all looking at this in a bigger perspective and thinking about the top of the pyramid. I think we are all committed to prioritizing that in our upcoming conversations about the CIP in particular.

Councilor Bencomo asked can you go back to convention versus systemic? I really just want us to really breathe and live this. I think it is important to shift away from victim blaming. Like pedestrians don't pose a risk to vehicles, vehicles do pose a risk to pedestrians though. The education cannot be solely on the pedestrian. It should not be. I think part of how we approach this issue as policy makers is really from this frame and perspective.

Mayor Miyagishima said I also think the pedestrian has a little bit of skin in the game as well. You don't want them just dressing up in clothing that they can't be seen in. It is tough now days with so many obstacles, whether it is the sun in their eyes or whatever may be the case. I hear what you are saying.

Councilor Flores asked do you look at areas and sometimes think this could have been prevented if we had a lower speed limit? Or this could have been prevented if we had another crosswalk? I am thinking about a not a quick fix but something for example, have more crosswalks at the big streets. I know that Tony and David, I have walked with them and we had a constituent who was asking all these questions and they informed that because of the design of this street right here it is not required to have a crosswalk. Do you do that sort of stuff or is it just too simplistic?

Srijana Basnyat said I think that is one way to address and enhance the transportation system is to look at the data and to see if there is something that

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was preventable or that we could fix moving forward. However, I think this is the piece that a little bit gets missed because we do have a lot of, I don't want to say siloing necessarily but we do have a separation of expertise and we have a gap in transportation planning at the city and that is something I am going to mention at the CIP Retreat to you all but this idea of having an approach to fixing a solution I also want to be very careful because I am kind of looking at legal right now. I think with better design and long-term thinking we can provide solutions to these problems. I don't know that there is a quick fix right now because sometimes you can place a crosswalk and make it more visible however it might not be visible 24/7 and it might not be the best location for the crosswalk because the street was not designed to be crossed at that point. It is not a straightforward answer and I can't answer that for you today.

Ifo Pili, City Manager said one thing I want to mention in regard to gaps. I think we touched upon it a little bit in the presentation just at the beginning of how we have all these different plans. We have Elevate, there is plans coming out of our ears when we talk about all the great things we are going to do for the city. We will go over this at the Budget Retreat, but this is pretty trail blazing. We are closer than we have ever been with this new line of business that was created. Now you have long range planning, you have performance management and the CIP all in one area under the direction of Srijana and her staff and we are going to be taking plans to implementation hopefully faster than we have ever done and more complete than we have ever done. This is going to require coordination teamwork of the entire staff. I think this is something that is really innovative and that has come from staff and all departments and particularly Srijana and her staff. You will see in our Budget Retreat coming up, just to manage expectations too the first day we really don't have any other room for any other JPAs to present. What we are proposing is maybe a Work Session, I think Barbara sent me March 27th might be our next available Work Session. The hope is that they are coming to your individual boards and presenting thoroughly.

Andrew Bencomo, Member of the Public said I am the Pedestrian Advisor for the BPAC. Some of the comments, I am super happy to hear this that people are trying to improve safety for walkers, bikers, runners also. One of the things I heard, and I hated to hear it was when the comment was made that the traffic systems are not the problem it's the users, it's the drivers. When there is accidents, it is not the system. That is exactly what the presentation was saying not to do and so I hated to hear that piece. A lot of the times what we want to do is reduce the speed limits, let's change the speed limit sign but we know that people just speed. So, the treatments of the roads, reduction of lanes, the chicanes those type of things. Those road treatments are really going to be the answer to what we are looking to provide here as far as safety goes. That will help to reduce traffic speeds. Obviously, they are expensive to do if you have to add them in afterward but they can be built into projects. One of the questions you asked was where do we start? What can we do? Can we change the traffic timing signals? I know in San Diego the traffic lights change but they change for the pedestrian first and then they hold the traffic so that they can cross for a little and I myself have been guilty of that. It changes, I start to go and there is somebody trying to walk, and I didn't see them. As far as trying to identify specific locations where people are killed, again we are

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going back to focusing on the micro things instead of looking at the whole system. While we do need to do that I would like for us to take a step back and look at the bigger system as they have presented. An example of what just occurred too, where we are missing the boat sometimes, we just did the GO Bonds. They just finished those wonderful trails that we have but if you look at the crossings that are at the roadways there is one sign put up. No treatments on the road, no crosswalks. How did that happen? How was that not part of the budget and part of the system put in place? The trails are great, but the safety system seems to be lacking somewhat. Back to that Alameda push and how long it takes, we were told that the traffic study was done but it was too old and it needed to be done again when nothing happens and traffic gets worse. How does a traffic study need to be done a second time when traffic just keeps increasing? That push was done by the public going to councilors and forcing that to happen, it was too bad it had to be that way but that is how it had to happen.

George Pearson, Member of the Public said currently unmarked roads have a 30 mile an hour speed limit, this includes almost all of the residential roadways. Pedestrian vehicle crashes at 20 miles per hour have an 80-90 percent survivability rate but at 40 miles an hour have 80-90 percent fatality rate. That was reflected on one of the slides in this presentation. An action item that can be taken to help would be to revise Las Cruces Ordinance 27-12-6-1.2 and change the default unmarked business and residential district roadway speed limit from 30 miles an hour to 25 miles an hour. Changing the speed limit in itself is only a partial solution but it would send the message that the Council is looking at this and raise some awareness of this. We will have to look at the design issues. People will drive at a speed that they perceive is safe. The City Council can make this happen. Budget season is coming up. We set aside funds and support some pilot projects to improve traffic safety. Such projects could be done with paint and signs and maybe temporary ballards or mini traffic circles. Let's look at changing traffic lights to get pedestrians a head start to crossing intersections or maybe we need some "no right turn on red" signs at high pedestrian intersections. We have been talking about traffic safety for some time but with limited action. I hope this will deserve discussion at the budget process and we can make Las Cruces a safer community.

Ashleigh Curry, Member of the Public said I am the Las Cruces Public Schools Safe Routes to School Public Coordinator. I have been looking forward to this for many months. This isn't just a one-time event. This isn't something that we check off a list and say thank you, we addressed pedestrian safety and we can move on and revisit in seven years' time. This needs to be in on going and constant discussion. I know that we have had many start and stops to the active transportation department here with the city and it is very unfortunate that it is currently an unfilled position. I work with cities around the nation and look at what other people do, and I don't know if there is anybody that is our size that only has one person who would be in charge of hitting this all up. I think if you are going to be looking at budgets look at paying somebody appropriately for that position so that we can get a high quality person who is invested in staying for the long term and also having people to help that person. All of these things that have come up today, all of these events are one small item on each and every one of your to do list but if somebody had that as

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their full-time job that would be an enormous job and to actually be able to work together with all of the departments and cross departments. I think that is very key. I am very invested from the school district's perspective in working with the city and MPO and with the Town of Mesilla, the county, and the DOT on pedestrian safety issues. As you saw from that inverted triangle the number one thing to do is eliminate vehicles and obviously that is not realistic. We are not going to a pedestrian only community. One of the biggest causes of pedestrian congestion is schools. If we can make our streets safer for kids to be able to walk and bike to school we can reduce a lot of those conditions around schools of traffic congestion. We are not an invisible state. We are number one in the nation for pedestrian deaths. I do sit on the NMDOT Pedestrian Safety Taskforce, and they are addressing that two-year lag just so you know that is being addressed from there.

3.2 MOBILE INTEGRATED HEALTHCARE TEAM INTRODUCTION

Justin Allen, Deputy Fire Chief introduced topic.

Matthew Hiles, Battalion Chief gave the overhead presentation.

Councilor Gandara asked the hours of operation and how you selected those? Can you tell me about that process?

Battalion Chief Matthew Hiles said we did do some data research on when the calls were being generated for. Behavioral or suicidal ideations or suicide attempts or overdoses and that timeframe was really just the bulk of it all to start with that. If we need to adjust, we will adjust. It was just a matter of pulling data from past calls.

Councilor Gandara said some of the data you shared with us specifically and you might want to go back the to slide, the suicidal attempts, the protective custody. You know we have been talking to PD and to Chief and the DCs about protective custodies and the sheer numbers are so much. You mentioned several times the emergency room and I want us to move away from is so many of these cases are not appropriate for the emergency room but probably more appropriate for acute care and acute care that we might not have in our community. Have you had conversations specifically with the hospital and what that might look like?

Battalion Chief Matthew Hiles said yes, that is currently something we are doing right now. We are still working on communicating with all of them.

Councilor Gandara said I have deep concerns of the fifth floor continued to being closed and some very limited communication with John about why that is and I feel like they should have the fifth floor open and they do not. The excuse is that there is not enough providers. There is a provider shortage and although I think to some extent as it relates to licensed social workers and counselors, and I guess now pediatricians can add that to the list. If this is going to work, I think that fifth floor needs to be open. I am asking that we have some very serious conversations with John Harris and their board and if we have to the Tennessee Board. This is outrageous that it has been closed for the amount of

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time that it has been. In order for the LIGHT project and MIH to work that also needs to be working as well.

Mayor Miyagishima said I was talking with the former psychiatrist who worked there and I think a lot of it I asked if it was obviously to bring in psychiatrist is it going to be trying to match a lot of they pay that they get. Let's say they are offering \$250,000 for a psychiatrist and if we were the county and city kick in \$25,000 or \$50,000. If you can let John know that might be something there that will help raise that level of compensation for a psychiatrist and we might be able to get them maybe at \$350,000.

Councilor Graham asked as of this moment are we completely staffed for both MIH and Project LIGHT?

Battalion Chief Matthew Hiles said no, not right now. We still need firefighter paramedics for the MIH side but for project LIGHT yes, we are.

Councilor Graham asked how many firefighters do we need to recruit into MIH?

Battalion Chief Matthew Hiles said just one.

Councilor Graham asked I don't know if you're anticipating recruitment challenges, if so, is there anything we can do on our side to make that a little easier for you?

Battalion Chief Matthew Hiles said currently I think we will have it under control to fine tune some things up a little bit.

Councilor Graham said I love how this is a model for trauma informed care and for obvious reasons I also think a lot about the trauma and hardships that first responders see when they are doing these jobs and I hope this would also be a model not just for trauma informed care for our patients but for trauma informed work for our first responders. How are you going to take care of each other in addition to taking care of our residents?

Deputy Chief Justin Allen said we do have a peer support group that is in the department that we have been working on over the past few years but it kind of fell to the wayside during Covid. We have stood that back up with pretty robust membership. We are currently seeking some training and have a training opportunity coming up April or May through the International Association of Firefighters are presenting a class here for peer support. On top of that we are looking at sending several of the member to specific peer support training outside of the city limits.

Councilor Abeyta asked is there any sort of estimate that you all have about how long it might take for each call to be done? I am sure that is one of the tracking items you are going to have.

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Battalion Chief Matthew Hiles said yes, it is one of the tracking items that we have. I don't have a number for you or a timeframe for time on task but that is something we will be looking at for sure.

Councilor Abeyta said as we go forward then all of that will be put together for us to say if we were going to fully staff and fund this project we would need X amount of teams if you want to start making this expanded service or seven day a week service then you perhaps have those estimates for us.

Battalion Chief Matthew Hiles said yes, I was talking with Chief Smith last week. We would like to come back around a six-month timeframe to have some actual data for you after a six month run and making those adjustments and making notes of where we can get some help or make some changes and improvements.

Councilor Abeyta said looking at long term sustainability for this program if it is internal type items or if we are going to be dependent or rely on other types of federal funds. I think it will just be important for us to track and look at what we need to advocate for at those different levels. Thank you to everybody who decided to be part of this new program. I know it is going to be hopefully very helpful for our community and not necessarily something that firefighters who were here 5-6 years ago thought that they would be doing.

Councilor Bencomo said I think most of my questions are related to 911 related and it is my understanding that is coming, the MVRDA Work Session. Last time I brought this up Chief Smith said that we are working on a Work Session with MVRDA to better understand their training side of things and how they are transitioning. I am excited about this six month plan and I think that is really great and important especially when we think about funding and the needs for you all. I would be really interested to understand how project LIGHT could additionally include domestic violence calls. There is a ton of PD protocols in terms of domestic violence. I am not suggesting taking that completely away but if there is a space for this kind of team to also respond to those kinds of calls?

Battalion Chief Matthew Hiles said I feel like I could probably give you a better answer after the six months mark and see how all that goes. To say whether yes or no would be premature.

Councilor Bencomo said absolutely. It is just something I wanted to raise today I would like to see if there is space for that.

Councilor Flores said I know that MVRDA is going to be critical in terms of 988 calls and 911 calls that will be going and staff there is going to have to be fully trained to distinguish which entity goes out. I think that domestic violence would probably go to LCPD because crimes or allegations of a crime are going on perhaps. That is a fine line call for MVRDA operator so that is the only concern so far as the training and going out to the right entity.

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Mayor Miyagishima said this is really forward thinking and I know some larger cities have this or are beginning to do this and this is trailblazing efforts on behalf of the city as well as the Fire Department.

4. ADJOURNMENT

- 4.1** Councilor Becki Graham made a motion to Adjourn at 3:14 p.m. Councilor Johana Bencomo seconded the motion. Carried unanimously.

Mayor

City Clerk



MINUTES

City Council Meeting

1:00 PM - Tuesday, February 21, 2023

City Council Chambers, City Hall

The City Council of the City of Las Cruces was called to order on Tuesday, February 21, 2023, at 1:00 PM, in the City Council Chambers, City Hall, with the following members present:

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

EXCUSED: Mayor Ken Miyagishima

1. OPENING CEREMONIES

1.1 Pledge of Allegiance - Mayor Pro Tem Gandara.

1.2 Pets of the Week.

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

1.3 Jobs of the Week.

Giselle Palomares, Workforce Solutions presented Jobs of the Week.

1.4 Presentation of Certificates of Appreciation/Proclamations - Mayor Pro Tem Gandara.

There were none.

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

2.1

None.

3. PUBLIC PARTICIPATION

3.1

Dr. Earl Nissen, Member of the Public said since we have two law enforcement agencies in Dona Ana County, we might compare them as to the results they deliver to us in terms of public safety and what it cost taxpayers for these services. I am interested in comparing the Dona Ana Sheriff's Department and the LCPD, in what appears to be a significant difference in the amount of taxpayer money paid to settle claims to families and individuals for police shootings and misconduct. As I understand it the Dona Ana County Commission has not in four years had to make large payoffs for claims against

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sheriff deputies while during the last four years City Council has had to issue millions of dollars to settle claims against LCPD. I am requesting from the Las Cruces City Manager who is by the City Charter responsible for LCPD the following, number one for the past four years a listing of the claims made against LCPD and paid for, number two the total amounts paid to settle each claim, three the disposition of officers involved in the incidents that led to settlements of the claims and four the amount of money spent on premium for a liability insurance for the past four years. I am asking the same for the Dona Ana County Manager. By comparing the two law enforcement entities data that I am requesting we might be able to ask if it is a difference in claims between the two results from how officers are trained and managed. I support police who observe appropriate codes of behavior and show excellent decision making while on duty.

Kathe Stark, Member of the Public said I am with Animal Advocates For Change. I was really pleased to hear that there was going to be a joint meeting with the City, County, and ASCMV and AAOC regarding spay and neuter needs in the community and I look forward to when that is scheduled. However, there were statements made by the Mayor and unfortunately he is not here so I will have to email him my comments that caught my attention. Before and since August 2021 when this City passed Chapter 7 members of this council stated that the TNR portion of that chapter was to be presented along with a budget for the program. I and others have stood before you several times asking that the city honor their commitment to TNR and have provided the option of funding a voucher program to help residents reduce the community cat population in recognition that the ASCMV has only one vet. To date there has not been a budget considered or allocated. The explanation or excuse provided by Mr. Enriquez for the current fiscal year was simply illogical and now it sounds like there is another illogical excuse for not funding the program. I ask that you refer back to the language of the ordinance itself. AAFC is aware that the ASCMV is governed by a joint power's agreement. The Mayor stated that funding request for the program would have to come to the city and the county through the ASCMV Board in their annual funding request and that the county would have to agree to pay half of the cost. There are several problems with that statement. First, the ordinance reads that the city should provide funding annually as a part of its budget for affordable low cost spay/neuter procedures. It goes on to state that the funding could be provided directly to the ASCMV or qualified nonprofit partners that could provide or coordinate such activities between residents and our veterinary providers. There is nothing in the ordinance that states the ASCMV is responsible for the program or that the program funding should come to their annual budget request. Without including the ASCMV Board you used your legislative process to institute a city program that was then dumped on the shelter and as the subcommittee worked on the policy and budget we all saw this coming and we spoke several times to the council pointing out that this is a city program. This is not a ASCMV program. The Mayor stated that the County would need to be on board and pick up half the cost. If we are talking about a broader spay/neuter program that statement is correct. However, for the TNR portion from the city ordinance the county has no real role to play. The county already funds their spay/neuter voucher program. I believe it was up to \$165,000.

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Diane Starbuck Ribaud, Member of the Public said I am a member of Animal Advocates For Change. Albuquerque has a mandatory spay and neuter ordinance and it cost \$150 to have an intact dog or cat. Wouldn't it be great if Las Cruces has something similar? Albuquerque takes their fees and uses it, part of it they use towards low cost spay and neuter.

Donna Simm, Member of the Public said I am also a member of the Animal Advocates For Change. On 8/27/2021 you approved a new animal ordinance Chapter 7. I am here today to ask what you have done to educate the public related to the law as of February 2023 the city's animal control webpage has finally changed regarding licensure. A provision that was eliminated in the new ordinance. However, the city's page on permits and licensing still states that all pets are required to be licensed. It has been 18 months. It is probably time to update that city page. As the second largest city in New Mexico, we should be leading not lagging when it comes to education of the public on the requirements for care on control of companion animals. Care and control of companion animals is a growing issue of concern in Las Cruces as evidenced by the sheer number of animals going to the ASCMV everyday and pleas for help by residents on social media. I urge the city to be proactive and step up your efforts to educate the public on the city's ordinance and care and control of responsibilities on companion animals on your webpage. The city as well as ASCMV and local organizations have a responsibility to educate the public. I am asking what it will take for the city to step up your efforts in this public education process. Another item, please reframe from referring to the feral cat population problems. The terminology tells me you really don't understand the issues. Many of the free roaming cats feral. They are cats that have been abandoned by their left to fend for themselves outside. This is exactly why the ordinance refers to community cats versus feral cats. I sincerely hope the council will take the responsibility seriously and act responsibly regarding this significant concern. Many of us who currently reside here are transplants from other states, I come from Colorado, where animal welfare is responsibly addressed and strictly enforced. It would be beneficial if Las Cruces could step up and become a leader versus a lagger in this issue.

Juan Garcia, Member of the Public said let's talk about priorities, Representative Romero, Santa Fe in speaking about high capacity weapons, "we have seen far to many mass shootings carried out using these weapons". So, I did some research. Las Cruces Sun, three mass shootings in 2020 killed one and injured 12. Gun violence archives, 2022, four killed and 18 injured. So, let's compare with opioid deaths CDC, drug overdose, death 39% per capita and of those 26% attributed to Fentanyl. Fire injury death rate 22.7% per capita. HB60 increases penalties for Fentanyl possession based on the amount of drug possessed. HB59 would make possessing a gun during drug trafficking a third-degree felony and House Bill 57 would grant immunity from litigation for alleged damages or injury for merchants who apprehend shoplifters. All three were blocked by our New Mexico democratic representatives, Las Cruces Sun. Representative Ferrary is concerned "thieves might be injured if HB57 passes." When Sheriff Stewart was interviewed, she stated "how would we enforce that? Are we going to be stopping people and saying give me your magazine, I want to count how many rounds you have in your gun. So, you have to ask yourself if we are doing this for the reasons of the greater good or are we just doing it to

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fill space?" Since Representatives Cadena, Ferrary and Rubio and many others have refused to engage in addressing the number of crimes against our small businesses we decided to try a different means of communication. I would like to enter this document into the record.

Jennifer Kreie, Member of the Public said I believe I will be back here on Monday to listen to the OIR Report. Everybody here has to be aware of the concern that we have in the community about transparency in terms of certain incidents where some people are concerned that the police used and I am learning that I need to be careful about the terminology but as a layperson I would say inappropriate force. I went to the website this morning, the city and I went to the Las Cruces Police Department and there is a section that says LCPD Transparency but underneath that you have Policies and Procedures. But the only other thing was a Public Safety Community Survey Report Results. I don't see how that is transparency. Policies and procedures and the results of a survey. There wasn't even a link to Internal Affairs Reports, but I did find them and I read the most current one and I didn't see anything in that report that dealt with incidents where there was loss of life. We are concerned about transparency. We want to communicate with the Police Department. We ask that they communicate with us. I don't care if we call it a Citizens Oversight Committee. I think that is probably not a good name but a police community exchange where we meet quarterly. Someway in which we can get some information and questions answered. Totally different subject, I drive by the Animal Services Center everyday and it is beautiful and thank you for making that happen.

Peter Goodman, Member of the Public said police accountability has been mentioned. I have talked individually with you folks and I know that you care about it collectively. This City Council, whether it is because of the Mayor or otherwise is not treating police accountability the epidemic of police killings, questionable police killings as the red alert that I think it is. I will address three small pieces of the picture. One is being told that maybe we are not going to have the promised Work Session. It is unclear. I mentioned this to one of you, in terms of transparency at a point where the Sun News and I and others were having trouble getting video from people's video cameras, police officers. Somebody at the Police or somebody at the city put out a propaganda video to try to make it look like oh this wasn't a big deal. I would be mad if I was a City Councilor and would want to know who was doing that. I will also note for the record that I made extensive efforts to have lunch or some other kind of conversation with your Police Chief. He is either too busy or too frightened or whatever it may be but I tried for months. I also want to say very quickly, a recent column I addressed the fifth floor at MMC. I hope that you folks have formally told MMC that they are in violation of the contract by not having the fifth-floor psych ward open and that you will take action. Finally, leaf blowers are still the worse stupidest polluting thing in the world and you folks ought to not be walking around using them.

Councilor Flores said I am not familiar with the feel good propaganda that you referred to. Where is it?

Peter Goodman said I will try and send you a copy. They put out a video.

Councilor Flores asked who is they?

Peter Goodman said the city. I will try and track down exactly where I got it from and I will ask the folks at the Sun News but basically it just sort of showed the police officer driving there and it showed him yelling to put down the weapon but it stopped before the actual shooting. I don't know if it says anything specifically untrue or lying but the mood of it is no big thing and I am just thinking when we are trying to get, we people who are news media or otherwise concerned citizens are trying to get the actual police video and learn the facts somebody is wasting time doing that.

Sarah Smith, Member of the Public said at the last meeting Councilor Graham mentioned that there is no buffer distance required between cannabis dispensaries and multifamily housing areas such as apartment complexes while there is a 300-foot buffer distance required for single family residential areas. I am asking that you consider extending the 300-foot buffer to include multifamily housing areas. To be clear I am not against cannabis legalization, but the city needs to carefully consider the potential negative impacts in order to have a balance approached by extending the protections of the 300-foot buffer to include multifamily housing areas. The city would be extending the protection of the buffer to more families regardless of their socio-economic status. According to some recent articles in the American Journal of Public Health, "cannabis retailers tend to cluster in socially and economically disadvantaged areas and this can create or exacerbate health disparities if these communities disproportionately bear the burden of the negative consequences of cannabis use." Legalization of cannabis may "exacerbate long standing racial, ethnic and socio-economic inequities." Cannabis is not harmless. Cannabis use disorder occurs in 20% of lifetime cannabis users with 11% of these cases severe enough to prevent individuals from participating in major life activities such as working and caregiving. Another study published in the journal, Substance Use and Misuse, found that higher density of cannabis retailers is associated with an increase in youth substance abuse. All of these studies that I am mentioning I gave to Christina so she can give them to you. This means that if there are too many dispensaries in Las Cruces there are going to be more children here who will end up abusing drugs. There needs to be a balance between supporting this new industry and also making sure that this community is giving its children and families the greatest chance of success. City Councilors you could pave the way towards supporting the cannabis industry while also balancing the needs of the families who live here by extending the 300-foot buffer to more families.

Councilor Flores said referring to studies and saying that you have given them to our City Clerk, thank you for that. However, some of the "studies" can't measure what a brain looks like before the ingestion of cannabis and what it was like afterwards. How valid are these studies? I don't in any way criticize you for referring to this because it is out there but some of the information that you presented and referring to studies has not been substantiated. I met with you in person, and I respect your credentials. I respect your concern for the community but what you presented right now is almost like a reefer madness type of alert and I don't think our city needs that. I think that we do everything

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as City Councilors to assure that our community is safe. We cannot change the course of history but I would like to remind you that cannabis was actually demonized to deport Mexicans in Arizona. I do thank you for your concern but you also failed to state a connection between your study and where these dispensaries are. Where is the connection?

Sarah Smith said hopefully you will have time to read the studies that I just gave you guys copies of. It does have in their actual references and explanations of how they determine how increasing density of cannabis dispensaries is correlated with a higher incident of youth substance abuse. I am hoping City Council will look at it a little more holistically.

Rick Reynaud, Member of the Public said I just wanted to mention some of the sources of Sarah Smith's data. She has been censored from posting NIH information. She has to be impeccable at her data. In regard to that discussion you just had, I saw the video of former Mayor Ruben Smith and he was here to admonish you all for the same subject.

Travis Owens, Member of the Public said I am a local business guy. I am actually here to also talk about cannabis, but I am here to talk about something totally different. I am actually the host of the Las Cruces Hemp and Cannabis Festival. If you are not aware we hosted last April over at Sassy Grass over on Picacho Boulevard and we had over a thousand people from all over the region including El Paso show up. We did not allow consumption because of the rules and regulations that are in place. I am coming to day to open conversation about possibly having a pilot program for our second annual Las Cruces Hemp and Cannabis Festival. We have moved it to the plaza downtown but we do have a connected partner that is within walking distance from the plaza that has a consumption license and we would possibly like to become a pilot program about outdoor consumption because we know from previous meetings and such that it is a concern and it is a conversational topic and we would like to be considered as possibly a pilot since we are already hosting an event in the public space.

4. READ CLOSED MEETING STATEMENT

4.1 Read February 13, 2023 Closed Meeting Statement into the record.

The Las Cruces City Council met in Closed Session and only discussed those limited items as stated in the posted notice. The purpose of the closed meeting is:

1. To discuss pending litigation regarding Yazmin Gutierrez, et al. v. city of Las Cruces, et al.; No. D-307-CV-2017-01409, which is closed pursuant to NMSA 1978, Section 10-15-1H (7).
2. To discuss pending litigation regarding Mark Price v. Francis Whitten, Thaddeus Allen, the City of Las Cruces d/b/a Las Cruces Police Department, Case No. 20-CV-1099, which is closed pursuant to NMSA 1978, Section 10-15-1H (7).

3. To discuss pending litigation regarding City of Las Cruces v. Amerisource Bergen Drug Corporation et al., 2:21-CV-00336 (Civil Action No. :21-00336), which is closed pursuant to NMSA 1978, Section 10-15-1H (7).

5. ACCEPTANCE OF AGENDA

5.1

Councilor Bencomo Moved to Approve the agenda as presented with removal of item 7.4 for discussion. Councilor Graham Seconded the motion. Approved 5-0. Mayor Miyagishima and Councilor Abeyta were absent.

6. CITY COUNCIL MINUTES

6.1 Regular City Council Meeting of January 17, 2023.

6.2 Work Session of January 23, 2023.

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

7.1 RESOLUTION 23-096: A RESOLUTION AUTHORIZING AN INCREASE IN THE ANNUAL NOT-TO-EXCEED AMOUNT OF THE CONTRACT FOR OUTSIDE COUNSEL SERVICES WITH JARMIE & ROGERS, PC TO \$180,000 PLUS NEW MEXICO GROSS RECEIPTS TAX ANNUALLY (PROCUREMENT NO. 22-23-024).

7.2 RESOLUTION NO. 23-097: A RESOLUTION AUTHORIZING THE CITY MANAGER TO SIGN DOCUMENTS TO RECEIVE FUNDS DUE TO THE CITY OF LAS CRUCES RESULTING FROM THE STATE OF NEW MEXICO OPIOID LITIGATION.

7.3 RESOLUTION NO. 23-098: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES TO DEVELOP A DELEGATION TO DISCUSS THE USE OF FUNDS DISTRIBUTED TO THE STATE OF NEW MEXICO RESULTING FROM OPIOID LITIGATION.

7.4 COUNCIL BILL NO. 23-019; ORDINANCE NO. 3025: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF CITY OF LAS CRUCES, NEW MEXICO, GENERAL OBLIGATION IMPROVEMENT BONDS, SERIES 2023, IN THE PRINCIPAL AMOUNT OF \$17,000,000, PAYABLE FROM AD VALOREM TAXES LEVIED ON ALL TAXABLE PROPERTY WITHIN THE CITY, LEVIED WITHOUT LIMIT AS TO RATE OR AMOUNT; PROVIDING FOR THE FORM, CERTAIN TERMS AND CONDITIONS OF THE BONDS, THE MANNER OF THEIR EXECUTION, AND THE METHOD OF AND SECURITY FOR PAYMENT THEREOF; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A COMPETITIVE SALE WITH AN OFFICIAL NOTICE OF SALE; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN AN AWARD CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND FINANCIAL SERVICES DIRECTOR TO AWARD THE BONDS TO THE PURCHASER; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

Erika Jaquez, Treasurer gave the overhead presentation.

Councilor Bencomo asked I am curious about the Affordable Housing Bonds and the decision to either not include them in this piece or how does that work? What do you think the timeline for that is and what will dictate that?

Erika Jaquez said the decision came with some assistance from our financial advisor RBC. The Affordable Housing Bonds will most like be issued as taxable bonds because of the ordinance tied to those when we approved the bonds that we said we were going to deposit them in that fund and since non-tax bonds are little a more attractive than taxable bonds we don't want to cannibalize our own bonds with including a taxable bond with it. We are hoping that by the time later this year or beginning of next year our economy will be a little bit more stable to get a better rate for these taxable bonds.

Councilor Bencomo asked does that mean then that affordable housing projects that would be funded ideally be funded with a portion of this money won't start till 2024 until after they are issued?

Erika Jaquez said that could be the case. We also have other options like reimbursement resolutions and since these are taxable bonds they are not as restricted as the tax-exempt bonds per the IRS. So, we may be able to reimburse ourselves with a certain time frame which that does not mean we cannot start the projects till then.

Councilor Bencomo said just on this question number 6 that last part, public art consistent with voter approved purpose. If the question didn't include anything about public art, how do we make that fit?

Erika Jaquez said what this ordinance is basically saying is for example the fire station 2% of those proceeds will be used for public art. Now with what is consistent with what voters approve that is not within the question, but it is a fire station. Let's say they have maybe the amount is \$10 million the 2% might be able to cover two public art projects. They just have to be consistent with the question they can't go put it at the pool it has to be at another fire station. Then we have parks and also the East Mesa Public Facility.

Councilor Bencomo Moved to Suspend the Rules to listen to item 7.4 and then 8.2. Councilor Flores Seconded the motion. Approved 6-0. Mayor Miyagishima was absent.

Councilor Graham Moved to Approve Ordinance 3025. Councilor Flores Seconded the motion. Approved 6-0. Mayor Miyagishima was absent.

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

- 8.1** RESOLUTION NO. 23-099: A RESOLUTION AUTHORIZING THE CITY OF LAS CRUCES (CITY) TO ACCEPT SECOND-QUARTER BUDGET ADJUSTMENTS FOR VARIOUS CITY DEPARTMENTS THROUGH AN AMENDMENT TO THE CITY'S ADOPTED FY2022-23 BUDGET, AND THE FY2022-2023 CAPITAL IMPROVEMENT PROGRAM (CIP).

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Leeanne DeMouche, Finance Director introduced the topic.

Jacqueline Rubalcava, Interim Budget and Grant Administrator gave the overhead presentation.

Councilor Flores said the first item, Shared Services Utilities and there are two amounts there. The Revenue was \$700,000 and the Transfer is going to be \$150,000 is going to transfer to 5160. What is 5160? Is that another Shared Services in the Utilities?

Jacqueline Rubalcava said it is a different fund.

Councilor Flores asked that is permissible to do transfers between funds even though the money has been allocated for a particular fund?

Jacqueline Rubalcava said yes. They do sometimes transfer to different funds to cover others. The transfer here is to cover an increase in fund 5160 and then we also see some interfund loans.

Councilor Flores asked what is 5160?

Abner Gomez, Rate and Economic Analysis Manager said fund 5160 is our equipment replacement fund. This is where we buy vehicles and other equipment. So, fund 5100 and 5160 are very unique because they don't generate revenue. All the other lines of businesses transfer money so that they can buy equipment and pay for operations expenses. That is why you see a transfer of revenue of \$700,000 because all the expenses and shared services have to be funded split by all 4 lines of business which are natural gas, water, wastewater, and solid waste.

Councilor Flores asked these transfers occur from time to time? You have been reporting that?

Abner Gomez said we don't transfer without presenting it to you.

Councilor Flores asked all of these adjustments are basically transfers on the amounts?

Jacqueline Rubalcava said they are not transfers some of them are increases in revenue and increases in expenditures, decreases in revenue, decreases in expenditures. Just the ones who have "T" are transfers and it will tell you where it is transferring to and from. The others are either increased or decreases in expenses for revenues.

Councilor Flores asked can you explain Shared Services?

Leeann DeMouche said just to give you a little bit of a background because I use to actually on be at Utilities. So Shared Services is a combination of Adrienne Widmer who is the Director, the Assistant Director, all the billing, all the technical support that if you opened your utility bill you only see a bill for

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water, wastewater, natural gas and solid waste. Those four utilities, well actually there is five individual type sections within utilities and one is shared services. So, water, wastewater, solid waste, and natural gas contribute to the Shared Services to cover those expenses. Hopefully that explains Shared Services is because they are sharing all of this with all four of the other utilities.

Councilor Flores asked even though natural gas is listed specifically?

Leeann DeMouche said natural gas, that is only an increase in expense just for natural gas. The one above where it says Shared Services. Shared Services has some revenue coming in that is coming from some of the other utilities and then they are making a transfer to 5160 just like Mr. Gomez says to cover, that is where their required reserve is. That is where they buy vehicles from, capital equipment and what they want to do is purchase for a new work order system in that fund.

Councilor Flores asked Shared Services on the second line says billing and receiving, is that under?

Leeann DeMouche said billing and receiving is part of the Shared Services because all the bills are from the four utilities so everybody under Billing and Receiving is also paid by Shared Services. So, all four of the individual utilities gives funding to the shared services so that way they can acquire that. So, what they are doing is they have some funding probably in their fund balance, so they are requesting to up their expenses because they have some various billing collection and I think it actually had to do with Postal Pros. They are the ones that send out the bills. They print them, they put them in the envelopes and send them out for Utilities.

Councilor Flores said I have questions about Special Revenue Reimbursement Grant. The Department is Grants Non-Department Police category is Revenue/Expenses and then the purpose and there are all these numbers and then we have ARPA. How does ARPA money get into revenue reimbursement grant?

Jacqueline Rubalcava said it is under fund 2100 and that is called, Special Revenue Reimbursement Grant and when we say here the increase of expense of \$29,643 to ARPA. This was to correct amounts from tranche 1 and tranche 2 and when they were reconciled and so that was the correcting.

Councilor Flores asked why was it reconciled? Was there a discrepancy?

Jacqueline Rubalcava said I believe so in how it was allocated. I don't have the specifics on that and this was requested and so we put it in. I would have to get you that.

Leeann DeMouche said as you can tell the expenses is being increased. I think during tranche 1 they thought the expense would be expense but it was not so this is similar to what we do with a carry over. So, we are carrying over the expense between the tranche1 and the tranche 2. That is what this is doing, it

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is bringing that expense in so that way it can be expensed in this fiscal year when we thought it was going to be in last fiscal year.

Councilor Flores said I am reading literally across the lines but those lines are really not indicative to what the purpose is.

Leeann DeMouche said in the second line the \$454,643 that was actually an increase revenue account for the ARPA as well. This was for the American Rescue Plan Act. It was revenue to match so we could reconcile. That is what a while ago Jacqueline was talking about, reconciling it. So, we were reconciling the \$454,643 from Tranche 1 to Tranche 2. Funding came in and we had not budgeted it correctly so what we are doing is fixing it so that way what actually came in from the ARPA is actually now accounted for.

Councilor Flores said my concern here is that we will be audited, the ARPA funds will be audited.

Leeann DeMouche said they were this year during the external auditors with Mr. Gardner. They did audit it this year and I will promise you they will audit it next year because it is over that amount for that special.

Councilor Flores asked it will be audited and this will be taken into account?

Leeann DeMouche said yes. I will tell you that our Comptroller Ms. Josie Trevino is reconciling this, and she is keeping me on my toes.

Cynthia Campo, CIP Analyst continued overhead presentation.

Councilor Flores Moved to Allow Councilor Abeyta to participate telephonically. Councilor Graham Seconded the motion. Approved 6-0. Mayor Miyagishima was absent.

Councilor Graham Moved to Approve Resolution No. 23-099. Councilor Flores Seconded the motion. Approved 6-0. Mayor Miyagishima was absent.

- 8.2** COUNCIL BILL NO. 23-018; ORDINANCE NO. 3024: AN ORDINANCE AUTHORIZING THE ISSUANCE AND SALE OF THE CITY OF LAS CRUCES, NEW MEXICO STATE SHARED GROSS RECEIPTS TAX IMPROVEMENT REVENUE BONDS, SERIES 2023 IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$12,150,000 FOR THE CONSTRUCTION, PURCHASE, ACQUISITION, AND IMPROVEMENT OF ROADWAYS AND PUBLIC FACILITIES; PROVIDING FOR THE METHOD OF SALE OF THE BONDS PURSUANT TO A COMPETITIVE SALE WITH AN OFFICIAL NOTICE OF SALE; PROVIDING FOR THE MATURITY DATES AND AMOUNTS, INTEREST RATES, PRICES, REDEMPTION FEATURES AND OTHER FINAL TERMS OF THE BONDS TO BE ESTABLISHED IN A PRICING CERTIFICATE; DELEGATING AUTHORITY TO THE CITY MANAGER AND TO CITY FINANCIAL SERVICES DIRECTOR TO EXECUTE AND DELIVER A PRICING CERTIFICATE FOR THE SALE OF THE SERIES 2023 BONDS; AND PROVIDING FOR OTHER DETAILS CONCERNING THE BONDS.

Erika Jaquez, Treasurer gave the overhead presentation.

Councilor Corran asked this is a regularly issued bond that we use to fund street maintenance? My understanding of this is it is a pretty consistent. We ask for the same amount but if there is an X axis and Y axis the X axis being time and the Y axis being cost because costs have become more significant this means that our rate of improvements will slow down. Is that an accurate understanding of this?

Erika Jaquez said yes, everything will cost more than the last time we did this cycling, so we are just going to have to be very strategic on what projects are high on priority and again fit the comprehensive and strategic plan and take care of the projects that are needed. This is a cycling program so we give them every three years. Usually, it is about ten and half million, but we borrowed a little less during the pandemic because we had all these unknowns so that is why we are at twelve million cycle.

Councilor Corran asked the interest rate has also changed during that time or is it remaining roughly the same and/or is it possible that it will go down and that will increase the amount of revenue that we get?

Erik Harrigan, RBC Capital Markets said for planning purposes we use a 4-4½% interest rate based upon current market conditions. We may anticipate the market rate for these bonds to come in roughly around 3.6-3.8%. The market moves every single day sometimes significantly either positively or negatively. That is what we anticipate. These bonds are expected to price in two weeks and that point in time the city will have locked in those rates.

Mayor Pro Tem Gandara said I was just told by Ifo that we can speak more directly to this at our Budget Retreat in terms of the specific projects that we have in mind.

Councilor Bencomo Moved to Approve Ordinance 3024. Councilor Graham Seconded the motion. Approved 6-0. Mayor Miyagishima was absent.

8.3 COUNCIL BILL NO. 23-020; ORDINANCE NO. 3026: AN ORDINANCE AMENDING CHAPTER 24, PROCUREMENT CODE, OF THE LAS CRUCES MUNICIPAL CODE.

Leeann DeMouche, Finance Director introduced the topic.

Alicia Hernandez, Purchasing Manager gave the overhead presentation.

Councilor Graham said Section 24-161 redline new letter B, this is 602 of 719 of the Council Packet if that helps anyone else. Construction projects may be awarded based on cost, qualifications, or both. Hopefully it will always be both qualifications. I understand giving projects to the lowest bidder, but I want to feel assured that safety, quality, etcetera will also be.

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Alicia Hernandez said I believe previously in June of 2021 cost was a factor and we took that out because it was determined to be the only factor but now it is not. We do have cost qualifications or both.

Councilor Flores asked as far as the exemptions on page 7, can you go back to that please? Were these exemptions brand new or were they modified?

Alicia Hernandez said we did not have anything in the P-Code that indicated that it was subject to review and written determination by the Purchasing Manager. So that was added in there. We also did not have anything on Cooperative Procurements. So, we included that as well that we are able to exempt the process of going forward if we use something from another government entity or another cooperative agency.

Councilor Flores asked you added it to facilitate procurement?

Alicia Hernandez said yes. To make it quicker we could piggyback essentially on any one on of those agreements that another agency has.

Councilor Flores asked is this a review consistent with McHard Report?

Alicia Hernandez said yes, it was factored in.

Councilor Flores asked is it a fine tuning of the McHard Report?

Alicia Hernandez said yes. As we review this, we notice things come up and we are going to continue to monitor it and bring them forward as needed. Hopefully in about a two to three year cycle.

Councilor Flores asked this is the second year since the last read?

Alicia Hernandez said it was June of 2021.

Councilor Flores said on page 8. Can you explain an increase to competitive public procurement threshold from \$75,000 to \$100,000, what does that mean. Don't you just go project by project?

Alicia Hernandez said anything procured above the \$75,000 limit you previously have departments and our procurement staff take it to City Council and now we are upping that threshold to \$100,000. So, what that means is that you will see anything above \$100,000 not anything below that. We still do provide reports to City Council quarterly regarding what those limits are so you have access to that so you see what may not have come to council.

Councilor Flores said on page 9 you have bid protest. Are you still finding loopholes?

Alicia Hernandez said I don't think we have had any issues. I think we just discovered that we didn't include it in June of 2021. There is a conflict of interest statement in there. I think all that was added was a statement of if an

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employee becomes aware they must disclose to the Purchasing Manager immediately.

Councilor Flores asked what is the mechanism besides self-reporting on a conflict of interest?

Barbara DeLeon, Chief Administrative Officer said I do want to clarify that the previous purchasing code did have language in it with respect to conflict of interest. It was very specific to the Selection Advisory Committee process where folks who sit on that committee are required to sign conflict of interest statements to ensure that is not an element of selection. However, because we are periodically reviewing the code to make sure we have all the language in there that will help folks to be compliant with the code we decided to add a general statement this time around to just state there may be conflict of interest not associated with the Selection Advisory Committee associated with other types of procurement and that is why this statement was added to the code. With respect to the Selection Advisory Committee there is a specific form that is signed, particular to conflict of interest with respect to this general requirement it is notification to the Purchasing Manager. That could be verbal. It could be email and then the Purchasing Manager would be responsible for documenting the conflict of interest as it is reported.

Councilor Flores asked the committee that you referred to is comprised of five people?

Barbara DeLeon said the Selection Advisory Committee is comprised of three directors and other subject matter experts. One of the directors is from the department that is procuring the goods or services and there is one that is a rotating position so that we can ensure that different directors can involve in the selection process and then we have internal subject matter experts that also are able to vote on the selection and be part of that selection advisory process.

Councilor Flores asked there is enough checks and balance in that process to keep shenanigans from happening ever again?

Barbara DeLeon said that is our intent and with the clarification to the code we are trying to make it as easy to comply with that outcome that we all want for transparent and fair procurement.

Councilor Flores asked that Select Committee is also going to be an Oversight Committee to an extent?

Barbara DeLeon said the Selection Advisory Committee is formed every time there is a particular procurement that is going out on the street for a request for proposals and the membership of that committee changes depending on the services that are being procured.

Councilor Corran said in these cases of selections often people will send me requests to pitch their business. This happens with some frequency just to be

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completely transparent and every time I refer them back to your department to say this is the process that we go through. When it comes to procurement, there is a very robust process in place that beyond hearing what you all do and approving of it and appreciating all the work that you do in refining it, we have nothing to do with it at all.

Councilor Bencomo asked in terms of this new set of upgrades to the P-Code, do any of these have an impact on the NGOs that we often partner with in the community and if so, have they been made aware of any process change?

Alicia Hernandez said we have not made them aware of it. They may be affected depending if they are a vendor of ours but we do intend to work with Economic Development on maybe getting some of that information out to them.

Councilor Bencomo asked could they expect, how they could expect to be impacted?

Alicia Hernandez said we don't have a plan yet.

Mayor Pro Tem Gandara said I do have a question on slide 7 around the expansion of the 48 months.

Alicia Hernandez said on that we didn't have anything that limited how far we could extend our contracts. So, what we did was we added the limit of the 48 months. At that point we would have to do an entire new competitive procurement.

Mayor Pro Tem Gandara said my question is around those 48 months is there are times when I get complaints about this where we are extending but the public isn't aware of the process that we move into related to in terms of ensuring that there is accountability and that people are doing what they say. That companies or organizations are doing what they say they are going to do. What gets factored into those extensions? Are you asking staff or departments about performance measures? We have moved into performance-based budgeting and each of these contracts specifically have performance measures that we are asking them to attain. What sort of internal processes are in place that you are actually reaching department heads and staffers that are working on the day to day and that might have issues and concerns.

Alicia Hernandez said the way we have our department structured our purchasing department is our buyers are assigned to several departments so that they can facilitate and easier communication method. What a lot of people don't realize is that there is a lot of involvement with competitive procurement so do they really want to do it every year. That is not very helpful for some of our departments that are doing these large projects or large goods that they are purchasing. So, we want to put that 48 month allowance to extend the contract out but we always include in our contracts a clause that indicates that we can terminate for anytime.

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Mayor Pro Tem Gandara said you are telling me there is process in place and when that contract renewal is coming up that several months before there is either an email or something that is going out to the department to say look this is the renewal time what do you have in order for me to. How many positives and what are they? Are there negatives? I guess I just want to be ensured if we are going to limited this and I know we have had them because this has come to us before. I just want to make sure there is that internal communication that is occurring. That we can assure the public that these contracts are being processed in a way and that we are actually looking at the pros and cons to each of these contracts and holding our contractors accountable to their performance measures.

Alicia Hernandez said yes that is correct. Our buyer team will reach out to the department prior to that contract expiring and they ask them those types of questions and if they want to proceed. We get together the information needed to do the contract amendment to extend them for another year.

Mayor Pro Tem Gandara said I know Mr. Pili and I have had some conversations with folks that have been concerned about some of our contracts. I just want to be assured that there is a process in place and there are those safety mechanisms. I appreciated Councilor Flores bringing up the McHard Report, I think we are the only two with the exception of the mayor on council now to go through that process. How is our Inspector General tied into these things related because we do have the Inspector General now which was a recommendation that was made to us. How is he tied into this and the conversations that were had in terms of improving our procurement?

Alicia Hernandez said I have not had a conversation with him yet or met him. I know right now he is working with our P-Card Administrator, that is Donny, and he is doing an audit of some of the P-Card transactions we have had. Right now, that is the extent of his involvement with us.

Mayor Pro Tem Gandara asked were these improvements and discussions ever had in our Finance PRC?

Alicia Hernandez said yes, they were.

Mayor Pro Tem Gandara said some of the feedback that was given to me when we are submitting request for proposals and they are submitting their RFP or their proposal through system that we have outlined. One of the concerns has been that they are putting out their business plan for a lot of ways and they are very exposed about what they are going to do for specific project and what not. Is that system public and does anybody off the street able to review those projects or those proposals?

Alicia Hernandez said they are. It is not until after we have awarded the contract. It is all confidential prior to that.

Mayor Pro Tem Gandara asked it is confidential?

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Alicia Hernandez said up until the award of the vendor.

Mayor Pro Tem Gandara asked you place that in some system?

Alicia Hernandez said we don't have it on a system, but anyone can do a public records request and get that information.

Mayor Pro Tem Gandara asked how do we protect their business? We do it for private companies, why are we exposing NGOs to that process?

Alicia Hernandez said I don't believe we do it for private companies.

Mayor Pro Tem Gandara said no what I mean is you protect them up until the very end. I don't know that their business plan and proposal is public.

Alicia Hernandez said we treat them all the same. Whether it is a private or a nonprofit we don't release any information unless it is asked and that is after the award that the vendor has been awarded the contract.

Councilor Flores said when you get a bid and the people who are proposing that, do you do any checks on the corporation or the company in terms of their board of directors, in terms of their investors, in terms of who is who and what is what? Do you do any of that?

Alicia Hernandez said we do reference checks on the vendors that are awarded.

Councilor Flores asked reference checks based on the references they give you?

Alicia Hernandez said yes.

Councilor Flores asked that is the extent? I think one of the problems we had with McHard is that and without making any slanderous statement here. Is there any safeguards for in house shenanigans? And by shenanigans, I mean wrongdoing. Self-profiteering?

Barbara DeLeon said there is an entire section of the code that is Ethics and Prohibitions and Procurement. That includes what Alicia was referring to earlier with respect to direct contact with anyone proposing something prohibiting direct contact with elected officials, city staff other than the Purchasing Manager from the development of specifications all the way through the contract award. It includes the conflict of interest that we were talking about earlier and it is very specific about defining conflict of interest and with this revision proposed the addition of a blanket statement if an employee becomes aware of a potential conflict of interest related to a procurement, they shall disclose such potential conflict to the Purchasing Manager immediately. That is in addition to the other language that is already in the section with respect to ethical procurement and conflict of interest. There is a section on gratuity and kickbacks and so yes, the code has quite a bit of language related to

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preserving the integrity of the process and how that is done. There is quite of bit of language in the code to make it clear what is and what is not permitted to preserve the procurement.

Councilor Flores said that is self-reporting. Self-reporting has its short comings and how do we get around that? I think that is my concern because we know very well that was some wrongdoing and I think that some of it will go unresolved as we all know.

Barbara DeLeon said I also did want to mention that we do have an annual reporting requirement for all employees to disclose any outside business interest that they have that is documented within our system so if we needed to do some checking ourselves with respect to relationships with employees and particular businesses, we can that as well. It is still self-reporting as you indicate but it is another of avenue of information that is available to purchasing staff should we need proceed with any inquiries along those lines.

Councilor Flores said people are either going to be forthcoming or either they are not going to be forthcoming, and we will just find out after the fact.

Barbara DeLeon said you are also bringing to mind the hotline that is available for employees or the external community to make us aware of potential improprieties as well. That is where potentially the Inspector General at this point since we have that position filled may get involved as well as other investigatory avenues as well.

Sonya Delgado, Assistant City Manager said I know that we have had some issues in the past and those I believe have been rectified and I would like to say the finance team has done a great job of going back through and checking our processes and making sure that things are on par that we are going to be followed through to the letter. As one of the SAC chairs for this committee, that is very important to me and I think that we have a great team. I think they understand what has happened. They themselves are the ones who came forward and said we should put these things into place. I will do my best to ensure that these processes are followed and that we continue to change that perception out there which I understand that sometimes things happen and unfortunately everyone has to bear that brunt.

Councilor Graham Moved to Approve Ordinance 3026. Councilor Bencomo Seconded the motion. Approved 5-0. Mayor Miyagishima and Councilor Abeyta were absent.

9. BOARD APPOINTMENTS

9.1 Philip Simpson

Councilor Graham Moved to Appoint Philip Simpson to the Las Cruces Utilities Board of Commissioners. Councilor Corran Seconded the motion. Approved 5-0. Mayor Miyagishima and Councilor Abeyta were absent.

10. NOTICE OF PROPOSED ORDINANCE(S)

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

10.1 COUNCIL BILL NO. 23-021; ORDINANCE NO. 3027: AN ORDINANCE APPROVING A ZONE CHANGE FROM C-1 (COMMERCIAL LOW INTENSITY) TO C-2 (COMMERCIAL MEDIUM INTENSITY) ON A PROPERTY ENCOMPASSING 0.264 ± ACRES. THE ZONE CHANGE REQUEST SEEKS TO BRING THE PROPERTY INTO COMPLIANCE WITH THE 2001 LAS CRUCES MUNICIPAL CODE, AS AMENDED. THE SUBJECT PROPERTY IS LOCATED AT 2505 MISSOURI AVENUE.

Council agreed to bring it forward.

11. CITY COUNCIL MEMBER BOARD REPORTS AND COMMENT

11.1 Mayor Pro Tem Gandara

I wanted to speak on behalf of senior services. Last year we brought to the attention the concern that I had specifically about our seniors and making sure we had allocated an amount to do an assessment. Not only to conduct an assessment around the current services and the need but because we are an aging population. I wanted to have this robust needs assessment regarding our seniors in terms of what we have currently and what we are needing. I'd like to get an update on that if I can and I haven't heard and I know we have had some transition with our new director so I would like an update. There are some new services that are going to be put in place from the private sector. An adult daycare, there will be a couple or three across the city which I think it is going to be a huge service for our seniors and I'd like for there to have some communication about private/public partnerships with those adult daycare centers.

I have a Lift Up meeting at 6 p.m. on February 28th, it will be at Loma Heights, and I am inviting the area specifically our Lift Up area to please come and talk to us about what you are seeing. It is very exciting, I live in that area and we have city staff there on a daily helping to improved infrastructure related to sidewalks and streets and programing. We have a Budget Retreat tomorrow, Wednesday and Thursday at the Convention Center. Every year I send out notice to our associations and folks that are on an email list just informing them of the Budget Retreat and what might be priorities for each of my areas and I have had several communications back with me about priorities they see. Of course, it is around public safety and quality of life.

11.2 Councilor Flores

None.

11.3 Councilor Corran

The dog park associated with the ASCMV, there are some questions I think folks were going there before it was finished. It is still in progress, there may be some electricity related things that are still happening and it is currently locked. We will either have a grand opening associated with the ASCMV or separately

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depending on the timelines for each of those. That will be forth coming pretty soon.

11.4 Councilor Bencomo

I wanted an ARPA update on those contracts, the \$11 million. I am curious if we will have a public statement once those contracts are issued. I am excited to see some of those programs roll out so I am curious if those contracts have been finalized?

Adrienne Widmer at our last Utility Meeting noted that they are working right now on finalizing the RFP for the energy transition plan. One of the things I mentioned was just how via tell our gas prices have been and that is just incredibly unsustainable but that is what it means when we behold into that industry and how it is obviously more urgent now more than ever that we begin to think about that. I am very excited to have those conversations at the utility but also bring them forth here at City Council.

11.5 Councilor Graham

I am probably going to ask Councilor Bencomo to jump back in with me on this one. She and I got to present to Junior Leadership last week, which is high school juniors from all of our local high schools. We had a really great time. Great questions, great comments.

The Skate Park Renovation Meeting on Thursday evening, I will definitely be popping in on that but for everyone who has been reaching out with redistricting that is no longer going to be in my district. That is a precinct that I lost to District 1. Still totally interested and happy to communicate with everyone but just a heads up that is going to be under Council District 1 in the future.

12. CITY MANAGER REPORT

12.1 Ifo Pili

I will get the updates on the both the senior needs assessment and the ARPA. I will have that for you councilors.

The report from the Quality of Life, feedback from the Plutomania Program. It was at the Museum of Nature and Science, and it was held Saturday February 11th. It drew 336 attendees for demonstrations and activities about space science. The event also celebrated Las Cruces own Clyde Tombaugh who discovered Pluto in 1930 and taught Astronomy at NMSU for many years.

I wanted to turn some time over to Barbara for Legislative updates. I know many of us have been up to Santa Fe and have a lot to report. I appreciate Barbara has been running point here in the home base for our Legislative connections with our lobbyist.

Barbara DeLeon, Chief Administrative Officer said just wanted to make mention a few bills that we are closely following here. House Bill 2, that is just

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the general appropriation. That passed the House last Thursday and moving on to the Senate. It passed with an increase of 12% in the appropriation. We are closely watching House Bill 367. That is one of the bills that is going to impact or might impact our gross receipt taxes. All of the bills related to taxes are being tabled right now in favor of one omnibus bill. We are tracking the Senate Bill 55. The Statewide Transit Fund, if that one passes it will provide for assistance of up to 50% for our local match for our transit system. We are looking at Senate Bill 104 which is for airport improvements. Just looking to see what is going to be set aside and looking for of course our own Airport Manager Andy Hume has been great about prioritizing his needs and making those heard as well. Senate Bill 251 it is being heard in committee right now. That bill pertains to the MRA changes that you all voted to support by resolution and our own Elizabeth Teeters, Economic Development Director is in Santa Fe right now to provide some expert testimony on that bill. Capital Outlay is due this Thursday and we will get a solidified view of which of our priorities might be funded or what amounts pretty soon here. That is it for this update but I will follow up again with a full Legislative Report that Larry Horan provides to us weekly.

Ifo Pili said the only thing I would add to is House Bill 367 as Barbara mentioned I was able to testify in opposition. The impact we saw was going to be about \$3-\$5 million to our GRT and so there were many city managers there and mayors from all over the state just to testify in opposition to that.

13. ADJOURNMENT

13.1

Councilor Corran Moved to Adjourn at 3:14 p.m. Councilor Bencomo Seconded the motion. Approved 5-0. Mayor Miyagishima and Councilor Abeyta were absent.

Mayor

City Clerk



MINUTES

Special Work Session Meeting

9:00 AM - Wednesday, February 22, 2023
Convention Center

The Special Work Session of the City of Las Cruces was called to order on Wednesday, February 22, 2023, at 9:00 AM, in the Convention Center, with the following members present:

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

EXCUSED: Mayor Ken Miyagishima

1. WELCOME.

1.1

Ifo Pili, City Manager welcomed everyone.

2. HISTORICAL AND FY2023 FINANCIALS GENERAL FUND.

2.1

Leeann DeMouche, Finance Director gave an overhead presentation.

Councilor Corran asked what did it feel like in those years where expenditures were more than revenues?

Leeann DeMouche said I came in in 2018 and we couldn't keep spending our beginning balance down. We do have a required 2/12th reserve. Personnel is a big chunk of this budget. Part of 2017 was the 50 new positions. We didn't have the revenue to support them. In 2019, we got a handle on it and moved forward.

Leeann DeMouche continued the overhead presentation.

Councilor Flores asked as far as personnel is 69% the budget allocation but not all positions are filled?

Leeann DeMouche said that is correct. Typically our vacancy rate is 12 to 14%. The 69% includes all budgeted positions.

Barbara De Leon, Chief Administrative Officer said when we budget for vacant positions, we don't necessarily budget them for a full year of their salaries because we know it will take some time to fill those. There will be new vacancies throughout the year that will impact the actuals.

Agenda Item #6.3.

Councilor Flores asked how much money is that?

Leeann DeMouche said all those positions are in the general fund. It would be 175 open positions.

Councilor Flores asked how does that translate into money?

Leeann DeMouche said I don't have those numbers

Councilor Flores asked how long do those positions remain vacant and what are we doing about that?

Jo Richards, Human Resources Director said the vacancy rates vary by departments, 9% to 30%. There are ongoing recruitments for those for a majority of those for each department. It's just the timing of getting those filled. Our vacancy rate runs anywhere from 10 to 14% per year.

Leeann DeMouche said it ranges between \$6 to \$7 million a year.

Leeann DeMouche continued the overhead presentation.

Councilor Flores asked the \$7 million sitting there due to vacancies, is that being invested?

Leeann DeMouche said yes, it is being invested.

Councilor Flores asked is there a report on that?

Leeann DeMouche said Erika Jaquez will be bringing our investment report today.

Leeann DeMouche continued the overhead presentation.

3. DEBT AND INVESTMENTS.

3.1

Erik Harrigan, RBC gave an overhead presentation.

Councilor Abeyta asked on the street bonds, considering that costs are going up everywhere what are the considerations that need to be taken on that value if we were to look at any sort of changes since the next issuance is planned for this summer?

Erik Harrigan said it targets \$2 million a year in annual debt service so really the only way if you wanted to increase your capacity is you would either have to look at increasing the length of which you do the cycle or you would have to consider paying additional amount of annual debt service if you wanted to increase that capacity.

Agenda Item #6.3.

Councilor Abeyta asked when looking at capacity, what type of information can we be given to look at those different layers? Could we get projections of what that would look like?

Erik Harrigan said sure.

Erik Harrigan continued with the overhead presentation.

Ikani Taumoepeau, Assistant City Manager asked could you share some percentages of what other cities are at?

Erik Harrigan said the City of Albuquerque has somewhere in the neighborhood of \$400 million outstanding in general obligation bonds. They go to voters every 2 years for \$140 to \$180 million. Their tax rate is 5 mills versus your 2 mills, and their tax base is \$14 billion versus \$2.8 billion. It's about 25%. The City of Rio Rancho is at about 15% or 16%. The City of Santa Fe is close to 5%. Santa Fe County and Bernalillo County is anywhere between 5% to 10%. I don't think there's any city that's bonded over 30% but we can provide a comparison of all communities across the state.

Councilor Bencomo asked we could go over \$23 million unless we wanted to increase taxes for the next bond? Will that number be lower?

Erik Harrigan said we anticipate that the number will be the same. That will depend on what happens to your tax base. We anticipate a 3% growth in your assessed valuation consistent with what Leeann was talking about with your budget. If that were to be lower than 3%, we might be looking at a number that is lower than \$23 million. If it's higher, we also might be looking at something slightly higher.

Erik Harrigan continued the overhead presentation.

Mayor Pro Tem Gandara asked when will we pay the first GO bond cycle of debt?

Erik Harrigan said you borrow for 13 years so you have higher debt service in the early years and higher debt service in the latter years to allow the city to layer its debt.

Erik Harrigan continued the overhead presentation.

Councilor Bencomo asked is there a Doomsday Plan B?

Erik Harrigan said the reality is nobody knows. We are seeing a rolling recession. There are areas that have seen 20% declines in home values. Those are the communities that also saw the largest increase in home values. New Mexico tends to experience what's happening on a national level 3-5 years after that actually happens.

Agenda Item #6.3.

Leeann DeMouche said we got our GRT this morning and it was over \$12 million.

Councilor Bencomo asked if it's 5 years late, does that mean it's less bad?

Leeann DeMouche said not necessarily. Knowing that that lag is there, we can prepare for it.

Ifo Pili, City Manager said I think that's why it's important to stick to budgeting principles. When you have ongoing expenses, you need to budget it with ongoing revenues. Personnel is an ongoing expense and it's the hardest during a recession. You can't put a bunch of reserve because the reserve will be drained year 1.

Erik Harrigan said if there's a recession in 3 years, you have the ability to manage that debt.

Councilor Flores asked how is this justified and how does it work?

Erik Harrigan said the Federal Reserve enacts something called monetary policy, which is the flow of money through an economy. The only way to get control of growth is to slow the flow of money meaning that banks are going to lend less and therefore you're not buying as much. The Federal Reserve wants a recession to get prices under control. They want to get inflation under control at something that is reasonable like 2% and restrict the amount of money flow as much as they possibly can to get rid of really high inflation.

Erika Jaquez, Treasurer gave an overhead presentation.

Councilor Abeyta asked what was our balance for the Telshor Fund before COVID?

Erika Jaquez said the one that fluctuated more during the pandemic was what was held with the state investment counsel. I can get you those numbers.

4. **BREAK.**

5. **FY2024 GENERAL FUND BUDGET.**

5.1

Leeann DeMouche, Finance Director gave an overhead presentation.

6. **DEPARTMENTAL BUDGETS.**

6.1 Public Works.

David Sedillo, Public Works Director gave an overhead presentation.

Councilor Bencomo asked on the sidewalk maintenance, are most of those complaints coming in through Ask Las Cruces?

Agenda Item #6.3.

David Sedillo said it's a myriad of things. We do get them through Ask Las Cruces but there are also phone calls directly to our streets department asking for us to go out and review.

Councilor Bencomo asked are you thinking about budgeting for pedestrian safety?

David Sedillo said you'll see that in some of our project updates. Those are always being evaluated in our reconstruction projects.

Mayor Pro Tem Gandara said what would be helpful is some data related to the number of calls you're receiving specific for these areas. Are you adding more sidewalks to the improvement?

David Sedillo said we will get you numbers on the requests that we're seeing. For the sidewalks, we've had a line item in the CIP for sidewalk gaps as part of the Active Transportation Plan. We are actively looking at increasing those areas as we get the funding approved through budgets. The rest we budget for repairs.

Mayor Pro Tem Gandara asked is that separate from what you're speaking to?

David Sedillo said it's all tied together.

Mayor Pro Tem Gandara said it would be helpful to separate that out for us and also the claims and percentage of reduction to those claims.

David Sedillo continued the overhead presentation.

Councilor Flores asked Picacho is part of Highway 70 so is the city working with the state to get funding?

David Sedillo said we received a grant from NMDOT to do the project.

David Sedillo continued the overhead presentation.

Councilor Bencomo asked Public Works is requesting a \$2 million increase to the pavement management system?

David Sedillo said we would like to continue that increase on an annual basis.

Councilor Bencomo said I'm supportive of that because I imagine those costs have also increased for maintenance and total reconstruction. I think it's important to tell constituents that it's around \$1 million to construct 1 mile of road. Has that changed?

David Sedillo said we haven't run the numbers yet but we're anticipating that those costs have gone up.

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Mayor Pro Tem Gandara said I would like to focus on how we use the HAWK systems across the city to manage the safety of pedestrians, specifically in areas where there have been crashes and deaths. I've asked for a HAWK system in the Madrid area because of the number of pedestrians coming through there and the crashes that have occurred. I'm recommending we do that as we're doing these larger scale improvements.

Councilor Graham said I'm also voicing my support for Public Works budget increase annually. Do we have any data on the University HAWK systems in terms of how has pedestrian safety improved?

David Sedillo said I don't have those numbers in front of me but we can reach out to staff. There's a HAWK system at Las Cruces High School but we deactivated it because there is some infrastructure that wasn't connecting to the timing of both those signals.

Councilor Abeyta said the one by Chick-Fil-A, they paid for that.

David Sedillo said that is correct.

Councilor Abeyta asked what percentage do you think this project is heavily focused on the repair for the waterline and what percentage is new improvements for the road?

David Sedillo said this project is a mill and overlay, not a full reconstruction. For a full reconstruction, we would be looking at all systems. So looking at the space we have to work with and looking at the right-of-way line we would have to look at what's the capacity of the roadway for all modes because we are working with a confined space. If we want to expand that, we are looking at higher costs with acquisitions of additional right-of-way.

Mayor Pro Tem Gandara said I saw Engler on there and our discussions of improving and reducing the bottleneck on 70 and what would it would be to open up that bottleneck if we add some additional infrastructure there, and would it be considered at some of these meetings DOT meetings.

Tony Trevino, Deputy Director of Public Works said NMDOT has two projects will affect the city, from Lohman to Highway 70. One of the topics brought up were the overpasses and where we could use those. Engler was the second project. They already have the right-of-way acquired.

Mayor Pro Tem Gandara asked as far as the Madrid underpass, will there be consideration for a roundabout in that area?

Tony Trevino said the difficulty is the amount of vehicles we can stack it depends on the bridge between Telshor and Triviz so we're going to try and acquire more property to the Villa Mora side.

6.2 Lunch Break.

6.3 Police.

Chief Miguel Dominguez gave an overhead presentation.

Councilor Abeyta asked if you were to be granted the additional positions, would you need to run a second academy?

Chief Miguel Dominguez said that is correct. Right now we're at 167 and have 6 laterals coming on board in mid March. The academy graduating in April will get us up to 191. The academy starting in July will have 25 cadets. We have another academy starting in January of 2024.

Councilor Abeyta asked are the extra academy costs put in the budget?

Chief Miguel Dominguez said they are part of the budget already.

Chief Miguel Dominguez continued with the overhead presentation.

Councilor Flores asked what do those numbers represent?

Chief Miguel Dominguez said it's a beat or a district within a district.

Chief Miguel Dominguez continued the overhead presentation.

Mayor Pro Tem Gandara asked is there a national standard of employees a supervisor should be supervising?

Chief Miguel Dominguez said ideally it's a 6 to 1 ratio.

Mayor Pro Tem Gandara said you're asking for 18 cadets but no higher level supervisors or lieutenants.

Chief Miguel Dominguez said if we were to get the 18 officers, there would be an additional 3 officers that we could reclass from the existing bodies. That would be an additional \$71,000 because of the difference in pay. They are patrol officers so they're out on the street as well.

Mayor Pro Tem Gandara asked how much money have you used from the governor and do you anticipate sending back money in June?

Chief Miguel Dominguez said we're trying to spend every penny. It's specific to salaries and benefits, and it's meant for recruitment and retention.

Mayor Pro Tem Gandara asked what about comp and class for supervisors and lieutenants?

Chief Miguel Dominguez said it covered everybody so they've already been given their raises.

Agenda Item #6.3.

Mayor Pro Tem Gandara said I think we really need to beef up Community Policing.

Chief Miguel Dominguez said I agree with you. Ideally we would like to have two per council district. The 18 bodies would be split up between 3 patrol shifts. We have two vacancies right now so we'll backfill those positions.

Mayor Pro Tem Gandara asked is there a possibility of using money from the governor for some recruitment?

Chief Miguel Dominguez said everyone is a patrol officer first. Moving to different sections happens after you've been there for awhile so Community Partnership officers would have to have their arms around a patrol division before.

Councilor Bencomo asked is there a timeline for a transition of Codes to Community Development? Are you requesting any increase in Codes officers?

Chief Miguel Dominguez said we have not requested any Codes officers. We have 14 Code Enforcement Officers so we're short two.

Councilor Bencomo asked what happens when we're on a downward trajectory?

Chief Miguel Dominguez said we track it trend by trend. Our five year trend has shown an increase in calls for service. It would allow us to be more proactive through the districts and prevent crime from spiking.

Councilor Bencomo said I'm wondering why we're not doing that faster.

Chief Miguel Dominguez said we need bodies on patrol to handle calls for service. We have enough bikes for all of our patrol officers to get out on the bikes but right now it's difficult because of the calls for service. Every one of our officers should be a Community Partnership Officer.

Councilor Bencomo said I continue to have concerns about accountability. I want us to have good faith conversations with the community about some of the concerns.

Councilor Graham said we want community policing to be a theory and a culture. More bodies create more positive relationships. I want a positive environment for our officers also, not just the people they are serving.

Deputy Chief Sean Mullen continued with the overhead presentation.

Mayor Pro Tem Gandara asked for the Dragon Suite, can that come out of the governor's money?

Deputy Chief Sean Mullen said I don't believe so. That money is specifically allocated for retention and salary and benefits for new officers.

Mayor Pro Tem Gandara asked that wouldn't be considered a retention tool?

Deputy Chief Sean Mullen said I know budget and the Chief have already worked on that but I don't believe those funds were approved for that purchase.

6.4 Quality of Life.

Carol Brey, Quality of Life Director gave an overhead presentation.

Councilor Flores said for public art we only get the 2% from CIP. But where does the maintenance come from?

Carol Brey said we're doing an assessment now to determine the extent of that.

Councilor Flores said the more we put into it, the more of a chance we have for accreditation and grant money.

Councilor Bencomo said it's obvious that the maintenance needs for buildings is critical and we need to invest in relationships with our legislators now.

6.5 Parks & Recreation.

Robert Nunez, Interim Parks & Rec Director gave an overhead presentation.

Councilor Abeyta asked with the onlining of the new pool, are we going to have budget considerations to make sure that that has safety mechanisms so people aren't trying to go in there?

Robert Nunez said we've recently completed the master plan for Frenger Pool so we're working to identify budget to move that forward as quickly as possible.

Councilor Abeyta said they had Tony Gomez first on the plan and then Frenger. I would highly suggest that we include something just to make sure that we're keeping that from becoming another hazard.

Robert Nunez said currently we have a seven foot fence surrounding the pool area but when it does come offline we'll certainly secure as much as possible.

Mayor Pro Tem Gandara said a timeframe would be great for what the closure will look like. I'm interested in knowing how much more we would be able to help kids in some of these activities because they are low income. Can you provide those numbers to us?

Robert Nunez said I don't have those numbers specifically but we have a scholarship fund.

Mayor Pro Tem Gandara asked can you give us the total of what's in that fund?

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Robert Nunez said I don't have that with me but I can certainly.

Mayor Pro Tem Gandara said when Council approved the competitive pool, we were very clear that we are making it accessible for all our kids to learn how to swim. How are we utilizing Mandy and the PIO office with different ways of enticing people around that area?

Robert Nunez said we're looking at it as a community pool. There is a piece of that that is certainly going to be competitive. It's large enough to have a dual use. We'll reach out to Mandy as we see it's getting closer to being available for us.

Mayor Pro Tem Gandara asked what percentage of your budget is grant driven? There's a lot of money out there that I'm not sure we tap into.

Robert Nunez said I can get you that information.

6.6 Economic Development.

Elizabeth Teeters, Economic Development Director gave an overhead presentation.

Chris Faivre, Economic Development Deputy Director continued the overhead presentation.

Elizabeth Teeters continued the overhead presentation.

Councilor Bencomo said I'm curious how Housing fits under the priorities and vision given that housing is such a huge need.

Elizabeth Teeters said Housing and Neighborhood Services is moving under the City Manager's Office.

7. ADJOURNMENT

7.1

The meeting adjourned at 3:44 p.m.

Mayor

City Clerk



MINUTES

Special Work Session Meeting

9:00 AM - Thursday, February 23, 2023
Convention Center

The Special Work Session of the City of Las Cruces was called to order on Thursday, February 23, 2023, at 9:00 AM, in the Convention Center, with the following members present:

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

EXCUSED: Mayor Ken Miyagishima

1. PLANNING & CAPITAL IMPROVEMENT PROGRAM (CIP) OVERVIEW.

1.1

Srijana Basnyat, Innovation & Strategy Manager gave an overhead presentation.

Cynthia Campo, CIP Analyst continued the overhead presentation.

Srijana Basnyat continued the overhead presentation.

Councilor Graham asked the unfunded versus funded for the whole six year cycle, how much of FY23 is funded?

Cynthia said everything in FY23 is funded, FY24 and 28 are unfunded. We recognize there's a need but don't have the funds to complete them at this time.

Flores asked why is so much unfunded?

Srijana said because we don't have enough money and we have competing needs.

Srijana continued with the overhead presentation.

2. ALIGNING CIP WITH COMMUNITY VISION.

2.1

Jessica Fields, Tool Design gave an overhead presentation.

Councilor Bencomo said something that we often pay a lot of lip service to but don't always know how to implement is breaking down silos.

Agenda Item #6.4.

Srijana Basnyat reviewed the scoring criteria handout.

Councilor Abeyta said regarding regulatory compliance, I'm curious about it's ranking in Tier 3.

Srijana Basnyat said the regulatory compliance is important enough that that project will score on it and sometimes we have to bypass so there's judgement there. If it's something like you could meet a compliance regulation with that project but you have some time there to come up to standard, there's some nuance there.

Councilor Abeyta said I'm curious from a staff perspective how you look and incorporate the type of change that you're seeing.

Srijana Basnyat said that's a good question of how do we adapt and change our policies through the plans. That's one of the reasons we shortened the update cycle for the Comprehensive Plan. We are required to update it once every 10 years. Other technical plans can get updated even more frequently. Ultimately we bring them back to you and you have the final say. It would be in the cycle of continuous improvement but we need to give staff the ability and consistency to apply these things so we don't change it the minute they get the hang of it but everything needs to stay flexible to a certain extent. Departmental plans change every year to accommodate more and more these strategic plans. You can also create policy to look at specific things.

Councilor Flores said the Tier 3 operational criteria is the most puzzling to me because so much of the funding we have historically been snubbed by Santa Fe. Is that something you would look at in terms of implementing anything?

Srijana Basnyat said when we do see an avenue where there is potential for funding, we will give them the first point. If the funding is guaranteed, we give them an additional point.

Barbara DeLeon, Chief Administrative Officer said it brings up a larger discussion about our strategies for funding projects. I'm assuming the legislative appropriations are part of the grants and it might help to break that out.

Mayor Pro Tem Gandara asked for the tiers, is 1 the most important and it gets higher points, or are you advocating that each item gets 1 point?

Srijana Basnyat said Tier 1 has more weight assigned to the scores.

Mayor Pro Tem Gandara asked so you're doing this prior to the budget cycle? I want to know where council fits into this because it feels like it's at the last.

Srijana Basnyat said we are trying to build the process so we're evaluating the current process is. Currently, we do start with City Council. Leeann will have one-on-ones with Council. You'll come in with projects and what you'd like to see in the next budget year. Then we disseminate that out to the departments.

Agenda Item #6.4.

Mayor Pro Tem Gandara asked how are we addressing items that don't have a home?

Srijana Basnyat said we have recognized that. We have discussed a potential program to add, which is the Innovation Hub. That is the idea where you have data analysts and you have stakeholders who bring ideas and get incubated, and feed that through implementation.

Mayor Pro Tem Gandara said I want to echo Councilor Abeyta's concern about regulatory compliance. Seeing it in Tier 3 gives me a little bit of heartburn and if there is some room to move it to Tier 1 we really should because it could become a litigious situation.

Councilor Flores asked in terms of ADA regulations, isn't there Federal funding for that?

Srijana Basnyat said we do have an ADA transition plan for the city so there are certain things identified that we need to take care of but for anything that we need to do there can be opportunities for funding to match those with our projects.

Councilor Flores said so if there's a Federal mandate in terms of the onus being on the municipality to implement, there should be money there. Are those things we explore?

Jessica Fields continued with the overhead presentation.

Mark Miller continued with the overhead presentation.

Councilor Flores said I'm concerned about Hacienda Acres. Do you have any data on that?

Mark Miller said I wouldn't be able to pull that up right this moment.

Jessica Fields continued with the overhead presentation.

3. LUNCH BREAK.

4. SAMPLE PROJECT TABLE ACTIVITY.

4.1

Five groups were broken out for tabletop exercises.

Jimmy Moreno, Construction Project Administrator discussed their table priorities regarding pedestrian crossings, door opening on the business side with not enough room, parking, buffers, shade, trees, buses, pullouts for buses, bike lanes with buffer, do we need 5 lanes for this type of roadway, management with landscape, mobile chicanes, and lighting.

Kyle Arend, Engineering Administrator discussed their table priorities regarding needing 5 lanes on a road or could we use a diet, bike lanes, pedestrian safety issues, medians, pedestrian refugees in the middle of the road, concern on the side of the road to the proximity of the pedestrian, pedestrian bicycle use and safety, the right-of-way is constrained and any additional services to be provided would require reduction of service.

Councilor Graham discussed their table priorities regarding overarching principles, collaborating values, traffic flow, sustainability, safety, walking everywhere, the challenge of redesign versus design.

Tony Trevino, Deputy Director Public Works continued with setting with Realize Las Cruces but when you have multiple cars in lower income neighborhoods, how do you take away the parking to allow a bike land going through there or a 6-7 foot sidewalk.

Adrienne Widmer, Utilities Director discussed their table priorities regarding what is under the roads, the storm drains and sewers need to be more in the middle, where the rest of the utilities would be located, walking, why the streets are as wide as they are, travel lanes, design requirements and what those standards are, wider sidewalks, and bike lanes.

Cathy Mathews, Landscape Architect discussed their table priorities regarding 5 feet being too narrow to grow a tree and how we could adjust items in the median to accommodate that, bike lanes, medians, eliminating the landscape strip on the park side to distribute for bike lanes, wider sidewalks, parking, making sure to keep the lane wide enough for the bus.

David Weir, Deputy Director continued regarding land use and on street parking.

The groups returned to their tabletop exercises to redesign the street.

Cathy Mathews said 5 feet is too small for a tree and almost too small for shrubs. Six feet is acceptable but the bare minimum for asking a tree to grow. Ten feet is preferred.

Kelsey Walker said that's a good point when you're talking about the maintenance of sidewalks.

David Sedillo, Public Works Director said our group's vision was that we could not move the curb lines but we can reconfigure behind curb in both directions or change within the curb line. We could incorporate changes closed to the building, 8 and 10 foot sidewalks. We came up with a parkway to house fire hydrants, street lights, and meters but the parkway wouldn't be continuous. It also allowed for bike racks. We changed our configuration of lanes, wider on the right for transit and reduced the other three lanes. We incorporated a median for landscaping. We wanted more amenities on the side of the park so a 12 foot shared path. There's a bus stop so we placed the bus shelter behind

Agenda Item #6.4.

the multiuse path and lined that side of the street with trees. We also decided to invert at the median to allow drainage to roll into the median and existing landscape.

Councilor Corran said we had a robust discussion about shared use path versus bike lane versus protected bike lane. We landed on bike lanes in the travel lane combined with a shared use path. We gave our trees 12 feet. What does return on investment mean? Are we contextualizing things only in terms of financial benefits? Are we measuring other aspects of potential benefits in the short and long term? Are we thinking about maintenance? Can we think about the cost of a life? We landed on a broader evaluation of outcomes.

Kyle Arend said we reduced to three travel lanes. We met the bare minimum with landscaping. We added an 8 foot sidewalk along the business and a protected bike lane on that business side along with parking. We did make accommodations for the bus space and bus shelter. We encroached a little bit into the park with our sidewalk. We kept it very basic. It's feasible, cost effective, and efficient.

Andy Hume, Airport Administrator said we kept the center a 12 foot turn lane. We reduced the travel lanes to 11 feet. On the exterior travel lanes, we had 13 foot total width with 11 foot travel lanes and 2 foot buffers. It did not impact construction costs. We were still able to accomplish this within the repaving project. We talked about return on investment, quantitative and qualitative. We moved the travel lane farther from the sidewalk to improve the pedestrian experience. On the business side, our transit, pedestrians, and bicyclists spend more money at businesses than drivers so we would like to work with Economic Development to measure the economic impact.

Councilor Bencomo said departments are working under these restrictions. There's a clear goal about pedestrian safety. By reducing the size of the lanes, hopefully we'll be reducing the speed and making it safer for pedestrians and bicyclists.

5. CIP PROGRAM CASE STUDY.

5.1

Fred Lopez, Quantum Engineering Consultants gave an overhead presentation.

6. STRATEGIES & NEXT STEPS.

6.1

Srijana Basnyat gave an overhead presentation.

Councilor Bencomo asked can you clarify the difference between the Transportation Project Planner/Manager and our current Transportation Manager position?

Srijana Basnyat said we don't have a transportation director. Transportation planning is network citywide. Transit is mostly operational.

Councilor Bencomo said I love the conversation around altering the pavement system and if it's working around the underserved neighborhoods in our community. Huge thank you to everyone who worked on the equity map.

Mayor Pro Tem Gandara asked with the vacancies we have currently, can we move some vacancies and transform them?

Ifo Pili, City Manager said we look at areas where we have positions that have sat vacant for awhile and opportunities for reclass. Positions are vacant because we can't fill them, not because they're not important or necessary.

Mayor Pro Tem Gandara asked there's still more to do to score the many CIP projects currently?

Srijana Basnyat said those are just the new ones because we have five years of unfunded and every year the decisions are made which of those projects move into the funded column. If we need to fund them through our own capital, they would go through the scoring again.

Mayor Pro Tem Gandara asked will we get a visual of what you're looking at and will we have to prioritize those coming to Council or are you within the funding that you have available?

Ifo Pili said we always start off in the hole. When we present the budget, we don't have a negative. That's not abnormal.

Councilor Bencomo said one of the things at the top of my mind is finding a way to add some nonprofits to our line items so they don't have to keep coming for grants.

Councilor Graham said I came here to learn and I have thanks to this fantastic team.

Councilor Abeyta said I'm trying to look at what are the core functions that we need to do as a city and that is personnel and looking at what it means to be sustainable as we grow as a city, expanding of services beyond the scope of departments. I'm an advocate for my district and I'm looking to see what types of projects have been having over the last 4 years, revitalization of Tony Gomez Park and Frenger Park, and the El Paseo revitalization.

Councilor Flores said I want to thank the entire staff. I feel very optimistic about the future of the city because of the leadership.

Councilor Corran said I appreciate learning and by preconceived notions challenged by reality. I would love for us to have a process for the community to go through something like this.

Mayor Pro Tem Gandara said I'm proud and grateful to share the dais with the people I share it with. I send an email to my district and they come back and

Agenda Item #6.4.

tell me the things that they feel with outside of the box thinking of creating a creative economy, using vacant properties to do mixed use property where we can utilize our students for internship and apprenticeship opportunities. I appreciate staff very much.

7. ADJOURNMENT

7.1

The meeting adjourned at 4:07 p.m.

Mayor

City Clerk



City of Las Cruces

City Council Action and Executive Summary

23-105

Type of Action:
☒ Resolution
☐ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A	1st Reading:	Adopted:
Drafter:	Dave Duncan	Department:	March 20, 2023
Program:	Procure to Pay	Line of Business:	Financial Services
			Purchasing
Title:	A RESOLUTION APPROVING A CONTRACT FOR LEGAL SERVICES RELATED TO EL PASO ELECTRIC COMPANY AND ALTERNATIVE ENERGY SOURCES BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION AND THE NEW MEXICO SUPREME COURT WITH ANASTASIA S. STEVENS DBA STEVENS LAW, LLC OF SANTA FE, NEW MEXICO IN AN AMOUNT NOT TO EXCEED \$400,000.00 ANNUALLY, PLUS APPLICABLE TAXES FOR A TERM OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR TWO (2) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND BUDGET APPROPRIATIONS (PROCUREMENT NUMBER 22-23-047).		

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

PURPOSE(S) OF ACTION:
To award a contract for legal services to Stevens Law, LLC.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City Attorney for the City of Las Cruces ("City") manages claims, litigation, and other legal matters against the City, made on behalf of the City, or involving the City. When specific matters require content-area specialization or require significant additional resources, the City Attorney engages outside counsel in order to continue to provide client services required by City Charter.

The City requires legal representation in administrative matters before the New Mexico Public Regulation Commission ("PRC") involving El Paso Electric, and other related regulatory matters. Representing the City before the PRC requires expertise in the field of utility regulatory law and requires daily monitoring and continued active participation in matters before the PRC; therefore, should be assigned to outside counsel.

Anastasia Stevens of Stevens Law, LLC at 29 Tano West, Santa Fe, New Mexico has the experience and expertise to represent the City regarding PRC regulatory matters. Ms. Stevens has effectively and thoroughly represented the City as a utility customer of El Paso Electric as well as City residents and businesses who are also customers of the company in multiple matters before the PRC. Apart from the various El Paso Electric cases, she vigorously represented the City's Utilities Department in rate cases pending before the Utilities Board.

The City Purchasing Manager determined Anastasia Stevens of Stevens Law, LLC to be a sole source provider pursuant to LCMC, Section 24-7 due to her legal expertise and experience which are specialized and unique. It is likely that an award to another attorney or law firm would result in "substantial duplication of cost to the City that is not expected to be recovered through competition" (LCMC, Section 24-7 [a]), and would cause "an unacceptable delay in fulfilling the City's requirements" (LCMC, Section 24-7 [b]).

SUPPORT INFORMATION:

[Exhibit "A" - Legal Contract](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:

400,000.00

AVAILABLE AMOUNT:

EXPENDITURE AMOUNT:

400,000.00

Funding Source(s):

50134001-721030 FY23 for Utilities

10131001-721070 FY23 for Legal

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 a Resolution awarding a contract for legal services to Anastasia S. Steven dba Stevens Law, LLC in an amount not to exceed \$400,000 annually, plus applicable taxes for a term of one (1) year, with the option to renew for two (2) additional one-year terms.

2. Vote "No"; this action 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 direction by City Council to staff.

4. Vote to "Table"; this could delay awarding a contract for legal services and prevent legal representation before the Public Regulation Commission.

RESOLUTION 23-105

A RESOLUTION APPROVING A CONTRACT FOR LEGAL SERVICES RELATED TO EL PASO ELECTRIC COMPANY AND ALTERNATIVE ENERGY SOURCES BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION AND THE NEW MEXICO SUPREME COURT WITH ANASTASIA S. STEVENS DBA STEVENS LAW, LLC OF SANTA FE, NEW MEXICO IN AN AMOUNT NOT TO EXCEED \$400,000.00 ANNUALLY, PLUS APPLICABLE TAXES FOR A TERM OF ONE (1) YEAR WITH THE OPTION TO EXTEND FOR TWO (2) ADDITIONAL ONE-YEAR TERMS, SUBJECT TO ANNUAL RENEWALS AND BUDGET APPROPRIATIONS (PROCUREMENT NUMBER 22-23-047).

The City Council is informed that:

WHEREAS, the City Attorney for the City of Las Cruces ("City") manages claims, litigation, and other legal matters against the City, made on behalf of the City, or involving the City; and

WHEREAS, when specific matters require content-area specialization or require significant additional resources, the City Attorney engages outside counsel in order to continue to provide client services required by City Charter; and

WHEREAS, the City requires legal representation in administrative matters before the New Mexico Public Regulation Commission ("PRC") involving El Paso Electric, and other related regulatory matters; and

WHEREAS, the City Purchasing Manager determined Anastasia Stevens of Stevens Law, LLC to be a sole source provider pursuant to LCMC, Section 24-7 due to her legal expertise and experience which are specialized and unique.

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

(I)

THAT a Resolution is hereby approved to contract for legal services with Anastasia S. Stevens dba Stevens Law, LLC of Santa Fe, New Mexico in an amount not to exceed \$400,000.00 annually, plus applicable taxes for a term of one (1) year, with the option to renew for two (2) additional one-year terms, subject to annual renewals and budget appropriations.

(II)

THAT the Purchasing Manager is authorized to contract with Anastasia S. Stevens dba Stevens Law, LLC, as shown in Exhibit "A", attached hereto and made a part of the Resolution, is hereby approved.

(III)

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

DONE AND APPROVED this day of

Agenda Item #7.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

22-23-047
Legal Services related
to El Paso Electric



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this ____ day of March, 2023 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and Anastasia S. Stevens dba Stevens Law, LLC, of 219 Tano West, Santa Fe, NM 87506, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Contractor will represent the City of Las Cruces in legal matters, as the City's attorney on specified matters.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform professional legal services to represent the City's interest before the New Mexico Public Regulation Commission and New Mexico Supreme Court. Legal services on behalf of the City for adjudicatory cases and rulemaking proceedings before the New Mexico Public Regulation Commission related to El Paso Electric Company and the State of New Mexico's renewable energy objectives, including Community Solar, and related proceedings before the New Mexico Supreme Court, and for alternative energy matters of the City including but not limited to power purchase agreements. CONTRACTOR shall invoice the City in accordance with the fee schedule, Exhibit A, attached hereto and made a part of this Agreement.

This agreement is for legal services and is in accordance with LCMC Chapter 24, Article I, Sec. 24-4-(10).

3. APPROPRIATIONS

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

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount not to exceed \$400,000.00 annually, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed. CONTRACTOR shall submit invoices monthly. 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 March 1, 2023 for a term of one year and, pending mutual written agreement, may be extended annually thereafter for up to two (2) additional one (1)-year terms.

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. Professional Liability: \$1,000,000 per claim

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

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

18. INDEMNITY AND LIMITATION

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

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

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

20. BREACH

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

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

TO CITY: City of Las Cruces
PO Box 20000
Las Cruces, NM 88004
ATTENTION: Jocelyn A. Garrison

With Copies to: City Attorney
Purchasing Manager

TO CONTRACTOR: Stevens Law, LLC
29 Tano West
Santa Fe, NM 87506
ATTENTION: Anastasia S. Stevens

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.

ANASTASIA S. STEVENS dba
STEVENS LAW, LLC

CITY OF LAS CRUCES

BY: _____
Anastasia S. Stevens
Sole Member

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 3/3/2023

City Attorney

EXHIBIT A**STEVENS LAW LLC'S LEGAL FEES AND EXPENSES****Attorneys' Fees**

Stevens Law LLC will charge a flat rate schedule under which Anastasia S. Stevens will charge \$200.00 per hour. No paralegals or associates currently are employed or are anticipated. Travel time may be billed at one-half the hourly rate, or \$100.00, and will not be billed for trips to Las Cruces to update the City Council.

Other Charges for Office Expenses and Advances

Photocopies	Third-Party Charges
CD/Thumb-drive Duplication	Actual Cost of CD or Thumb-drive
In-Town Courier	No charge
Out-of-Town Courier	Third-Party Charges
Service of Process	Third-Party Charges
U.S. Postage	No charge unless large mailing
Computer Research Charges	No charge unless client agrees
Long-Distance Telephone Charges	Actual Third-Party Charges, if any
Travel Expenses (actual expenses incurred by the Firm attorney)	Third-Party Charges actually incurred
Travel Expenses (out-of-town travel by attorney in personal automobile in circumstances in which travel time is billed)	\$0.655 per mile (per IRS official mileage chart)
Airfare (coach)	Third-Party Charges
Third-Party Courier Services	Third-Party Charges
Filing Fees	Third-Party Charges
Court Reporter Fees	Third-Party Charges
Outside Photocopy Charges	Third-Party Charges
Other Third-Party Disbursements	Third-Party Charges
Bank Wire Fees - incoming and outgoing	Third-Party Charges



City of Las Cruces

City Council Action and Executive Summary

23-106

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A

1st Reading: **Adopted:** March 20, 2023

Drafter: Dave Duncan **Department:** Financial Services

Program: Procure to Pay **Line of Business:** Purchasing

Title: A RESOLUTION TO APPROVE AN AMENDMENT TO THE FY22 CONTRACT WITH ANASTASIA S. STEVENS DBA STEVENS LAW, LLC OF SANTA FE, NEW MEXICO FOR LEGAL SERVICES IN MATTERS BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION AND THE NEW MEXICO SUPREME COURT, INCREASING THE CONTRACT TO AN AMOUNT NOT TO EXCEED \$500,000.00 ANNUALLY, PLUS APPLICABLE TAXES AND CLARIFYING THE SCOPE OF SERVICES WITHIN THE AGREEMENT.

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

PURPOSE(S) OF ACTION:

To approve an amendment for legal services.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On February 22, 2022, as approved in Resolution 22-103, the City entered into an agreement for legal services on behalf of the City for adjudicatory cases and rulemaking proceedings before the New Mexico Public Regulation Commission and the New Mexico Supreme Court relating to El Paso Electric Company with Anastasia S. Stevens dba Stevens Law, LLC of Santa Fe, New Mexico in an amount not to exceed \$400,000.00 annually, plus applicable taxes.

The original contract amount was not sufficient due to the volume of work required in the past year, and an additional \$100,000.00 is required for these services. Approval of this amendment will increase the amount of the contract to \$500,000.00, plus applicable taxes. The amendment will also revise Sections 1 and 2 of the agreement for contractual consistency and clarity of the services that are being provided by Ms. Stevens.

SUPPORT INFORMATION:

[Exhibit "A" - Stevens Law - FY22 Legal Services - Amendment 1](#)

[Attachment "A" - Stevens Law - 3.2022 to 3.2023 Contract](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

Agenda Item #7.2.

☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT:	AVAILABLE AMOUNT:	EXPENDITURE AMOUNT:
\$500,000.00	\$193,200.00	\$500,000.00

Funding Source(s):
50134001-721070 for the 50% Utilities portion of the increase (\$50,000)
10131001-721070 for the 50% Legal portion of the increase (\$50,000)

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 amend the agreement with Anastasia S. Stevens dba Stevens Law, LLC to an amount not to exceed \$500,000.00 annually, plus applicable taxes, while also revising the language in the Project Description and Scope of Services sections.
2. Vote "No"; this action will not authorize the Resolution and City Council will need to provide staff with alternative direction.
3. Vote to "Amend"; this could modify the Resolution based on direction by City Council to Staff.
4. Vote to "Table"; this will delay the performance and payment of legal services.

RESOLUTION 23-106

A RESOLUTION TO APPROVE AN AMENDMENT TO THE FY22 CONTRACT WITH ANASTASIA S. STEVENS DBA STEVENS LAW, LLC OF SANTA FE, NEW MEXICO FOR LEGAL SERVICES IN MATTERS BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION AND THE NEW MEXICO SUPREME COURT, INCREASING THE CONTRACT TO AN AMOUNT NOT TO EXCEED \$500,000.00 ANNUALLY, PLUS APPLICABLE TAXES AND CLARIFYING THE SCOPE OF SERVICES WITHIN THE AGREEMENT.

The City Council is informed that:

WHEREAS, the City of Las Cruces requires legal services for adjudicatory cases and rulemaking proceedings before the New Mexico Public Regulation Commission and for matters pertaining to El Paso Electric before the New Mexico Supreme Court; and

WHEREAS, the City entered into an agreement with Anastasia S. Stevens dba Stevens Law, LLC of Santa Fe, New Mexico on February 22, 2022 for an amount not to exceed \$400,000.00 annually, plus applicable taxes; and

WHEREAS, the original contract amount was not sufficient due to the volume of work required in the past year and must be increased to \$500,000.00, plus applicable taxes.

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

(I)

THAT the amendment to the professional service agreement with Anastasia S. Stevens dba Stevens Law, LLC of Santa Fe, New Mexico dated February 22, 2022, increasing the agreement to an amount not to exceed \$500,000.00 annually, plus applicable taxes, as shown in Exhibit "A", attached hereto and made part of this Resolution, is hereby approved.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



AMENDMENT NO. 1

Legal Services Relating to El Paso Electric Company

This amendment, made this ____ day of March, 2023 by and between the CITY OF LAS CRUCES and Anastasia S. Stevens dba Stevens Law, LLC of Santa Fe, New Mexico.

WITNESSETH

WHEREAS, the parties desire to modify the terms and conditions of their original contract dated February 22, 2022, the parties hereby agree as set forth below:

The following provisions are added:

1. Section 1: PROJECT DESCRIPTION
Contractor will represent the City of Las Cruces in legal matters, as the City's attorney on specified matters.
2. Section 2: SCOPE OF SERVICES
In a satisfactory and proper manner, the CONTRACTOR shall perform professional legal services to represent the City's interest before the New Mexico Public Regulation Commission and New Mexico Supreme Court. Legal services on behalf of the City for adjudicatory cases and rulemaking proceedings before the New Mexico Public Regulation Commission related to El Paso Electric Company and the State of New Mexico's renewable energy objectives, including Community Solar, and related proceedings before the New Mexico Supreme Court, and for alternative energy matters of the City including but not limited to power purchase agreements. CONTRACTOR shall invoice the City in accordance with the fee schedule, Exhibit A, attached hereto and made a part of this Agreement.
3. Section 4: COMPENSATION
The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount not to exceed \$500,000.00, plus applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed.

Subject to the modifications set forth in this amendment, the above referenced original agreement dated February 22, 2022 between the parties is hereby ratified and confirmed.

IN WITNESS WHEREOF, the parties, through their authorized representatives, have affixed the signatures below.

SIGNATURE BLOCK ON NEXT PAGE:

Agenda Item #7.2.

ANASTASIA S. STEVENS dba STEVENS
LAW, LLC

CITY OF LAS CRUCES

BY: _____
Anastasia S. Stevens
Sole Member

BY: _____
Alicia Hernandez
Purchasing Manager

Date

Date

APPROVED AS TO FORM

 2/24/23

City Attorney



PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT, made and entered into on this 22 day of February, 2022 by and between the City of Las Cruces, New Mexico, hereinafter called "CITY" and ANASTASIA STEVENS DBA STEVENS LAW, LLC, of 29 TANO WEST, SANTA FE, NM 87506, hereinafter called "CONTRACTOR".

1. PROJECT DESCRIPTION

Legal services on behalf of the City for adjudicatory cases and rulemaking proceedings before the New Mexico Public Regulation Commission and the New Mexico Supreme Court relating to El Paso Electric Company, and for alternative energy matters including but not limited to power purchase agreements.

2. SCOPE OF SERVICES

In a satisfactory and proper manner, the CONTRACTOR shall perform SERVICES, as set forth in Exhibit A, attached hereto and made a part of this Agreement.

3. APPROPRIATIONS

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

4. COMPENSATION

The CITY shall compensate CONTRACTOR for the performance of SERVICES under this Agreement an amount not to exceed \$400,000.00, including applicable taxes. CONTRACTOR shall perform the SERVICES upon receipt of a purchase order or written Notice to Proceed from the CITY. The CITY cannot authorize costs to be incurred prior to such written Notice to Proceed.

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

5. DEVOTION OF ADEQUATE TIME

CONTRACTOR will devote the necessary hours each week to the performance of project(s) 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 March 1, 2022 for a term of one year through February 28, 2023. CONTRACTOR shall perform the SERVICES in accordance with the time set forth as agreed upon by the CITY and CONTRACTOR.

7. EXTENSIONS, CHANGES, AND AMENDMENTS

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

8. CHANGES AND EXTRA SERVICES BY THE CITY

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

9. CHANGES AND EXTRA SERVICES BY THE CONTRACTOR

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

10. DELAYS

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

11. TERMINATION

This Agreement may be terminated by either party hereto upon fifteen (15) calendar days written notice in the event of substantial failure by the other party to perform in

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

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

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

12. RECORDS AND AUDITS

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

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

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

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

14. INDEPENDENT CONTRACTOR

CONTRACTOR represents that it has, or will secure, at its own expense, all personnel required in performing the SERVICES under this Agreement. Such personnel shall not be employees of, nor have any contractual relationship with the CITY. CONTRACTOR, consistent with its status as an independent contractor, further agrees that its personnel will not hold themselves out as, nor claim to be officers or employees of the CITY by reason of this Agreement.

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

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

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

15. NO JOINT VENTURE OR PARTNERSHIP

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

16. ASSIGNMENT

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

17. INSURANCE

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

- a. Professional Liability: \$1,000,000 per claim

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

and shall provide the CITY thirty (30) days written notification of cancellation of such policies.

18. INDEMNITY AND LIMITATION

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

19. APPLICABLE LAW

This Agreement and the rights and obligations of the parties shall be governed by and construed by the laws of the State of New Mexico applicable to Agreements between New Mexico parties made and performed in that state, without regard to conflicts of law principles. Venue shall be in the Third Judicial District, State of New Mexico.

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

20. BREACH

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

21. DISPUTE RESOLUTION

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

22. NOTIFICATION

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

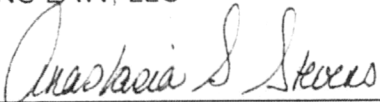
TO CITY: City of Las Cruces
 PO Box 20000
 Las Cruces, NM 88004
 ATTENTION: Robert A. Cabello

With Copies to: City Attorney
 Purchasing Manager

TO CONTRACTOR: STEVENS LAW LLC
 29 TANO WEST
 SANTA FE, NM 87506
 ATTENTION: ANASTASIA S. STEVENS

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.

STEVENS LAW, LLC

BY: 
ANASTASIA S. STEVENS
Sole Member

01/21/2022
Date

CITY OF LAS CRUCES

BY: 
Alfredo Pacheco
Acting Purchasing Manager

01/22/22
Date

APPROVED AS TO FORM


City Attorney

EXHIBIT A

STEVENS LAW LLC'S LEGAL FEES AND EXPENSES

Attorneys' Fees

Stevens Law LLC will charge a flat rate schedule under which Anastasia S. Stevens will charge \$200.00 per hour. No paralegals or associates currently are employed or are anticipated. Travel time may be billed at one-half the hourly rate, or \$100.00, and will not be billed for trips to Las Cruces to update the City Council.

Other Charges for Office Expenses and Advances

Photocopies	Third-Party Charges
CD/Thumb-drive Duplication	Actual Cost of CD or Thumb-drive
In-Town Courier	No charge
Out-of-Town Courier	Third-Party Charges
Service of Process	Third-Party Charges
U.S. Postage	No charge unless large mailing
Computer Research Charges	No charge unless client agrees
Long-Distance Telephone Charges	Actual Third-Party Charges, if any
Travel Expenses (actual expenses incurred by the Firm attorney)	Third-Party Charges actually incurred
Travel Expenses (out-of-town travel by attorney in personal automobile in circumstances in which travel time is billed)	\$0.585 per mile (per IRS official mileage chart)
Airfare (coach)	Third-Party Charges
Third-Party Courier Services	Third-Party Charges
Filing Fees	Third-Party Charges
Court Reporter Fees	Third-Party Charges
Outside Photocopy Charges	Third-Party Charges
Other Third-Party Disbursements	Third-Party Charges
Bank Wire Fees - incoming and outgoing	Third-Party Charges



City of Las Cruces

City Council Action and Executive Summary

23-107

Type of Action:

☒ **Resolution**

☐ **Ordinance**

☐ **TIDD Resolution**

District: ☒ 1 ☒ 2 ☒ 3 ☒ 4 ☒ 5 ☒ 6 ☐ N/A

1st Reading:

Adopted:

March 20, 2023

Drafter:

Mike Bartholomew

Department:

City Manager's Office

Program:

Fixed Route and Dial-a-Ride Programs

Line of Business:

Transit

Title:

A RESOLUTION APPROVING THE UPDATED ROADRUNNER TRANSIT PUBLIC TRANSPORTATION AGENCY SAFETY PLAN (PTASP).

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

PURPOSE(S) OF ACTION:

To approve the update of the RoadRUNNER Transit Public Agency Safety Plan

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

On December 20, 2020, the Las Cruces City Council approved RoadRUNNER Transit's first Public Transportation Agency Safety Plan (PTASP) in Resolution 21-093. The Federal Transit Administration (FTA) requires urban transit agencies to develop, implement, and maintain a PTASP, which defines how Safety Management Systems (SMS) are implemented within the City's public transportation operations. SMS is the top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS is a comprehensive, collaborative approach that brings management and labor together to build on the transit industry's existing safety foundation to control risk better, detect and correct safety problems earlier, share and analyze safety data more effectively, and measure safety performance more carefully.

The plan requires annual Safety Performance Targets be established for each of the two modes of transit service, which are Fixed Route and Dial-a-Ride. Vehicle Revenue Miles (VRM) are the total miles accrued annually by vehicles in revenue service. Targets are set by mode for fatalities per VRM, injuries per VRM, and safety events per VRM. A fourth target is set for System Reliability which is the number VRM travelled between major failures on buses. A "major failure" is when any system on the bus in revenue service fails, creating a safety concern and interrupting service.

With the passage of the federal Infrastructure Investment and Jobs Act in November 2021, additional elements were required to be included in the RoadRUNNER Transit PTASP. The critical elements added to the existing plan is language assuring front-line employee involvement in the development of the plan (page 7 of Exhibit A), updating the safety performance targets (page 8 of Exhibit A), and including infectious diseases as a safety risk (page 15 of Exhibit A). Minor administrative changes include changing the term "SMS Manager" to "SMS Executive" to be more consistent with PTASP standard language and clarifying tasks and responsibilities of key staff throughout the document to reflect actual practices.

This updated plan must be formally approved by City Council, signed by City Manager, and submitted to FTA by the City Transit Director.

Agenda Item #7.3.

The Area Transit Advisory Board recommended approval of the plan at its January 19, 2023 meeting.

SUPPORT INFORMATION:

[Exhibit A - RoadRUNNER Transit ASP Dec 2022](#)

PLAN(S):

None

COMMITTEE/BOARD REVIEW:

ADA Advisory Committee

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" to approve the RoadRUNNER Transit Public Transportation Agency Safety Plan (PTSAP) which allows it to be submitted to the Federal Transit Administration (FTA).
2. Vote "No" to not approve the PTASP. This would result in the City being non-compliant with FTA grant requirements and would compromise future FTA funding.
3. Vote to "Amend" the PTASP. This could create delays in submitting the PTASP for FTA certification.
4. Vote to "Table" the PTASP. This would result in our grant program being non-compliant with FTA requirements.

RESOLUTION 23-107

A RESOLUTION APPROVING THE UPDATED ROADRUNNER TRANSIT PUBLIC TRANSPORTATION AGENCY SAFETY PLAN (PTASP).

The City Council is informed that:

WHEREAS, in 2018, the Federal Transit Administration (FTA) published the Public Transportation Agency Safety Plan (PTASP) Final Rule, requiring certain operators of public transportation systems that receive federal funds under FTA's Urbanized Area Formula Grants to develop safety plans that include the processes and procedures to implement Safety Management Systems (SMS); and

WHEREAS, the Las Cruces City Council approved the original version of the RoadRUNNER PTASP in Resolution 21-093 on December 20, 2020; and

WHEREAS, in 2022 the FTA issued new rules requiring certain updates to the RoadRUNNER PTASP to align with the requirements of the federal Infrastructure Investment and Job Act of 2021.

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

(I)

THAT the updated Public Transportation Agency Safety Plan, attached as "Exhibit A", for the City of Las Cruces RoadRUNNER Transit be approved and submitted to the Federal Transit Administration for certification.

(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

RoadRUNNER Transit

Agency Safety Plan

Ver. 2 December 2022



Version Number and Updates			
Version Number	Section / Pages Affected	Reason for Change	Date Issued
1		New Document	12/22/2020
		December 2021 – no changes	
2		Update of plan to meet PTASP requirements	Dec. 2022

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1. Transit Agency Information

Transit Agency Name	The City of Las Cruces RoadRUNNER Transit		
Transit Agency Address	300 W. Lohman Ave, Las Cruces, NM 88005		
Name and Title of Accountable Executive	Ifo Pili, City Manager The Accountable Executive meets the requirements in 49 CFR § 673.5 and §673.23(d)(1). Please see the Roles and Responsibilities of the Accountable Executive in Section 4-Safety Management Policy.		
Name and Title of SMS Executive	Mike Bartholomew, City Transit Director		
Name and Title of Chief Safety Officer	Carl Conley, City Risk Manager The Chief Safety Officer meets the requirements of § 673.5 and §673.23(d)(2). Please see the Roles and Responsibilities of the Chief Safety Officer in Section 4-Safety Management Policy.		
Mode(s) of Service Covered by This Plan	Fixed-Route and Dial-A-Ride	List All FTA Funding Types: (e.g., 5307, 5310, 5311)	Section 5307 and 5339
Mode(s) of Service Provided by the Transit Agency (Directly operated or contracted service)	Fixed-Route Bus: Directly Operated Dial-A-Ride: Directly Operated. Dial-A-Ride offers both ADA-mandated complementary paratransit and senior transportation.		
Does the agency provide transit services on behalf of another transit agency or entity?	NO	Description of Arrangement(s)	N/A
Name and Address of Transit Agency(ies) or Entity(ies) for Which Service Is Provided	N/A		

System Description

History

In May 1985, the City of Las Cruces City Council passed a resolution (85-177), invoking the State of New Mexico's Municipal Transit Law (3-52-1 to 5-52-13 NMSA 1978). The City was previously contracting with a private franchisee to provide this service. This legislation approved a Short-Range Public Transportation Improvement Program, which recognized these facts:

- General transportation of persons is necessary and convenient.
- Privately owned public transportation facilities in operation are inadequate.
- It is impossible for existing franchise operators to render necessary service with adequate resulting return on the investment of capital.
- Assignment of the existing franchise by the holder or release thereof, granting the new franchise by the city will not afford adequate service.

Beginning in July 1985, the City Council approved a series of resolutions establishing the City's Transit Department to purchase equipment and plan the implementation of a City-operated transit service. The first service rolled out on April 21, 1986. The service was formally designated as the Las Cruces Area Transit (LCAT), but from the beginning, it was branded as RoadRUNNER Transit.

Governing Body

The City of Las Cruces' RoadRUNNER Transit is governed by the Las Cruces City Council, consisting of six council districts represented by an elected councilor and mayor who represents the entire City. The Las Cruces City Manager is a council form of government. The City Manager is responsible for implementing all aspects of the service as directed by City Council. In 1986 the City Council also established by ordinance (0705 and 1651) an Area Transit Advisory Board (TAB). The TAB consists of seven representatives who represent Senior Citizens, At-large City residents (2 positions), ADA, Business, New Mexico State University (NMSU), and Doña Ana Community College (DACC). All members must be City residents, except the representatives from NMSU and DACC may be residents of the county. The Transit Director is an ex-officio non-voting member and there is a non-voting staff member from the Mesilla Valley Metropolitan Planning Organization. TAB members are appointed by the Mayor with the advice and consent of City Council to 4-year terms. The Mayor also designates a member of City Council as a non-voting member to the TAB. The duties of the TAB are to review the operations of the transit program and make recommendations to the Transit Director for system improvements; serve as a resource group on transit issues; and encourage support and use of the transit system.

Description

The City of Las Cruces RoadRUNNER Transit is small urban system and provides the greatest level of public transit service to the area. The service area includes the City of Las Cruces, the Town of Mesilla and the New Mexico State University campus. RoadRUNNER Transit operates 8 routes, from 6:30 a.m. to 10:30 p.m. Monday through Friday and from 8:30 a.m. to 4:30 p.m. on Saturdays. Two routes are on 30-minute headways, and the remaining 6 are on 60-minute headways. RoadRUNNER Transit also has a contract with NMSU to provide two routes on the NMSU campus during the fall and spring semesters. One route is on a 10-minute headway and operates only during the regular semesters, the other route operates year around on a 20-minute headway. Also, there is an agreement between the City of Las Cruces and the Town of Mesilla that helps to partially fund the segment of one route that serves the town. Another agreement between the City of Las Cruces and Doña Ana Community College helps to fund a portion of the Route 2. There are 13 buses in peak fixed-route service.

When the COVID-19 pandemic began in March 2020, service hours were changed to 7:30 a.m. to 5:30 p.m. Monday through Saturday. Due to the severity of the pandemic, many drivers had to take COVID-19 related leave, leaving the section with insufficient numbers of drivers to operate at full service level. RoadRUNNER was able to resume full service on April 25, 2022.

RoadRUNNER's Dial-A-Ride provides service to individuals with qualifying disabilities and to senior citizens ages 60 and older. There are 20 buses in the fixed route fleet and 20 vehicles in the Dial-A-Ride service. The fleet is currently fueled with diesel and gasoline, but the City is transitioning to battery-electric buses, the first five are expected in April 2023. The City also learned it was awarded an additional \$5.7 million for seven more electric buses which will be purchased on options in the existing contract with the vendor. Pre-pandemic annual fixed-route ridership was between 500,000 and 600,000 trips; and pre-pandemic annual Dial-A-Ride Ridership was between 50,000 and 55,000 trips. Ridership plunged during the pandemic and as of August 2022 is at about 75-80% of pre-pandemic levels.

City of Las Cruces RoadRUNNER Transit Leadership

RoadRUNNER Transit is a Section within the City Manager's Office (CMO). A Transit Director oversees RoadRUNNER Transit fixed-route and Dial-A-Ride operations. The Transit Director reports to the Assistant City Manager Chief Operating Officer (COO), who reports to the City Manager. As of July 1, 2022, Transit Maintenance staff and operations are within the Transit Section. The City Manager is the Accountable Executive for both the Transit Asset Management Plan and this Agency Safety Plan (ASP). The Chief Safety Officer is the Administrator of the City's Risk Section, which is within the Legal Department. The Transit Director is the SMS Executive.

Goals

The overall operational safety goals for RoadRUNNER Transit are:

- Provide a level of service that meets, if not exceeds, industry standards.
- Identify, eliminate, minimize, and control safety hazards and their associated risks.
- Comply with the applicable requirements of regulatory agencies.

Agency Safety Plan and Safety Management System (SMS)

RoadRUNNER Transit developed this safety plan to comply with 49 CFR Part 673, the PTASP regulation. This plan also serves as an "SMS user's manual" that guides RoadRUNNER Transit in the successful implementation and operation of its SMS. As it pertains to this plan, "Agency" refers to the City of Las Cruces RoadRUNNER Transit.

The FTA defines SMS as:

"The formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards."

Furthermore, SMS is a comprehensive, collaborative approach that brings management and labor together to build on the transit industry's existing safety foundation to control risk better, detect and correct safety problems earlier, share and analyze safety data more effectively, and measure safety performance more carefully.

RoadRUNNER Transit's SMS has four distinct components, which are discussed in subsequent sections of this safety plan:

- Safety management policy
- Safety risk management
- Safety assurance
- Safety promotion

2. Plan Development, Approval, and Updates

The City of Las Cruces/RoadRUNNER Transit Agency Safety Plan addresses all applicable requirements and standards as set forth in the Federal Transit Administration's (FTA) Public Transportation Safety Program and the National Public Transportation Safety plan.

Name of Entity that Drafted this Plan	The City of Las Cruces RoadRUNNER Transit and Risk Management Staff	
Signature by the Accountable Executive	Signature of the City Manager as Accountable Executive	Date of Signature
Approval by the Board of Directors or an Equivalent Authority	Name of Entity that Approved	Date of Approval
	Las Cruces City Council	
	Relevant Documentation (title and location)	
	Las Cruces City Council Resolution attached as Appendix C.	
Certification of Compliance 673.13(a)(b)	Name of Individual/Entity that completed Certification Documentation	Date of Certification
	Michael Bartholomew/City of Las Cruces	
	Relevant Documentation (Title and Location)	
	This plan is on file with the City Clerk and the RoadRUNNER Transit Section.	

Annual Review and Update of the Public Transportation Agency Safety Plan
This RoadRUNNER Transit Agency Safety Plan and its safety performance targets are jointly reviewed by Transit and Risk Management Staff by the end of each calendar year and updated if needed. The draft document is shared with all transit covered employees for their feedback; input is also received from safety committee participants representing frontline employees. If any changes are made to the plan, the Accountable Executive will review and approve the changes, the plan will then be brought to City Council for final review and approval. The City Manager will sign the revised plan after Council approval.

3. Safety Performance Targets

Safety Performance Targets							
The targets listed below are based on reviews of FY 2018 – FY2022 of RoadRUNNER Transit safety performance data.							
Mode of Transit Service	Fatalities (total)	Fatalities (per 100 thousand VRM)	Injuries (total)	Injuries (per 100 thousand VRM)	Safety Events (total)	Safety Events (per 100 thousand VRM)	System Reliability (VRM /major failures)*
Fixed Route	1	0.04	16	0.69	100	5.41	39833
Dial-A-Ride	0	0	8	1.18	67	7.52	82230

*The City is a Reduced Reporter for National Transit Database (NTD) and does not report major mechanical failures to the NTD. The safety performance target for System Reliability reflects maintenance work order records from the City's FY2020 forward, by mode, indicating major mechanical failures. The total vehicle revenue miles (VRM) by mode for each fiscal year starting with FY2020 is then divided by the major mechanical failures by mode to derive an average distance between major mechanical failures. As of December 2022, system reliability data is based on a 3-year average. As data for major mechanical failures is gathered in subsequent fiscal years, the years will be averaged until we reach five years of data. Following the fifth year, a five-year running average will be used. In the event the City becomes a full NTD reporter, the target will be tied to major mechanical failures reported to NTD.

Safety Performance Target Coordination		
On behalf of the RoadRUNNER Transit Accountable Executive, the SMS Executive shares its safety performance targets with the Mesilla Valley Metropolitan Planning Organization (MPO) each year after its formal approval by the Las Cruces City Council. The SMS Executive also provides a copy of our formally adopted Safety Plan, including safety performance targets, to the New Mexico Department of Transportation (NMDOT). RoadRUNNER Transit personnel are available to coordinate with NMDOT and the MPO in the selection of NMDOT and MPO safety performance targets upon request.		
Targets Transmitted to the State	State Entity Name	Date Targets Transmitted
	New Mexico Department of Transportation	
Targets Transmitted to the Metropolitan Planning Organization(s)	Metropolitan Planning Organization Name	Date Targets Transmitted
	Mesilla Valley Metropolitan Planning Organization	

4. Safety Management Policy

RoadRUNNER Transit Safety Management Policy Statement (SMPS)

To all RoadRUNNER Transit Staff, City Risk Management Staff, and other select City Staff:

RoadRUNNER Transit developed a Public Transportation Agency Safety Plan (PTASP) in accordance with the Federal Transit Administration (FTA) final rule 49 CFR Part 673. This rule requires the development of a uniform system of public transit safety management, called the Safety Management System (SMS). As the City Manager, I am the Accountable Executive as specified under the new regulations. Ultimately, I am responsible to ensure the successful implementation of the new safety standards are upheld throughout our organization.

To facilitate this process, I will support the efforts to integrate this Policy Statement. This document will serve as a guiding beacon as we adopt and follow the federal safety guidelines.

Safety has always been a core value of RoadRUNNER Transit, and managing safety is a core business commitment for our agency. RoadRUNNER Transit is committed to developing, implementing, maintaining, and continuously improving our daily practices to ensure the safety of our customers, employees, contractors, and the public. RoadRUNNER Transit will use the safety management processes to guide the prioritization of safety and allocate our organizational resources (such as people, funding, and technology) to integrate into our everyday operations. We aim to develop and support a robust safety culture and achieve the highest levels of safety performance set forth by the FTA.

RoadRUNNER Transit is committed to the following core capacities:

Executive Commitment to Safety—Executive Management will lead the development of an organizational culture that promotes safe operations. We will provide appropriate resources to support the PTASP development by fostering and ensuring safe practices, improving procedures when needed, and encouraging effective employee safety reporting and communication. RoadRUNNER Transit will keep every executive, manager, and employee accountable for our priority of safe operations.

Communication & Training—Employee engagement is crucial to a functioning SMS. Communication systems have been developed and fine-tuned to enable greater awareness of RoadRUNNER Transit's safety objectives, performance targets, and ongoing safety communication throughout every level of our organization. All levels of management must proactively engage employees, and continuously work to keep the lines of safety communication simple, honest, and open. All employees are made aware of the importance of RoadRUNNER Transit's SMS and trained in any new or improved safety reporting procedures.

Responsibility & Accountability—All employees, managers, and contractors are responsible for delivering safe and quality transit services that represent RoadRUNNER Transit's performance standards. Each manager will take an active role in the SMS process and ensure that the Safety Assurance functions are supported and advocated. Managers are also responsible for ensuring that Safety Risk Management is being performed in their operational areas of control to assure that the safety risk associated with identified safety hazards is assessed and mitigated. Safety performance is an important part of annual performance evaluations for all RoadRUNNER Transit employees and managers. Risk Management

generates reports by employee that supervisors can use during the evaluation.

Employee Reporting—We instituted a safety reporting program as a viable tool for employees to clearly voice their safety concerns. All frontline employees are responsible for utilizing this program as part of the SMS. No action is taken against any employee who communicates a safety condition through the RoadRUNNER Transit safety reporting program unless such disclosure indicates the following: an illegal act, gross misconduct or negligence, a deliberate or willful disregard of RoadRUNNER Transit rules, policies, and procedures.

Performance Monitoring & Measurement—RoadRUNNER Transit will establish realistic measures of safety performance and safety performance targets to ensure our continuous improvement. Our employees representing different crafts within the organization, will work together with management to verify that the resulting safety risk mitigations are appropriate, helpful, and effective.

Review & Evaluation—RoadRUNNER Transit will measure our SMS performance by analyzing our key safety performance indicators, reviewing inspections, and evaluating our corrective action reports. These activities become the basis for revising or developing safety objectives, safety performance targets, and the overall Agency Safety Plan with the goal of continuous, effective safety improvements. The Agency Safety Plan is a living document and frequently monitored for applicability and functionality.

Thank you for your full cooperation in building a safer workplace for all our employees and customers.

Sincerely,

Ifo Pili
City Manager/Accountable Executive
City of Las Cruces

Safety Management Policy Communication

A paper copy of this SMSP is distributed to each transit-funded employee and Risk Management, as well as obtaining a signature of receipt to acknowledge receipt of the Safety Management Policy Statement (SMPS). The SMPS is also posted on bulletin boards within the facility along with a link posted on the RoadRUNNER Transit website and to Transit SharePoint files. A paper copy of this policy is also distributed to new transit-funded and Risk Management employees.

Authorities, Accountabilities, and Responsibilities

Roles and Responsibilities of the Accountable Executive

The City of Las Cruces' RoadRUNNER Transit Accountable Executive is the City Manager and has ultimate responsibility for carrying out the Agency Safety Plan. The Accountable Executive has ultimate control and issues final direction over the financial, human and capital resources needed to develop and maintain this Agency Safety Plan.

The Accountable Executive is accountable for ensuring that RoadRUNNER Transit effectively implements its SMS throughout the agency and addresses SMS substandard safety performance. The Accountable Executive is responsible for signing SMS implementation planning documents and endorsing SMS implementation team membership.

The Accountable Executive may delegate specific responsibilities, but the ultimate accountability for RoadRUNNER Transit safety performance cannot be delegated and always rests with the Accountable Executive.

RoadRUNNER Transit's Accountable Executive's role includes, but is not necessarily limited to:

- Decision-making about human and capital resources needed to support asset management, SMS activities, and capital investments.
- Maintaining the Transit Asset Management (TAM) Plan.
- Signing SMS implementation planning documents and ensuring that SMS is effectively implemented throughout RoadRUNNER Transit's public transportation system.
- Ensuring action is taken to address substandard performance in RoadRUNNER Transit's SMS.
- Endorsing SMS implementation team membership.
- Providing periodic updates on safety performance.

Roles and Responsibilities of the SMS Executive

The SMS Executive, jointly and in coordination with the City's Chief Safety Officer, supports the Accountable Executive in developing, implementing, and operating RoadRUNNER Transit's SMS. The SMS Executive reports directly to the Accountable Executive for matters involving SMS.

The SMS Executive's role includes:

- Jointly developing SMS policies and procedures.
- Jointly overseeing the implementation and operation of the SMS.
- Jointly developing and maintaining SMS documentation.
- Jointly directing hazard identification and safety risk assessment.
- Jointly monitoring safety risk mitigation activities.
- Jointly monitoring SMS-related performance.
- Jointly planning safety management training.
- Jointly ensuring safety communication.
- Other duties as assigned or deemed necessary.

Roles and Responsibilities of the Chief Safety Officer

The Chief Safety Officer, jointly and in coordination with the Transit Section's SMS Executive, supports the Accountable Executive in developing, implementing, and operating RoadRUNNER Transit's SMS. The Chief Safety Officer reports directly to the Accountable Executive for matters involving SMS.

The Chief Safety Officer's role in partnership with the SMS Executive includes:

- Developing SMS policies and procedures.
- Overseeing the implementation and operation of the SMS.
- Developing and maintaining SMS documentation.
- Directing hazard identification and safety risk assessment.
- Monitoring safety risk mitigation activities.
- Monitoring SMS-related performance.
- Planning safety management training.
- Ensuring safety communication.
- Duties as assigned or deemed necessary.

Agency Leadership and Executive Management Roles

Agency leadership and executive management have authorities and responsibilities for the day-to-day implementation and operation of the agency's SMS.

Independent of the Accountable Executive, SMS Executive, and Chief Safety Officer, RoadRUNNER Transit Leadership and Executive Management include:

- Transit Administration, Operations, and Maintenance Supervisors
- Transit Training Coordinator
- City Risk Management Safety Officers
- Building Managers
- City Council
- Transit Advisory Board (TAB)

The Agency Leadership and Executive Management are responsible for the following accountabilities and responsibilities of this plan. Their roles include, but are not necessarily limited to:

- Overseeing the implementation and operation of RoadRUNNER Transit's SMS within the functions for which they have responsibility
- Providing input into the allocation of resources to accomplish the goals and objectives of the agency safety plan
- Providing oversight and maintaining compliance with the Agency Safety Plan
- Modifying policies consistent with the implementation of the Agency Safety Plan.

Key Staff Roles

RoadRUNNER Transit Key Staff has the following accountabilities and responsibilities within this plan. Their roles include, but are not necessarily limited to:

- Assisting the Accountable Executive, SMS Executive, and Chief Safety Officer in developing, implementing, and operating the SMS. Based on responsibilities and expertise, Key Staff assist in hazard identification, safety risk assessment, safety risk mitigation, safety performance monitoring, safety performance measurement, safety training, and safety communication activities.
- Key staff plays a significant role as subject matter experts in hazard identification, safety risk assessment, safety risk mitigation, and safety performance monitoring activities.
- Key staff functions that bring experience and expertise to bear on SMS activities include:
 - Managers
 - Supervisors, including the transit training supervisor
 - Scheduler/Dispatchers and Customer Service Representatives
 - Bus Operators and Dial-A-Ride drivers
 - Building Managers (Customer Service Representatives)
 - Vehicle Mechanics, Vehicle Service Workers, and Service Attendants
 - City Risk Management staff
 - Other skilled professionals as needed.
- **Transit Safety Meetings:** Transit will hold two (2) virtual meetings each month. During these meetings, we discuss potential hazards and strategies to mitigate the consequences of those hazards. This information is logged and shared with all Transit staff.
- **Management:** Management and Supervisors meet daily to discuss safety issues and concerns. Non-supervisory staff are briefed daily regarding safety issues and concerns.
- **Transit Safety Committee:** The committee holds a virtual meeting once a month. A Microsoft Outlook calendar reminder is made to determine time, place, and date. Attendees at each meeting are documented. Topics of previous meetings are discussed to see if they have been resolved or need additional attention. New topics (for example, hazard identification) and what needs to be done to resolve them are discussed. Time is given for any other additional concerns or suggestions. The committee is striving to include no less than one person representing the different transit functions (fixed route, Dial-a-Ride, maintenance and customer service staff) and Risk Management staff, The committee will include supervisory and non-supervisory staff. During the safety committee meeting, RoadRUNNER gathers input on the ASP, including what is working in the plan, changes to procedures, and potential updates to the plan.

Documentation of Authorities, Responsibilities, and Accountabilities

RoadRUNNER Transit staff identifies and documents all the SMS-related organizational accountabilities and responsibilities, and this documentation is available to the SMS Executive on RoadRUNNER Transit's SMS SharePoint site.

Employee Safety Reporting Program

RoadRUNNER Transit has established and implemented a safety reporting program that allows its employees to voluntarily report any safety issues, conditions, or concerns they may see during their day-to-day delivery of transit services. This voluntary safety reporting program is separate from RoadRUNNER Transit mandatory reporting requirements for accidents and incidents.

The Employee Safety Reporting Program (ESRP) provides protections for employees who report safety issues, concerns, or conditions and ensures that discipline will not be applied, and employees have protection against reprisal or any other adverse action for reporting a safety issue, concern, or condition. Employees who report safety issues, concerns, and conditions are also generally protected under Occupational Safety and Health Administration whistleblower protections.

The ESRP also describes employee behaviors that are not protected under the program and may result in disciplinary action, such as an employee engaged in an illegal act, committed gross negligence, or deliberately or willfully disregarded regulations or RoadRUNNER Transit procedures.

The ESRP clarifies:

- What to report, what not to report, and how to report.
- What managers should do when employees report safety concerns.
- How reports are documented.
- How employees will receive feedback about the results of their reports.

The reporting system is simple to use and available to all RoadRUNNER Transit employees. RoadRUNNER Transit's ESRP addresses the following:

- Who is responsible for developing and managing the employee safety reporting program.
- Timely response to employee safety reports.
- How the agency provides feedback to employees on the action(s) taken to address the reported safety issue, condition, or concern.
- Investigation of reported safety issues, conditions, or concerns for causal or contributing factors.
- How the transit system documents and reviews safety issues, conditions, or concerns to determine if a hazard exists.
- If the issue is determined to be a hazard, how the hazard is then entered into the safety risk management process.

RoadRUNNER Transit is committed to providing feedback to its employees who report a safety issue, condition, or concern. This feedback is provided either directly in a one-on-one conversation or through the safety meeting platform. The feedback addresses what, if any action, was or will be taken to address the reported safety issue, condition, or concern.

Forms are available in the driver's room located at the bus yard. The Driver Report Form allows employees to fill out and report any safety issues, conditions, or concerns. A Safety Issue Log was also created for employees who report issues or concerns over the two-way radio. Transit staff who receive these reports are responsible for logging in the report and initiating the SMS process. There is also the ability for each employee to email a safety issue, concern, or condition directly to management. If an employee does not have access to email, they can anonymously call the City's Employee Safety Reporting Hotline at 575-528-3660. Any safety issues, conditions, or concerns will be logged, and

management is immediately informed via email. The general public can also utilize email via, Ask Las Cruces feature on the City of Las Cruces website; the Ask Las Cruces system will direct transit-related publicly emailed concerns to Transit supervisors for action.

A description of the ESRP is on file in the Accountable Executive's office and at RoadRUNNER Transit Headquarters. The ESRP is distributed to all current employees during the training provided on employee safety reporting and new employees during their new-hire orientation.

Infectious Disease

RoadRUNNER monitors guidelines put out by the Center for Disease Control and Prevention, state, and local health authorities. Based on those guidelines, RoadRUNNER develops strategies to address infectious disease risk and protect employees and passengers.

5. Safety Risk Management (SRM)

RoadRUNNER Transit uses the SRM process as a primary method to ensure the safety of our operations, passengers, employees, vehicles, and facilities. It is a process wherein hazards and their consequences are identified, assessed for potential safety risk, and resolved in a manner acceptable to RoadRUNNER Transit leadership. Our SRM process allows us to carefully examine what could cause harm, determine whether we have taken sufficient precautions to minimize the harm, or if further mitigations are necessary.

The SMS Executive, in partnership with the Chief Safety Officer, leads the SRM process to identify hazards and consequences, assess the safety risk of potential consequences, and mitigate the safety risk. The results of the SRM process are documented in the Hazard Log.

The SRM process applies to all elements of the system, including operations, maintenance, facilities, vehicles, personnel recruitment, employee training, and supervision.

Overall, the RoadRUNNER Transit SRM process includes the following steps that are carried out under the guidance of the SMS Executive, supported by the Chief Safety Officer, with input from appropriate subject matter experts:

- Identify hazards
- Identify the potential consequences of each hazard
- Evaluate consequences in terms of probability and severity
- Prioritize risk using our formal risk matrix
- Communicate prioritized risk to the Accountable Executive
- Create safety risk mitigations to eliminate or reduce the effects of a hazard and request the Accountable Executive's approval, if needed.
- Implement the mitigation
- Create a strategy for monitoring mitigation effectiveness

In carrying out the SRM process, RoadRUNNER Transit uses the following terms:

- **Safety event** – Any accident, incident, or occurrence.
- **Hazard** – Any real or potential condition the consequences of which can cause injury, illness, death, damage to/loss of facilities, equipment, rolling stock, or infrastructure belonging to RoadRUNNER Transit, or damage to the environment.
- **Risk** – Composite of predicted severity and likelihood of the potential effect of a hazard.
- **Risk Mitigation** – Method(s) to eliminate or reduce the effects of hazards.
- **Consequence** – An effect of a hazard involving injury, illness, death, or damage to RoadRUNNER Transit property or the environment.

Safety Hazard Identification

All subsequent safety risk management activities are contingent on effectively identifying sources for hazard identification and the processes to obtain information on hazards.

RoadRUNNER Transit has developed methods and processes to identify hazards and consequences of the hazards. RoadRUNNER Transit considers, as a source for hazard identification, data and information provided by City Management and the City Council, the FTA, and NMDOT. RoadRUNNER Transit also

considers the results of its asset condition assessments when performing safety hazard identification activities through its SMS. The results of the condition assessments and safety risk management activities help inform RoadRUNNER Transit's determination as to whether an asset meets the state of good repair standards under 49 CFR Part 625.

The SMS Executive, in coordination with the Chief Safety Officer, is responsible for overseeing and facilitating RoadRUNNER Transit's hazard identification process. The SMS Executive is also responsible for documenting identified hazards and ensuring that subject matter experts identify the potential consequences of those hazards. Information related to hazard identification and consequence determination is stored in a Hazard Log for documenting all identified safety hazards and the subsequent activities related to addressing those hazards. The SMS Executive in coordination with the Chief Safety Officer ensure RoadRUNNER staff maintain the Hazard Log, and they make this information available to the Accountable Executive in an annual report and more frequently as needed or requested.

The safety hazard identification process helps RoadRUNNER Transit identify hazards and potential consequences in the operation and maintenance of the system. Hazards are identified through a variety of sources, including:

- Employee Safety Reporting
- Passenger Reporting
- Review of Vehicle Camera Footage
- Review of Monthly Performance Data Sheets
- Observations from Supervisor
- Operator-Supervisor daily meetings
- Maintenance Reports
- Comments from Customers and Passengers
- Employee Safety Meetings
- Manager and Supervisor Safety Meetings
- Results of audits and inspections of vehicles and facilities
- Results of training assessments
- Results of internal safety audits
- Investigations into safety and security events, incidents, and occurrences
- CSR Desk,
- Tyler 311 reporting
- FTA, the New Mexico Department of Transportation, and other oversight authority agencies.

The SMS Executive, in coordination with the Chief Safety Officer, reviews these sources for hazards and documents them in the Hazard Log.

Hazards identified during reviews of the RoadRUNNER Transit operations and maintenance, results of audits and observations, and information received from FTA, New Mexico Department of Transportation, and other oversight authorities, including the National Transportation Safety Board, are also entered into the Hazard Log.

The SMS Executive or Chief Safety Officer may conduct further analysis of hazards and consequences entered in the Hazard Log spreadsheet to collect information, identify additional consequences, and to inform management which hazards should be prioritized for safety risk assessment.

In following up on identified hazards, the SMS Executive or Chief Safety Officer may:

- Reach out to the reporting party, if available, to gather all known information about the reported hazard.
- Conduct a walkthrough of the affected area, assess the possible hazardous condition(s), generate visual documentation (photographs and/or video), and take any measurements that are deemed necessary.
- Conduct interviews with employees in the area to gather potentially relevant information on the reported hazard.
- Review any documentation associated with the hazard (such as records, reports, procedures, inspections, technical documents, etc.)
- Contact other departments that may have association with or technical knowledge relevant to the reported hazard.
- Review any previously reported hazards of a similar nature.
- Evaluate any tasks or processes associated with the reported hazard.

Any identified hazard that poses a real and immediate threat to life, property, or the environment is immediately brought to the attention of the Accountable Executive and addressed through the SRM process for safety risk assessment and mitigation. This signifies the belief that immediate intervention is necessary to preserve life, prevent major property destruction, or avoid harm to the environment that would constitute a violation of the Environmental Protection Agency or NMDOT environmental protection standards.

RoadRUNNER Transit involves subject matter experts in safety hazard identification processes by matching the experience and expertise of the individual(s) with the type of hazard to be analyzed. For example, if the hazard is operations related, then the primary subject matter experts will be from operations; if the hazard is vehicle maintenance related, that type of hazard requires vehicle maintenance expertise and skills.

Determination of the potential consequences of hazards drives our safety risk assessment activities. Hazards in and of themselves do not cause damage. It is the consequences of hazards that cause injuries, death, property destruction, environmental harm, or impair the ability of a transit provider to deliver transit services. RoadRUNNER Transit subject matter experts identify the potential consequences of hazards, keeping in mind that a single hazard could have many potential consequences. Each potential consequence is identified and recorded.

The SMS Executive and Chief Safety Officer are both responsible for ensuring that the documentation of hazards and consequences is taking place.

Safety Risk Assessment

RoadRUNNER Transit in coordination with City Risk Management established processes to assess the safety risk associated with identified safety hazards. These safety risk assessment processes include an assessment of the likelihood and severity of the consequences of the hazards, including existing mitigations and prioritization of the hazards, based on the safety risk.

Assessing the likelihood and severity of hazard consequences is the first step in prioritizing safety risk. RoadRUNNER Transit working with City Risk Management have established procedures for assessing the safety risk of the consequences of identified safety hazards and prioritizing the hazards based on this safety risk. The agency assesses safety risk in terms of likelihood (the probability of a consequence occurring) and severity (the seriousness of a consequence if it does occur). A color-coded safety risk index provides a rating system to use with a assessment matrix to prioritize the safety risk. The assessment matrix helps us to determine the probability and severity of consequences and allows for prioritization of safety risks. Appendix E provides a copy of the safety risk assessment matrix used by RoadRUNNER Transit.

RoadRUNNER Transit in coordination with City Risk Management choose subject matter experts to involve in safety risk assessments by matching the experience and expertise of subject matter experts with the type of hazard under assessment. This assessment is carried out under the guidance of the SMS Executive or Chief Safety Officer using the RoadRUNNER Transit safety risk assessment matrix.

Safety risk prioritization is linked to safety risk mitigation creation. Prioritizing our safety risk provides the Accountable Executive with the information needed to make decisions about resource application. It helps RoadRUNNER Transit apply its limited time, financial, and human resources to the highest priority transit safety risk. The Accountable Executive is the ultimate decision-maker on applying resources to mitigate high priority transit safety risk.

Transit Section staff also use Incident Hazard Analysis and a risk matrix to evaluate consequences.

Safety Risk Mitigation

Developing safety risk mitigations to proactively reduce the agency's safety risk is the culmination of the safety risk management process. RoadRUNNER Transit has established processes to identify mitigations or strategies necessary, as a result of its safety risk assessment activities, to reduce the likelihood and severity of its consequences. The SMS Executive and in conjunction with the Chief Safety Officer are responsible for guiding and overseeing the subject experts during the risk mitigation process at RoadRUNNER Transit. Safety risk mitigations requiring additional resources or changes in agency policy are approved by the Accountable Executive.

RoadRUNNER Transit, in coordination with City Risk Management, have established procedural steps for creating safety risk mitigations to address the potential consequences of its prioritized risk. The steps include how RoadRUNNER Transit determines when safety risk mitigation is necessary, and the job function(s) or position(s) that is(are) responsible for creating mitigations. RoadRUNNER Transit and City Risk Management understand that the goal of a mitigation is to reduce assessed safety risk to an acceptable level. It is unrealistic that a transit operation can assume that it will be able to eliminate all safety risk.

Safety risk mitigation steps include:

- Examining the consequences of hazards and their probability and severity
- Develop strategies to reduce the probability and/or severity of those consequences
- Ensure the strategy can be implemented with available resources
- Turn the strategy into a mitigation plan
- Put the mitigation plan into place
- Create a plan for monitoring the effectiveness of the mitigation

After creating a safety risk mitigation that may have involved subject matter expertise, RoadRUNNER Transit and City Risk Management develop and document a strategy for implementing the mitigation. These implementation strategies include:

- Who is responsible for implementing the mitigation.
- Where the mitigation will reside within agency activities.
- How the mitigation will be implemented.
- How long implementation should take.

RoadRUNNER Transit and City Risk Management need to know that its mitigations are working. When we develop a mitigation, we also define and document the way the mitigation will positively impact safety performance so we can then monitor whether that positive impact is taking place, and if the mitigation is effective. Under the guidance of the SMS Executive and the Chief Safety Officer, the subject matter experts involved in creating a safety risk mitigation also decide on the best ways to monitor the effectiveness of the mitigation. This includes developing, documenting, and monitoring strategies. RoadRUNNER Transit and City Risk Management have strategies for monitoring the effectiveness of mitigations. These strategies provide consistency in monitoring activities, regardless of whether the mitigation is implemented in operations, maintenance, or administration.

RoadRUNNER Transit and City Risk Management understand that successful mitigation implementation and monitoring activities depend on having a process for how it will communicate mitigation and monitoring strategies to operations, maintenance, or administration staff who will implement and monitor the mitigations. This process is documented. This communication is a cross-functional ownership in SMS processes since employees who create the mitigations may not be the same employees that implement and monitor the mitigations.

Strong documentation of safety risk mitigations feeds safety performance monitoring. RoadRUNNER Transit and City Risk Management established and documented how it will record all of its various safety risk mitigation activities and their outcomes. Safety risk mitigation documented processes and records of safety risk mitigation activities are on file at RoadRUNNER headquarters and with City Risk Management.

6. Safety Assurance

RoadRUNNER Transit has established processes to:

- Monitor its operations for compliance with and sufficiency of its policies and procedures. (b)1
- To ensure that it is performing maintenance which is consistent with RoadRUNNER Transit's ability to safely meet its operational requirements and in compliance with all safety policies and procedures.
- Monitor its operations to identify any safety risk mitigations that may be ineffective, inappropriate, or not implemented as intended. (b) 2
- Conduct investigations of safety events to identify causal factors. (b)3
- Monitor the effectiveness of any of its internal safety programs including its employee safety reporting program. (b)4

Safety Performance Monitoring and Measurement

RoadRUNNER Transit has many processes in place to monitor its entire transit system for compliance with operations and maintenance procedures, including:

- Safety audits
- Informal inspections
- Regular review of on-board camera footage to assess drivers and specific incidents.
- Investigation of safety occurrences.
- Safety review before the launch or modification of any facet of service.
- Daily data gathering and monitoring of data relating to the delivery of service.
- Regular vehicle, equipment, and facilities inspections and preventative maintenance.

The SMS Executive and Chief Safety Officer ensure that any identified non-compliant or ineffective activities, including any resulting mitigations, are entered back into the SRM process for reevaluation.

Operations Monitoring

RoadRUNNER staff is responsible for ensuring and documenting the system's compliance with sufficiency of its operations policies and procedures. RoadRUNNER Transit has forms that are used to drive and document its operations monitoring activities.

The operational areas that are monitored for compliance with policies and procedures include but are not limited to:

- Bus Operator pre-trip inspections. (B.O. reports)
- Bus Operator behind the wheel performance. (Ride-alongs, Camera Checks, retraining)
- Bus Operator passenger assistance as outline in the Driver SOP Manual.
- Bus Operator emergency response as outlined in the Driver SOP Manual.

When RoadRUNNER Transit's monitoring activities determine a lack of compliance with operations policies and procedures or inadequacies of those policies and procedures, it then uses this information to correct the activity or to feed RoadRUNNER Transit's hazard identification and safety risk assessment process when necessary.

RoadRUNNER Transit has established and documented emergency procedure checklists that Supervisors and Dispatchers can readily access to help direct their response to Bus Operators experiencing emergencies during revenue service. These procedures include, but are not limited to:

- Responding to accidents and incidents.
- Evacuating a vehicle under smoke and fire conditions.
- Responding to a potentially dangerous passenger and other security threats.

Vehicle Maintenance Monitoring

RoadRUNNER Transit monitors the following areas of vehicle maintenance and document all monitoring activities and their results:

- Mechanic skills and performance.
- Adherence to preventive maintenance schedules.
- Effectiveness of corrective maintenance activities.
- Maintenance-related vehicle road calls.

It is very important to adhere to preventive maintenance intervals. Not only to extend the life of the parts but also to prevent accidents from happening. We have three different intervals: plan A at 6,000, plan B at 36,000 miles and plan C at 72,000 miles. Basically, when we bring a bus in for service, whether it is for plan A, B, or C, we follow the guidelines on the maintenance plan. We can also foresee what parts might need to be replaced or serviced before the next PM is due. A work order is created in the City's maintenance work order software for every maintenance plan. There you can also find out what parts were replaced, how long it took to replace it, and or any other information related to the service.

Facility Safety Inspections

City's Risk Management staff conduct periodic facility safety, shop safety, and HAZMAT inspections. These inspections, as well as activities to mitigate any problems identified during the inspections, are documented. These records are maintained by City Risk Management after the walk-through. These reports are sent to department heads and are available in the SMS SharePoint folder.

Fire Hazard and Fire Extinguisher Inspections

Las Cruces Fire Department and the City Risk Management division conduct independent annual fire inspections at our facilities.

Vehicle fire extinguishers are checked daily by drivers during the pre-trip inspection process and recharged annually. Supervisors will have staff initial card on the extinguisher once a month. Building extinguishers are inspected monthly by a designated building manager.

Field Observations of Service Delivery

RoadRUNNER Transit service attendants conduct documented field observations of safety-related aspects of the following elements of service delivery:

- Bus stops.
- Bus transfer locations.

Transit staff ensure that this monitoring is carried out and documented. Field observations are carried out by operations, maintenance, and administrative staff. If deficiencies are noted during the monitoring process, these deficiencies are documented and addressed as a source of proactive hazard

identification through the safety risk management processes. The documented processes and the results of service delivery monitoring activities are on file in RoadRUNNER Transit's SMS SharePoint site.

Risk Mitigation Monitoring

The SMS Executive, in partnership with operations, maintenance, and administrative staff, has responsibility for monitoring operations to identify any safety risk mitigations that may be ineffective, inappropriate, or not implemented as intended. The actual field monitoring of the mitigations is often carried out by subject matter experts, including those that assisted in creating the mitigations.

RoadRUNNER Transit and City Risk Management periodically assess the effectiveness of safety risk mitigations

Activities to monitor the effectiveness of safety risk mitigations ultimately assist RoadRUNNER Transit in determining the following:

- Is existing mitigation working as desired.
- Is the existing mitigation in need of modification to work as desired.
- Is the existing mitigation not working and needs to be replaced.
- Is the existing mitigation no longer needed.

The results of mitigation monitoring activities are made available for further safety risk management activity if needed. Mitigation monitoring documentation is on file in RoadRUNNER Transit's SMS SharePoint site.

Safety Event Investigation

Responsibility for RoadRUNNER Transit's safety event investigation process is shared by the SMS Executive and Chief Safety Officer. Actual performance of safety event investigations, including identifying causal factors, involves not only the SMS Executive and the Chief Safety Officer but also Operations Supervisors, Maintenance Staff, Training Staff, and City Risk Management staff. Local law enforcement responds to accident scenes, as well.

Safety event records provide critical baseline information to support SMS implementation, operation, and safety performance target achievement.

RoadRUNNER Transit and City Risk Management have documents and forms consistent with industry standards for documenting the results of safety events as well as the subsequent investigation. Safety event documentation is on the RoadRUNNER Transit SMS SharePoint site.

Transit supervisors along with Risk Management will investigate safety events. Transit supervisors are trained on how to request, view and save video; interview parties involved, collect comment cards and statements; observe the surrounding area and look for contributing factors; recreate events to get a broader picture of what caused the event and determine ways to avoid repeating the event; and document the event on an accident/incident form. Risk Management Safety Specialists are trained in the following topics:

- Accident Investigation
- Workplace Hazard Recognition & Mitigation

- OSHA Regulations and Standards
- Defensive Driving Techniques

After a safety event investigation is complete, RoadRUNNER Transit staff and City Risk Management staff, with input from subject matter experts, determine whether the safety event was preventable or non-preventable and, based on that decision, whether discipline of employees involved is required.

RoadRUNNER Transit and City Risk Management take the process a step further and perform causal analysis of safety events to help determine if latent organizational factors, beyond individual employee behavior, may have contributed to the event. The results of causal analysis are documented and on file in the City Risk Management office and in the SMS SharePoint site.

Results of this analysis for causal factors provide potential hazard identification information that may need to be put through the RoadRUNNER Transit safety risk management process to reduce the potential risk of recurrence of a similar accident or incident.

Employee Safety Reporting Program Monitoring

An effective ESRP supports hazard identification. The SMS Executive is responsible for monitoring the transit agency's ESRP.

RoadRUNNER Transit has established criteria to help determine if the program is performing as desired. Some of the criteria include:

- The timeliness and accuracy of feedback provided to employees who have reported a safety issue, concern, or condition.
- Volume of reports received.
- Value of reports received.
- How reports are responded to in terms of hazard identification, risk assessment, and risk mitigation.
- How information gathered from the ESRP is shared and communicated.

Documentation on monitoring the safety reporting program is on file.

Monitoring Information Reported Through Other Internal Safety Reporting Programs

In addition to the ESRP, the RoadRUNNER Transit routinely review safety data captured in employee safety reports, safety meeting minutes, customer complaints, and other safety communication channels. When necessary, RoadRUNNER Transit ensures that the concerns are investigated or analyzed through the City's SRM process.

RoadRUNNER Transit also reviews internal and external reviews, including audits and assessments, with findings concerning City's safety performance, compliance with operations and maintenance procedures, or the effectiveness of safety risk mitigations.

Safety Performance Measurement

RoadRUNNER Transit is committed to periodically measuring its safety performance. This measurement includes not only using safety performance indicators to measure the achievement of our safety performance targets but also how well we do in addressing safety risk within every aspect of our service delivery. Documentation of periodic performance measurement results are on file in the RoadRUNNER

Transit's SMS SharePoint site which is available to the Accountable Executive's office.

7. Safety Promotion

Competencies and Training

Under the guidance of the SMS Executive, the RoadRUNNER Transit Training Coordinator has the day-to-day responsibility for the development, delivery, and documentation of all safety skill competencies and SMS training. This includes ensuring all Transit staff are informed and trained on Job Hazard analyses that are pertinent to the employee's job function.

RoadRUNNER Transit has established competencies and training for all personnel directly responsible for safety. Training is provided to employees at the time of hire and on an ongoing refresher basis. The schedule of routine employee training is in Appendix G.

Training Needs Analyses

RoadRUNNER Transit periodically conducts training needs analyses to ensure that its training is up to date, and addresses critical, safety-related concerns. It carries out these training needs analyses by doing the following:

- Reviewing existing job descriptions.
- Identifying which positions, including contractors, have direct responsibility for determining when safety training is needed.
- Determining what SMS roles, responsibilities, and processes are missing from job descriptions.
- Updating job descriptions to reflect SMS practices.

New-Hire Bus Operator Training Program

RoadRUNNER Transit has comprehensive lesson plans for new-hire, classroom, and hands-on Bus Operator training. Continuation of skill training helps it identify hazards, such as training gaps or outdated lesson plans. Lesson plans and schedules not only assist the instructor in delivering the training but also provide a record of the content of the training should it be needed for any other purpose. All RoadRUNNER Transit new-hire Bus Operator lesson plans and schedules are on file in the RoadRUNNER Transit SMS SharePoint site.

New-hire Bus Operator training primarily consists of classroom type coaching and on-vehicle mentoring and training.

Basic topics in new-hire Bus Operator training include but are not limited to:

- Defensive driving
- Pre-trip inspection
- Customer service
- Passenger assistance and securement
- Adapting to weather conditions
- Accident and incident response
- Emergency response activities
- Route training
- Other topics as appropriate to the transit agency

- Bloodborne Pathogens
- Assault Awareness and Prevention
- De-escalation training
- Ergometrics
- Active Shooter (in coordination TSA)
- SMS Awareness video training (currently the TSI course is available and NMDOT will have another similar course in early 2023).

The City provides generic training in other areas, such as Personnel Policies, Drug and Alcohol, Sexual Harassment, Civil Rights, and other appropriate topics.

Bus Operator Refresher Training

RoadRUNNER Transit presently provides Bus Operator refresher training on a variety of topics, including defensive driving, bloodborne pathogens, wheelchair securement, emergency procedures, active shooter, de-escalation, and ergonomics.

RoadRUNNER Transit maintains lesson plans, agendas, and sign-in sheets to document the content of refresher training and individual attendance at that training. These documents are on file in the RoadRUNNER Transit SMS SharePoint site. Status of employee training refreshers is tracked on a spreadsheet on the same SharePoint site. Documentation of completion of individual training in general City requirements is maintained on the City's Learning Management System (LMS).

RoadRUNNER Transit also provides retraining for Bus Operators for performance deficits.

Supervisors, Dispatchers, Customer Service Representatives and Vehicle Maintenance Staff Training

Operations Supervisors, Dial-A-Ride Dispatchers, Customer Service Representatives, and Vehicle Maintenance Staff play a critical role in identifying and responding to hazards and helping to both proactively and reactively mitigate risk. Training for these individuals primarily consists of mentoring, coaching, and on-the-job training. Supervisor training includes reasonable suspicion training, ADA complaint investigation, ride checks and spot checks.

Mentoring, coaching, and on-the-job training are very appropriate training approaches, but due to the complexity of that process, specific safety training elements might not be fully documented. Mentors and coaches document such safety training elements when practical.

RoadRUNNER Transit tracks satisfactory completion of the training on a spreadsheet. . This document is on file in the RoadRUNNER Transit Supervisor SharePoint site.

SMS Orientation

A cross-functional and multi-level understanding of SMS supports all SMS-related activities. Successful SMS implementation and operation require employee involvement and ownership at every level of the agency and within every service-delivery related function. Employees need to understand SMS; what their role is within SMS; and how they, the organization, and customers benefit from SMS success. This knowledge will nurture employee "buy-in." Employees are given specific training on SMS Awareness. In addition to classroom teaching, training videos are available through TSI and, in 2023 through other resources provided to NMDOT.

When this PTASP was first implemented in 2020, SMS orientation sessions were provided for all employee functions and addressed the implications of SMS for all agency functions. This initiative addressed SMS with experienced employees. RoadRUNNER Transit has also plugged information on SMS into all new-hire employee orientations. Documentation of these orientations, including agenda of topics covered, signatures of trainer/trainee, are on file in the RoadRUNNER Transit SMS SharePoint site.

Safety Risk Management Orientation for Subject Matter Experts

Successful proactive safety risk mitigation begins with subject matter experts who have a clear understanding of their responsibilities and the skills required to carry them out.

Employees who participate in safety risk management activities as subject matter experts need to understand how to carry out their responsibilities. The SMS Executive makes sure that subject matter experts are oriented on their safety risk management responsibilities, the desired outcomes of safety risk management activities, and the importance of the effort to RoadRUNNER Transit's safety performance.

Documentation of the orientation process, as well as the orientations themselves, includes how the agency:

- Assesses hazards for consequences.
- Conducts safety risk assessments.
- Creates safety risk mitigations.

Documentation of this ongoing activity is on file in the RoadRUNNER Transit SMS SharePoint site.

Safety Performance Monitoring Orientation

The quality of safety performance monitoring is reflected in an agency's overall positive safety performance. Employees who participate in safety performance monitoring activities need to know how to carry out their responsibilities.

The SMS Executive makes sure that these employees receive orientations on their responsibilities, the desired outcomes of safety performance monitoring, and the importance of the effort to overall agency safety performance.

Orientations include how to perform monitoring activities. Performance monitoring includes such activities as:

- Field observations to ensure operations and maintenance policies and procedures are being followed correctly.
- Assessing and documenting employee safety performance.
- Monitoring the effectiveness of safety risk mitigation.
- Evaluating the effectiveness of the employee safety program.

Documentation of these activities is on file in the RoadRUNNER Transit SMS SharePoint site.

Orientation on Employee Safety Reporting Program

An effective ESRP is one of the most important tools for hazard identification.

RoadRUNNER Transit's ESRP, at a minimum, provides the following information:

- The purpose and benefits of the program.
- Guidelines on the types of safety concerns and issues employees should report.
- Reporting methods available to employees (how to report).
- Explanation of how the information will be managed and shared.
- Protections for employees who report safety concerns.
- Description of the operational behaviors that are not protected and may result in discipline.
- Agency's commitment to providing feedback on reported safety concerns.

Agendas of the ESRP orientation is on file in the RoadRUNNER Transit SMS SharePoint site.

Conflict Management and De-escalation skills

All RoadRUNNER employees have access to an e-learning module that describes strategies for managing conflict and de-escalating that conflict to reduce the risk of assault.

Training Documentation

Training documentation provides formal proof that employees were trained Up-to-date training documentation also assists RoadRUNNER Transit in forecasting future training schedules.

RoadRUNNER Transit training documentation includes:

- Records of training needs analysis for lesson plan development
- Curricula for initial and refresher training.
- Training schedules and records of all completed training.
- Procedures for revising training materials.
- Course assessment materials.
- Copies of individual employee training records.

RoadRUNNER Transit records of course completion include:

- Dates training was held.
- Content covered during training sessions
- Signatures of instructor and trainee.

Records of training documentation are on file.

Training Monitoring

RoadRUNNER Transit regularly monitors its training to ensure effectiveness. The responsibility for regular monitoring of staff training records and addressing issues is with the Transit Training Coordinator. Specifically, the training monitoring process addresses the following:

- monitor training to make sure it delivers the necessary SMS skills and information.
- establish a process for reviewing and revising training courses and consider review frequency, reviewers, and decision-making process for revisions.

Safety Communication

The Transit Training Coordinator is responsible for ensuring the distribution and communication of safety and safety performance information throughout RoadRUNNER Transit. This person is assisted in this responsibility by appropriate Managers and Supervisors.

Safety communication provides a foundation to build SMS processes and activities. RoadRUNNER Transit has ensured that all its employees are aware of information relevant to their safety-related roles and responsibilities. This information includes explanations of changes to policies, activities, or procedures.

RoadRUNNER Transit documented its overall approach to safety communication and supporting safety communication activities. This overall approach to safety communication is on file in the Transit Section's SMS SharePoint site which is accessible to the SMS Executive.

In general, RoadRUNNER Transit's documentation of safety communication includes details about:

- Objectives of the communication
- Content
- Target audience
- Format
- Frequency of the communication
- Ways to ensure communication was understood.

Safety Meetings

An effective employee safety meeting process provides a strong platform for safety-related communication and dialogue; identification of safety hazards, concerns, issues; and the delivery of refresher training.

The Transit Section holds a monthly safety committee meeting which includes the Risk Management Department, supervisors, Transit mechanic staff, and non-supervisory staff. Supervisors also discuss safety related issues daily. Supervisors also meet biweekly to specifically review accidents and incidents and make recommendations to prevent future similar incidents. Agendas for these meetings are stored on the PTASP website as well as recording of Teams Safety Meetings.

RoadRUNNER Transit's documentation of its safety meeting process includes:

- How often it schedules employee safety meetings.
- The job functions that are required to attend meetings.
- How it chooses topics to discuss during the meetings.
- How it addresses those topics within the employee safety meeting.

Employees involved in the safety meetings are given a calendar invitation via Microsoft Outlook that includes the date, time, and meeting location. Supervisors meet with staff to remind employees of the upcoming meetings. All employees in attendance are required to sign in for documentation purposes. The Transit Safety Team leads the meetings, bringing up safety topics to discuss. Meetings are thirty minutes to an hour based on driver participation. Meetings are held once a month with drivers to allow for suggestions and feedback. With respect to any current and future pandemic guidelines, meetings would be scheduled in a manner that is consistent with the pandemic guidelines.

Organization-Wide Communication of Safety Hazard and Safety Risk Information

A goal of safety risk management processes is to reduce safety risk for employees and customers. Safety-sensitive employees are always vulnerable to the consequences of safety hazards within the transit environment. Timely reporting to employees of newly identified safety hazards and the safety risks those hazards present can help reduce that vulnerability.

RoadRUNNER Transit and City Risk Management have documented procedures for communicating hazards. The SMS Executive and Chief Safety Officer are responsible for making sure this communication takes place. The documentation of these procedures is on file in the RoadRUNNER Transit SMS SharePoint site which can be accessed by both the SMS Executive and City Risk Management.

Communication about Safety Risk Mitigations

RoadRUNNER Transit and City Risk Management are committed to informing all employees at every level of operations about the safety risk mitigations it is putting into effect. The following reasons explain why this information is given:

- It allows employees to know the transit agency is doing all it can to reduce risk.
- It brings attention and awareness to employee roles and responsibilities that may be affected by new mitigations.
- It allows informed employees to be better situated as a source of information on determining how well mitigations are working.

The SMS Executive and Chief Safety Officer share responsibility for making sure that this communication takes place. Documented procedures for communicating safety risk mitigations to employees are on file in the RoadRUNNER Transit's SMS SharePoint site.

Organization-Wide Communication of Agency Safety Performance

Transit agencies implement SMS to help them continuously improve their safety performance. Communicating agency safety performance information promotes employee "buy-in" to SMS processes, thus further improving the agency's overall safety performance.

RoadRUNNER Transit employees should have ownership of safety. To reinforce this ownership, RoadRUNNER Transit annually communicates the agency's overall safety performance to all employees regardless of job function. This coincides with the annual NTD reporting in October.

RoadRUNNER Transit documents how it communicates safety performance information throughout the transit section and to the City. The SMS Executive is responsible for taking the lead on this communication and making sure that it takes place. The documented procedures are on file in RoadRUNNER Transit's SMS SharePoint site.

Additional Information

RoadRUNNER Transit maintains documents such as JHA's, SOP's, Reviews of Safety Hazards, and updated Transit Agency Safety Plan that describe the programs, policies, and procedures it uses to carry out its agency safety plan. It also maintains relevant documents not included or referenced elsewhere in this safety plan, related to the implementation of the transit agency's SMS, as well as results from SMS processes and activities. To the greatest extent possible these documents are maintained electronically in a secure cloud-based location that is accessible to the Accountable Executive, the SMS Executive, the Chief Safety Officer, and other SMS team members.

These documents are maintained for at least three years after their creation and made available upon request by the FTA, other federal entities, or the NMDOT. The SMS Executive is the point of contact for providing Agency Safety Plan-related information to external agencies to ensure access to these documents.

Appendix A: Definitions

Accident: An Event that involves any of the following: A loss of life; a report of a serious injury to a person; a collision of public transportation vehicles; a runaway train; an evacuation for life safety reasons; or any derailment of a rail transit vehicle, at any location, at any time, whatever the cause.

Accountable Executive: A single, identifiable person who has ultimate responsibility for carrying out the Public Transportation Agency Safety Plan of a public transportation agency; responsibility for carrying out the agency's Transit Asset Management Plan; and control or direction over the human and capital resources needed to develop and maintain both the agency's Public Transportation Agency Safety Plan, in accordance with 49 U.S.C. 5329(d), and the agency's Transit Asset Management Plan in accordance with 49 U.S.C. 5326.

Agency: Refers to the City of Las Cruces Transit operations.

Chief Safety Officer: An adequately trained individual who has responsibility for safety and reports directly to a transit agency's chief executive officer, general manager, president, or equivalent officer. A Chief Safety Officer may not serve in other operational or maintenance capacities, unless the Chief Safety Officer is employed by a transit agency that is a small public transportation provider as defined in this part, or a public transportation provider that does not operate a rail fixed guideway public transportation system.

Equivalent Authority: An entity that carries out duties similar to that of a Board of Directors, for a recipient or subrecipient of FTA funds under 49 U.S.C. Chapter 53, including sufficient authority to review and approve a recipient or subrecipient's Public Transportation Agency Safety Plan.

Event: Any Accident, Incident, or Occurrence.

Hazard: Any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.

Incident: An event that involves any of the following: A personal injury that is not a serious injury; one or more injuries requiring medical transport; or damage to facilities, equipment, rolling stock, or infrastructure that disrupts the operations of a transit agency.

Injury: Any reported safety event that injures anyone, no matter how minor the injury.

Investigation: The process of determining the causal and contributing factors of an accident, incident, or hazard, for the purpose of preventing recurrence and mitigating risk.

Major Failure: When any vehicle has a failure of a system that creates a safety issue and results in an interruption of service while the vehicle was in revenue service.

National Public Transportation Safety Plan: The plan to improve the safety of all public transportation systems that receive Federal financial assistance under 49 U.S.C. Chapter 53.

Occurrence: An Event without any personal injury in which any damage to facilities, equipment, rolling stock, or infrastructure does not disrupt the operations of a transit agency.

Operator: Operator of a public transportation system means a provider of public transportation as defined under 49 U.S.C. 5302(14). The City of Las Cruces is the operator in this plan.

Paratransit: Refers to accessible transit services, mandated by the Americans with Disabilities Act (ADA), that provide equivalent transportation to persons who have a disability that prevents the use of fixed route services. This service complements fixed route service and is also called complementary paratransit.

Performance measure: An expression based on a quantifiable indicator of performance or condition that is used to establish targets and to assess progress toward meeting the established targets.

Performance target: A quantifiable level of performance or condition, expressed as a value for the measure, to be achieved within a time period required by the Federal Transit Administration (FTA).

Public Transportation Agency Safety Plan: The documented comprehensive agency safety plan for a transit agency that is required by 49 U.S.C. 5329 and this part.

Risk: The composite of predicted severity and likelihood of the potential effect of a hazard.

Risk mitigation: A method or methods to eliminate or reduce the effects of hazards.

Safety Event: Any Accident, Incident, or Occurrence.

Safety Assurance: Processes within a transit agency's Safety Management System that functions to ensure the implementation and effectiveness of safety risk mitigation, and to ensure that the transit agency meets or exceeds its safety objectives through the collection, analysis, and assessment of information.

Safety Management Policy: A transit agency's documented commitment to safety, which defines the transit agency's safety objectives and the accountabilities and responsibilities of its employees in regard to safety.

Safety Management System (SMS): The formal, top-down, organization-wide approach to managing safety risk and assuring the effectiveness of a transit agency's safety risk mitigation. SMS includes systematic procedures, practices, and policies for managing risks and hazards.

Safety Management System (SMS) Executive: A Chief Safety Officer or an equivalent. For purposes of this plan the equivalent is the Transit Director who services as the SMS executive.

Safety performance target: A Performance Target related to safety management activities.

Safety Promotion: A combination of training and communication of safety information to support SMS as applied to the transit agency's public transportation system.

Safety risk assessment (SRA): The formal activity whereby a transit agency determines Safety Risk

Management priorities by establishing the significance or value of its safety risks.

Safety Risk Management: A process within a transit agency's Public Transportation Agency Safety Plan for identifying hazards and analyzing, assessing, and mitigating safety risk.

Serious injury: Any injury which: (1) Requires hospitalization for more than 48 hours, commencing within 7 days from the date of the injury was received; (2) Results in a fracture of any bone (except simple fractures of fingers, toes, or noses); (3) Causes severe hemorrhages, nerve, muscle, or tendon damage; (4) Involves any internal organ; or (5) Involves second- or third-degree burns, or any burns affecting more than 5 percent of the body surface.

Small public transportation provider: A recipient or subrecipient of Federal financial assistance under 49 U.S.C. 5307 that has one hundred (100) or fewer vehicles in peak revenue service and does not operate a rail fixed guideway public transportation system.

State: A State of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, Guam, American Samoa, and the Virgin Islands.

State of good repair: The condition in which a capital asset is able to operate at a full level of performance.

System Reliability: The mean distance, in miles by mode, between major mechanical failures by mode.

Transit agency: An operator of a public transportation system. For purposes of this plan, this is the City of Las Cruces.

Transit Asset Management Plan: The strategic and systematic practice of procuring, operating, inspecting, maintaining, rehabilitating, and replacing transit capital assets to manage their performance, risks, and costs over their life cycles, for the purpose of providing safe, cost-effective, and reliable public transportation, as required by 49 U.S.C. 5326 and 49 CFR part 625.

Appendix B: Acronyms and Abbreviations

Acronym or Abbreviation	Meaning
ADA	Americans with Disabilities Act
ASP	Agency Safety Plan
CFR	Code of Federal Regulations
CNG	Compressed Natural Gas
ESRP	Employee Safety Reporting Program
FTA	Federal Transit Administration
NMDOT	New Mexico Department of Transportation
MPO	Metropolitan Planning Organization
PTASP	Public Transportation Agency Safety Plan
SMPS	Safety Management Policy Statement
SMS	Safety Management System
SRM	Safety Risk Management
TAB	Transit Advisory Board
TAM	Transit Asset Management
TSI	Transportation Safety Institute

Appendix C: City of Las Cruces ASP Approval Documentation

[Approving council resolution inserted here]

Appendix D: Certification Documentation

[This page is reserved for documentation of FTA certification of the ASP]

Appendix E: RoadRUNNER Transit Safety Risk Assessment Matrix

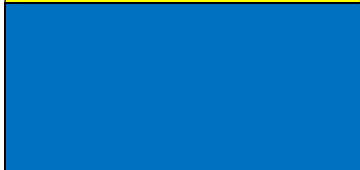
Risk Assessment Matrix				
SEVERITY	Catastrophic (1)	Critical (2)	Marginal (3)	Negligible (4)
LIKELIHOOD				
Frequent (A)	High	High	High	Medium
Probable (B)	High	High	Medium	Medium
Occasional (C)	High	Medium	Medium	Low
Remote (D)	Medium	Medium	Low	Low
Improbable (E)	Medium	Low	Low	Low

Severity of the Consequence		
<i>Definition Category</i>	<i>Meaning</i>	<i>Value</i>
Catastrophic	Could result in one or more of the following: death, permanent total disability, irreversible significant environmental impact that violates law or regulation, or monetary loss equal to or exceeding \$250,000.	1
Critical	Could result in one or more of the following: permanent partial disability, injuries or occupational illness that may result in hospitalization of at least one person, property damage exceeding \$25,000 but less than \$250,000, system shut down lasting between 10 minutes and 4 hours, or reversible significant environmental impact causing a violation of law or regulation.	2
Marginal	Could result in one or more of the following: injury or occupational illness resulting in one or more lost work day(s), reversible moderate environmental impact without violation of law or regulation, or monetary loss up to \$25,000, or system shutdown of less than 10 minutes	3
Negligible	Could result in one or more of the following: injury or occupational illness not resulting in a lost work day, minimal environmental impact, or monetary loss less than \$25,000.	4

<i>Qualitative Definition</i>	<i>Meaning</i>	<i>Value</i>
Frequent	Likely to Occur Frequently - more than once per month	A
Probable	Likely to Occur less than once per month but more than once per year	B
Occasional	Likely to Occur less than once per year but more than once per decade	C
Remote	Very Unlikely to Occur - once in the life of the system	D
Improbable	Almost inconceivable that the event will occur in the life of the system	E

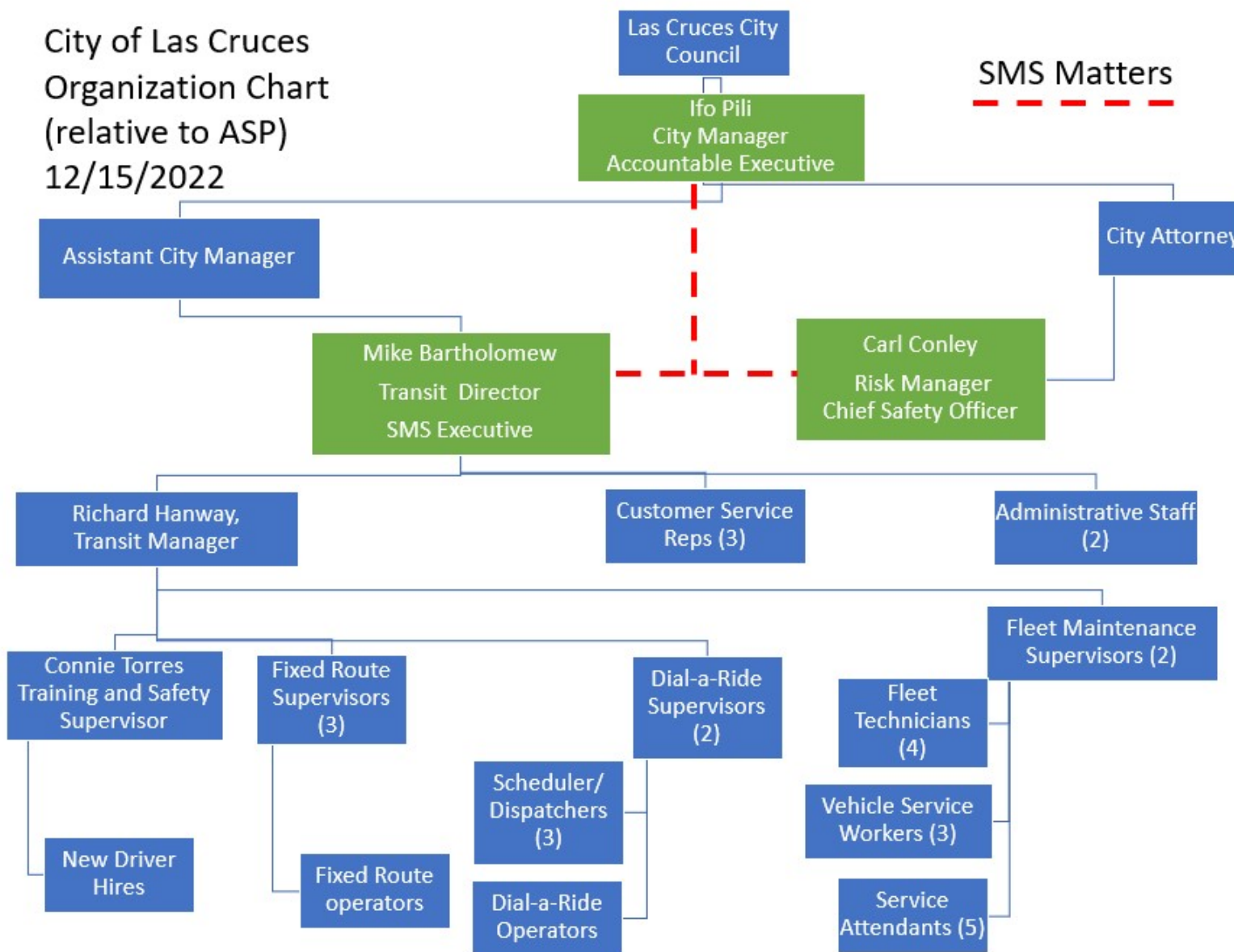
Safety Risk Levels

Risk Assessment Matrix Color Code

<i>"Tolerability" based on identified severity and likelihood.</i>	
	Unacceptable under the existing circumstances.
	Acceptable based upon mitigations; monitoring is necessary.
	Acceptable under existing circumstances; with senior management approval.

Appendix F: RoadRUNNER Transit Organizational Chart

City of Las Cruces
Organization Chart
(relative to ASP)
12/15/2022



Appendix G: Employee Training Schedule

All Training for new drivers, drivers, non- drivers, supervisors, non- supervisors, and recurring shall be refreshed on a regular basis. All new training and recurring training shall be refreshed as follows (Items with "*" required of all City employees):

- a) Farebox & Clever Device – Once
- b) Federal Motor Carrier Safety Regs-signed as received – Once
- c) Cybersecurity* – Yearly
- d) Wheelchair – At Hire then Every Year
- e) Ergonomics – At Hire then Every Year
- f) Customer Service*/ De- Escalation – At Hire then Every Year (De-escalation training may not be available every year)
- g) Harassment Prevention* – Yearly
- h) Ethic's* – Yearly
- i) Bloodborne Pathogens – Yearly
- j) Fire Extinguisher Training – 2yr
- k) Victim Assistance – as available
- l) Railroad Crossing For Drivers – 2yr
- m) Human Trafficking – 2yr
- n) TSA First Observer Plus Training – 2yr
- o) Bicycle Awareness – 2yr
- p) Alcohol and Drug Policy Responsibilities* - 2yr (Supervisors take drug and alcohol reasonable suspicion training)
- q) FMLA* – 2yr
- r) ADA *– 2yr
- s) Defensive Driving* – 4yr
- t) CDL Defensive Driving for Route Supervisors and Drivers only* – 4yr
- u) Active Shooter Training 2yr
- v) Assault Awareness 2 yr
- w) SMS Awareness Training – 2yr.

Supervisors Only Get Additional Training as Follows:

- A) Drug and Alcohol Reasonable Suspicion* – 2yr
- B) FLSA* – 2yr
- C) FMLA for supervisors* - 2yr
- D) Hiring and Selection* – 2yr

- E) Harassment Prevention for Supervisors – 2yr
- F) Managing Employee Performance* – 2yr
- G) Performance Appraisals* – 2yr



City of Las Cruces

City Council Action and Executive Summary

23-108

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☒ 5 ☐ 6 ☐ N/A

1st Reading: **Adopted:** March 20, 2023

Drafter: Jan Lauterbach **Department:** City Manager's Office

Program: Housing & Neighborhood Services **Line of Business:** Housing & Neighborhood Services

Title: **A RESOLUTION APPROVING A HOME INVESTMENTS PARTNERSHIP (HOME) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR AFFORDABLE HOUSING DEVELOPMENT IN THE METRO VERDE PUD.**

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

PURPOSE(S) OF ACTION:

Approve HOME agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

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

Annual Action Plans presented to and adopted by City Council outline how HOME funds for each program year (PY) will be spent per the strategic goals outlined in the Consolidated Plan. On May 7, 2018, through Resolution 18-126, City Council approved the 2018 Action Plan as amended, allocating \$295,000 in HOME funds to Tierra Del Sol Housing Corporation for HOME-eligible expenses in the construction of affordable single-family homes.

Tierra Del Sol, a Community Housing Development Organization (CHDO) is proposing to use HOME funding up to \$295,000 (HOME entitlement + HOME CHDO) for construction on 10 lots in the Metro Verde PUD, Metro Park Village Phase 4. The homes to be constructed will be sold to low-income households utilizing Tierra Del Sol's homeownership program. The HOME funds will provide for a direct reduction in the sales price of the homes, offering a more affordable mortgage to individual households. The City will file a Deed Restriction and Restrictive Covenants Agreement against each property to maintain the properties' affordability and use as residential owner-occupied housing.

In order to comply with HOME program regulations, a HOME Program Recoverable Grant Agreement as shown in Exhibit "A", is required to be executed with City Council approval, as indicated under the proposed Resolution.

SUPPORT INFORMATION:

[Exhibit "A" HOME Agreement TDS MetroVerde PUD](#)

PLAN(S):

Agenda Item #8.1.

City Council Strategic Plan, Department Strategic Business Plan, 2016-2020 Consolidated Plan, 2021-2025 Consolidated Plan, Elevate Las Cruces

DOES THIS AMEND THE BUDGET?:

- ☐ Yes
☒ No

BUDGET / FISCAL IMPACT:

BUDGETED AMOUNT: \$295,000 **AVAILABLE AMOUNT:** \$295,000 **EXPENDITURE AMOUNT:**
\$295,000

Funding Source(s):

20435012-721080-10246 \$75,000
20435012-721080-10279 \$220,000

Overall Budget Impact:

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

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

- ☐ Yes
☒ No

Does this action align with Elevate Las Cruces?

- ☒ Yes
☐ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the Resolution and HOME agreement with Tierra Del Sol Housing Corporation for affordable housing development.
2. Vote "No"; this will not approve the Resolution nor the HOME agreement with Tierra Del Sol Housing Corporation for affordable housing development.
3. Vote to "Amend"; this would require further direction from City Council.
4. Vote to "Table"; this could delay the Resolution and would require further direction from City Council.

REFERENCE INFORMATION:

Resolution 18-126
Resolution 21-147

RESOLUTION 23-108

A RESOLUTION APPROVING A HOME INVESTMENTS PARTNERSHIP (HOME) AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND TIERRA DEL SOL HOUSING CORPORATION FOR AFFORDABLE HOUSING DEVELOPMENT IN THE METRO VERDE PUD.

The City Council is informed that:

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

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

WHEREAS, on May 7, 2018, City Council approved Resolution 18-126 approving the 2018 Action Plan allocated \$295,000 (\$220,000 HOME Entitlement + \$75,000 CHDO Reserve) to Tierra Del Sol Housing Corporation, a Community Housing Development Organization (CHDO) for HOME eligible construction expenses; and

WHEREAS, Tierra Del Sol desires to use up to \$295,000 in funding for the construction of 10 homes in the Metro Verde PUD, Metro Park village Phase 4, for affordable housing development; and

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

WHEREAS, in order to comply with HOME regulations, a HOME Program Recoverable Grant Agreement between the City and Tierra Del Sol Housing Corporation is required to be executed.

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

(I)

THAT the HOME Program Recoverable Grant Agreement between the City and Tierra Del Sol Housing Corporation as shown in Exhibit "A" attached hereto and made a part of this Resolution, is hereby approved.

(II)

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

(III)

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

DONE AND APPROVED this day of

Agenda Item #8.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

Exhibit "A"

**HOME PROGRAM RECOVERABLE GRANT
AGREEMENT BETWEEN
THE CITY OF LAS CRUCES
AND
TIERRA DEL SOL HOUSING CORPORATION**

This **HOME PROGRAM RECOVERABLE GRANT AGREEMENT** (hereinafter referred to as the "Agreement") is entered into by and between the **CITY OF LAS CRUCES**, a New Mexico municipal corporation with a principal address of 700 N Main St., Las Cruces, New Mexico 88001 (hereinafter referred to as "City") and **TIERRA DEL SOL HOUSING CORPORATION**, a non-profit agency, and Community Housing Development Organization (CHDO), whose EIN number is LL4BQ6Z9BM4 and whose address is 210 E. Idaho Suite B, Las Cruces, New Mexico 88005 (hereinafter referred to as "Developer").

WITNESSETH:

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

WHEREAS, the recipient has submitted a proposal to utilize Two Hundred Ninety-Five Thousand Dollars and No Cents (\$295,000.00) in HOME funds (\$220,000 EN + \$75,000 CHDO Reserve) for new construction of ten homes in the Metro Verde PUD, Metro Park Village Phase 4, located more specifically as described on the attached **Attachment "A"** (hereinafter referred to as "Property");

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

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

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

SECTION 1. DEFINITIONS

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

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

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

14. Project – the new construction of ten owner occupied, single-family units within the Property, in which all units shall be exclusively occupied by Extremely Low, Very Low- or Low-Income Persons.
15. Project Completion – that the necessary title transfer requirements and construction work have been performed; the project complies with the requirement of this part (including the property standards under § 92.251); the final drawdown has been disbursed for the project; and the project completion information has been entered into HUD's IDIS system. All units contemplated under this agreement must be completed within 4 years from the effective date of this agreement or IDIS set-up date.
16. Sale of Homebuyer Units – All units contemplated under this agreement must be sold within 6 months of completion date of the project(s) individual HOME-assisted units. Sold units are defined as units that:
 - 1) have a "ratified sales contract" or
 - 2) actual "permanent closing" that includes completion of title transfer and execution of warranty deed to an income qualified household that will occupy the unit as their primary residence.
 - 3) Maximum sales price of the individual units cannot exceed the HUD HOME ownership value limits as defined by HUD at the time of sale. Proceeds from the sale may be retained by the developer for activities that benefit low-income families.
17. Property - All that certain real property located in the county of Dona Ana, State of New Mexico, described as Lots 31, 32, 60-67, Metro Park Village Phase 4. See attached **Attachment "A"** for full legal description.
18. Very Low Income Person or Very Low Income Household – one or more natural persons or a family whose has a total Annual Gross Income for the household that does not exceed fifty percent (50%) of the median annual income Adjusted for Family Size for households within the Las Cruces MSA, which includes the City of Las Cruces, as determined by HUD.

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

SECTION 2. RECOVERABLE GRANT AMOUNT AND USE OF FUNDS

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

Under the terms and conditions of this Agreement, the City agrees to grant the Developer a total of Two Hundred Ninety-Five Thousand Dollars and No Cents (\$295,000.00) for new construction of the Property. The grant funds to the Developer shall be in the form of a recoverable grant on the terms set forth in this Agreement and the individual owners' Deed Restriction and Covenants Agreements, as required by the City. The Owners' shall secure a Deed Restrictions and Covenants Agreement on the Property (the "Deed Restrictions") substantially in the form attached hereto and incorporated herein by reference as **Attachment "C"**.

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

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

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

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

5. Layering Review: As applicable, it is the City's responsibility under HOME regulations, and more specifically 24 CFR §92.250, to evaluate the use of other local, state, or federal assistance in HOME-assisted projects to ensure that it does not invest any more HOME funds than are necessary to provide Low Income Housing. The Developer must submit revised Sources and Uses Statements and Pro-forma if any of the original funding sources, amounts or financial conditions change from the time this application was submitted.
6. Program Income: Any program income generated from the proceeds of the HOME grant shall be returned to the City in accordance with 24 CFR §92.503(a) and 24 CFR §92.504(c)(2)(ii).
7. Term: The term of this Agreement shall commence on the effective date of this Agreement which is the date of the last party to sign this Agreement (the "Effective Date"), and shall continue through the end of the Fifteen (15) year Affordability Period. Notwithstanding any of the foregoing, all record-keeping requirements, audit, and use and maintenance of the Property requirements set forth in this Agreement or any record-keeping or use requirements mandated by HOME regulations shall survive termination of this Agreement.
8. Payment: It is expressly agreed and understood that the total amount to be paid by the City under this Agreement shall not exceed \$295,000. Payment requests are due by the fifteenth (15th) day of each month. If no payment request is needed for a particular month, the Developer must submit in writing that no payment request is required for that particular month. The Developer agrees to use the Payment Request form as referenced in **Attachment "E."** Payments may be contingent upon certification of the Developer's financial management system in accordance with the standards specified in 2 CFR Part 200, Subpart D, "Financial and Program Management."
9. HOME Match Requirement: The Grantee and the Developer are currently exempt from HUD's Match Requirements in 24 CFR §92.220. The Developer will be notified if the requirement becomes effective. Upon notice of a required HOME match the Developer and/or the City would be required to make a contribution up to 25% of the HOME funds granted to the developer and expended during the applicable federal fiscal year.

Possible Maximum Match Liability: \$295,000 x 25% = \$73,750

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

SECTION 3. GENERAL TERMS AND CONDITIONS

1. Applicable Laws: The Developer shall comply with all applicable federal and state laws, rules, and regulations dealing with the Property, whether presently existing or hereafter promulgated. The Developer agrees to comply with all of the HOME Program regulations, HUD regulations, 42 U.S.C. §§12701-12839, 24 CFR Part 92 as amended from time to time, whether set forth herein or not, and agrees to execute or amend documents as necessary to be in compliance therewith. The Developer, as a CHDO, shall comply with the Uniform Administrative Requirements at 24 CFR Part 84.21. The Developer shall follow procedures as outlined in their Procurement Manual for construction activities. The Developer also shall comply with all other applicable federal, state, and local statutes, ordinances, rules and regulations, including, but not limited to, all applicable provisions of the City's Municipal, Building, and Zoning Codes.
2. Period of Affordability/Restrictive Covenant: All HOME-assisted units shall be maintained as affordable housing for the 10-year Affordability Period. To be classified as affordable housing, it is required that the owner shall maintain the Property as Owner Occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period. If the HOME assistance/subsidy is from \$1 to \$14,999, then the Affordability Period is five (5) years from the project completion date; if the HOME assistance/subsidy is from \$15,000 up to and including \$40,000, then the Affordability Period is ten (10) years from the project completion date; if the HOME assistance/subsidy is greater than \$40,000, then the Affordability Period is fifteen(15) years from the project completion date; or if the subsidy is for new construction or acquisition of rental housing, then the Affordability Period is twenty (20) years. The Affordability Period will begin on the effective project completion date. In order to ensure compliance with the Affordability

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

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

to be constructed, the household must be qualified at the time the agreement is signed. All qualifying documentation shall be provided to City HOME staff for review prior to occupancy and/or permanent closing.

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

income eligibility. Such information shall be maintained in a beneficiary file by the Developer and shall be made available to the City's monitors and/or their designees for review upon request.

10. Uniform Administrative Requirements: The Developer and the City shall comply with 24 CFR §92.505 regarding uniform administrative requirements. The Developer shall provide the City with such documentation and records to satisfy the City's requirements under these various provisions. The Developer also agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred.
11. Audits and Inspections: The Developer's records with respect to any matters covered by this Agreement shall be made available to the City, grantor agency, their designees or the Federal Government, at any time during normal business hours, as often as the City or grantor agency deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data.

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

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

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

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

records demonstrating compliance with 24 CFR §92.354, including contract provisions and payroll records.

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

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

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

acquisition.” It is anticipated that no displacement and relocation will occur as the result of new construction.

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

25. Affirmative Marketing: As applicable the Developer and the City shall exercise affirmative fair housing marketing and shall comply with the provisions of 24 CFR §92.351. The Developer and the City shall keep records necessary to comply with 24 CFR §92.508(a)(7).
26. Miscellaneous Federal Requirements: The Developer shall comply with the federal requirements set forth in 24 CFR Part 5 as applicable.
27. Religious Organizations: The Developer shall comply with 24 CFR §92.257 regarding religious organizations. The Program must be used exclusively for secular purposes, available to all persons regardless of religion, and there must be no religious or membership criteria for participants in the Program.
28. Financial Accountability: The Developer agrees to comply with the standards specified in 2 CFR Part 200, Subpart D, Financial Program Management, and agrees to adhere to the accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The Developer shall administer its program in conformance with 2 CFR part 200 "Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards".
29. Environmental Review: This agreement is a conditional commitment of funding pending the completion of an acceptable environmental assessment of the project properties. No draws can be submitted and not funds disbursed until the project has received environmental clearance. The Project will be assessed and comply in accordance with the National Environmental Policy Act of 1969 (NEPA) (U.S.C. §4321) and implementing regulations contained in 24 CFR Parts 50-58.
30. Environmental Conditions
- A. Air and Water
- The Subrecipient agrees to comply with the following requirements insofar as they apply to the performance of this Agreement:
- Clean Air Act, 42 U.S.C., 7401, et seq.;
 - Federal Water Pollution Control Act, as amended, 33 U.S.C., 1251, et seq., as amended, 1318 relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued thereunder;
 - Environmental Protection Agency (EPA) regulations pursuant to 40 CFR Part 50, as amended.

31. Reversion of Assets: Upon the Agreement's expiration, the Developer shall transfer to the City any HOME funds on hand and any accounts receivable attributable to the use of HOME funds.
32. Clean Air Act and Federal Water Pollution Control Act: As applicable, the developer agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C 125101387). Violations must be reported to the Federal Awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

SECTION 4. DEFAULTS AND REMEDIES

1. Events of Default: The following shall constitute an Event of Default under this Agreement:
 - a) If the Developer fails to comply with any regulations governing HOME Program awards, including, but not limited to, 42 U.S.C. §§12701-12839, 24 CFR Part 92, or fails to comply with any of the terms contained in this Agreement and such failure continues for a period of thirty (30) days following written notice thereof given by the City to the Developer;
 - b) If the Developer is deemed in default under the terms of other financing or mortgages used for the Project and said defaults extends beyond the applicable cure period provided in said documents;
 - c) If at any time any material representation made by the Developer in any written certification or communication submitted by the Developer to the City in an effort to induce the making of this grant or the administration thereof is determined by the City to be false, misleading, or incorrect in any material manner;
 - d) If the Developer does not disclose to the City, upon demand, the names of all persons with whom the Developer has contracted or intends to contract with for the construction or management of any portion of the Project, including contracts for services and/or labor; and
 - e) If any default shall occur under the Mortgage and Restrictive Covenants, or any Grant Documents executed in connection with this grant by the City (herein in the "Grant Documents") which is not elsewhere specifically addressed herein and such default is not cured within the applicable cure period set forth in the Grant

Documents, or if there is no cure period set forth, then within thirty (30) days following the date of written notice to the Developer thereof.

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

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

SECTION 5. INDEMNIFICATION

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

SECTION 6. INSURANCE

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

- iii. Flood Insurance: The Developer shall provide Flood Insurance as required under applicable HUD regulations and where applicable.

SECTION 7. MISCELLANEOUS PROVISIONS

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

City of Las Cruces
P.O. Box 20000
Las Cruces, New Mexico 88004
(575) 528-3134

B. Executive Director
Rose Garcia
Tierra Del Sol Housing Corporation
Las Cruces, New Mexico 88005
(575) 541-0477

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

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

Tierra Del Sol Housing Corporation

Rose Garcia, Executive Director

Date

CITY OF LAS CRUCES

Ikani Taumoepeau, Assistant City Manager

Date

APPROVED AS TO FORM:
 2/21/23

City Attorney

ATTACHMENT "A"

LEGAL DESCRIPTION

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

Lots 31-32, and Lots 60-67 Metro Park Village, Phase 4, in the City of Las Cruces, Dona Ana County, New Mexico, as the same is shown and designated on Plat No. 5888 thereof, filed for record in the Office of the County Clerk of said county on April 25, 2022, and recorded in Book 25, Pages 66-67, Plat Records

ATTACHMENT "B"

STANDARDS OF ELIGIBILITY - 2022 INCOME LIMITS

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

HUD INCOME GUIDELINES LAS CRUCES MSA INCOME LIMITS Income Levels by Family Size HOME INCOME AND RENT LIMITS EFFECTIVE DATE, June 15, 2022				
MEDIAN FAMILY INCOME (MFI): \$56,800				
FAMILY SIZE * # OF PERSONS	EXTREMELY LOW INCOME (30% of Median)	VERY LOW INCOME (50% of Median)	LOW INCOME (80% of Median)	MODERATE INCOME (100% of Median)
1	\$12,850	\$21,350	\$34,200	\$39,750
2	\$14,650	\$24,400	\$39,050	\$45,450
3	\$16,500	\$27,450	\$43,950	\$51,100
4	\$18,300	\$30,500	\$48,800	\$56,800
5	\$19,800	\$32,950	\$52,750	\$61,350
6	\$21,250	\$35,400	\$56,650	\$65,900
7	\$22,700	\$37,850	\$60,550	\$70,450
8	\$24,200	\$40,300	\$64,450	\$75,000
Source: The US department of Housing and Urban Development (HUD) Office of Policy Development and Research (PD&R), FY 2022 Income limits from website at https://files.hudexchange.info/reports/published/HOME_IncomeLmts_State_NM_2022.pdf Income limits for families with more than eight-persons, 8% of the four person base should be added to the either person income limit. Income limits are rounded to the nearest \$50. For simplicity, this is optional for income limits for nine-plus person families.				

ATTACHMENT "C"

**CITY OF LAS CRUCES
HOME PROGRAM
DEED RESTRICTIONS AND COVENANTS AGREEMENT**

Date: _____, 20__

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

Deed Restrictions

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

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

and assigns of Owner who may acquire any rights, title, or interest in or to the Property, or any part of it. Owner, its successors, heirs, and assigns hereby agree and covenant to abide by and fully perform the provisions of this instrument.

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

Restrictive Covenants

This Agreement restricts the use of the Property and is in consideration of a subsidy from Lender to Owner, through the Agent, Tierra Del Sol Housing Corporation in the amount of Two Hundred Ninety-Five Thousand Dollars and No Cents (\$295,000.00) ("Grant and/or Loan") for development and construction costs. The Grant and/or Loan will be made to the Owner through the Lender's HOME Investment Partnerships Program pursuant to Title 24 of the Code of Federal Regulations Part 92, as amended from time to time, and can be made to Owner only if Owner agrees to the restrictions and requirements set forth herein.

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

- A. Affordability Period. Owner shall maintain the Property as Owner-occupied, single family residential property for residential purposes only, until the expiration of the Affordability Period of 10 years. The Affordability Period will begin on the date of the execution of this Deed Restrictions and Covenants Agreement.
- B. Owner Occupied. Annually during the Affordability Period, upon request from their agent Tierra Del Sol Housing Corporation, the owner(s) are required to provide documentation to their agent confirming the owner is occupying the unit as their principal residence. If, at any time during the term of the Affordability Period, the Property ceases to be the principal residence of Owner, whether through sale of the Property or otherwise, the Owner agrees to make the Property available for subsequent purchase only to a buyer whose household qualifies as a low-income family, earning between 31-80% of area median income (AMI) as will use the property as their principal residence. The Owner further represents and warrants that his/her family, if any, and the Owner met income eligibility requirements at the time the Contract to build the unit was executed with the Agent, Tierra Del Sol Housing Corporation.

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

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

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

2. Resale Provisions related to Net Proceeds- Provided that #1 immediately above is complied with, Net Proceeds due to the seller and HOME Funds prorations credited to the new buyer are applicable in the following scenarios:
 - i. Net Proceeds of new Sales Price in excess of 10% of the Original Sales Prices: If during the affordability period the property is sold to a subsequent buyer at a sales price that is an increase of more than 10% of the original HOME-assisted

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

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

at 4 years and 6 months, year 4 will be considered the sale year. The chart below is provided to outline the seller/buyer proration percentages for net proceeds and HOME funds due to seller and the subsequent buyer during the term of the affordability period:

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

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

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

Default. Owner agrees that any default under the terms of the Grant, as those terms are set forth in this Agreement and executed contemporaneously herewith, or under the terms of any other mortgage or

encumbrance on the Property, whether superior to or junior to this Agreement, will constitute a default under this Agreement and shall cause the full amount or pro-rata share of the Grant to become transferred/sold to another qualified owner as specified within Section B above.

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

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

(SIGNATURES ON NEXT PAGE)

IN WITNESS WHEREOF the undersigned Owner(s) have hereunto set their hand(s) this _____ day of _____, 20__.

Owner/Borrower

Owner/Borrower

Acknowledgment

STATE OF NEW MEXICO)
COUNTY OF DONA ANA) ss

The foregoing instrument was acknowledged before me this ____ day of _____, 20____ by _____.

Notary Public

My commission expires:

ATTACHMENT "D"

(SCOPE OF WORK, PROJECT SCHEDULE, AND BUDGET)

Tierra Del Sol Housing Corporation will construct 10 single-family owner-occupied homes. The homes will be located on Lots 31-32, and Lots 60-67 in Metro Park Village Phase 4 of Metro Verde PUD. The homes will be built for clients on Tierra Del Sol's wait list. All households will be income qualified at under 80% or less than area median income as defined by HUD and will have executed a contract for construction with Tierra Del Sol Housing Corporation. Construction is anticipated to begin in June 2022 with estimated completion dates no later than June 2024

City of Las Cruces HOME funds of \$29,500 per lot will be used for HOME eligible construction materials and subcontractors and will ultimately provide a direct reduction in the sales price to the homeowner, thereby reducing the mortgage amount and providing a more affordable payment to the homeowner.

ATTACHMENT "E"

(PAYMENT REQUEST FORM)



City of Las Cruces
MOUNTAINS OF OPPORTUNITY

INVOICE

Date _____

Agency Name Tierra Del Sol Housing Corporation
Property Address: _____

Original contract balance	\$ 295,000
<u>or per house</u>	<u>\$ 29,500</u>

Balance as of end of previous month

Invoice Expenses:

	\$
GRAND TOTAL:	\$

Remaining Balance:	\$ _____
---------------------------	----------

Certification:

I, _____, as _____
_____ of _____,
hereby certify that the information provided on this invoice is for reimbursement
for eligible development and construction expenses incurred in the month of _____
for Tierra Del Sol Housing Corporation, a Community Housing
Development Organization.

Printed Name

Signature

Date

ATTACHMENT "F"

CERTIFICATION REGARDING DRUG-FREE WORKPLACE REQUIREMENTS

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

CERTIFICATION

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

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

PLACE OF PERFORMANCE
FOR CERTIFICATION REGARDING DRUG-FREE WORKPLACE
REQUIREMENTS

Name of Subgrantee: Tierra Del Sol Housing Corporation

Program Name: Metro Park Village Phase 4

Date:

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

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

Metro Park Village Phase 4 Lots 31 & 32 and 60-67

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

TIERRA DEL SOL HOUSING CORPORATION

By:

Date

ATTACHMENT "G"

SECTION 3 CLAUSE

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

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

**TIERRA DEL SOL HOUSING
CORPORATION**

By:

Date

ATTACHMENT "H"

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

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

**TIERRA DEL SOL HOUSING
CORPORATION**

By: _____

_____ Date

ATTACHMENT "I"

CERTIFICATION REGARDING LOBBYING

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

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

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

TIERRA DEL SOL HOUSING CORPORATION

By:

Date



City of Las Cruces

City Council Action and Executive Summary

23-109

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District: ☐ 1 ☒ 2 ☒ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A

1st Reading: Adopted: March 20, 2023

Drafter: Chris Faivre Department: Economic Development

Program: Business Development Line of Business: Development

Title: **A RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS PURSUANT TO THE METROPOLITAN REDEVELOPMENT CODE, AND DESIGNATING THE EL PASEO & SOUTH SOLANO, AND WEST PICACHO METROPOLITAN REDEVELOPMENT AREAS.**

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

PURPOSE(S) OF ACTION:

To designate El Paseo & South Solano and West Picacho as Metropolitan Redevelopment Areas.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The Economic Development Department hired Groundworks Studios in the fall of 2022 to evaluate the City's Infill Area to determine if all or portions of the Infill would qualify for MRA designation. As a result of that process, the Las Cruces Metropolitan Redevelopment Area (MRA) Boundary Designation Report is the culmination of an extensive and detailed assessment of multiple focus areas within the Infill Development Overlay District (IDO) of Las Cruces, New Mexico. This assessment took place between October 2022 and January 2023. MRA designation, followed by the development of an MRA plan, is the first step in providing the City of Las Cruces with the tools needed to facilitate the redevelopment of targeted areas of the city. The assessment process and designations align with Elevate Las Cruces and the El Paseo Blueprint.

The proposed Metropolitan Redevelopment Areas designated in this report exhibits deteriorated and blighted conditions due to a variety of factors including under-investment by property owners as well as issues relating to infrastructure condition, public services, crime, housing condition, and factors contributing to the commercial and residential real estate market. There is a significant need for the improvement of commercial and residential buildings, streets, sidewalks, and utilities throughout the area to ensure the health, safety, and welfare of residents, businesses, and visitors in the proposed MRAs.

SUPPORT INFORMATION:

[Exhibit "A" - The Las Cruces Metropolitan Redevelopment Area Boundary Designation Report \(1\)](#)

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

Agenda Item #8.2.

☐ 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 establish the El Paseo & South Solano and West Picacho MRA Designations.
2. Vote "No"; this will not approve the Resolution and will not establish El Paseo & South Solano and West Picacho MRA Designations.
3. Vote "Amend"; this could modify the Resolution and would need further direction from Council to staff.
4. Vote "Table"; this will postpone consideration of the Resolution and would need further direction from Council to staff.

RESOLUTION 23-109

A RESOLUTION MAKING CERTAIN FINDINGS AND DETERMINATIONS PURSUANT TO THE METROPOLITAN REDEVELOPMENT CODE, AND DESIGNATING THE EL PASEO & SOUTH SOLANO, AND WEST PICACHO METROPOLITAN REDEVELOPMENT AREAS.

The City Council is informed that:

WHEREAS, Section 3-60A-8 NMSA 1978 of the Metropolitan Redevelopment Code (Sections 3-60A-1 through 3-60A-48 NMSA 1978) states: "A municipality shall not prepare a metropolitan redevelopment plan for an area unless the governing body by resolution determine the area to be a blighted area and designated the area as appropriate for a metropolitan redevelopment project."; and

WHEREAS, the City of Las Cruces, has for some time, engaged in a study of blighted areas within the Infill Development Overlay District (IDO), and have submitted their findings and recommendations concerning the areas detailed in the Designation Report, which is included in packets for the March 20, 2023 City Council meeting, a copy of which is attached hereto as Exhibit "A" The Las Cruces Metropolitan Redevelopment Area Boundary Designation Report; and

WHEREAS, pursuant to Section 30-60A-8 NMSA 1978 of the Metropolitan Redevelopment Code, City of Las Cruces caused to be published in the Las Cruces Sun News, a newspaper of general circulation, a notice containing a general description of the proposed Metropolitan Redevelopment Areas and the date, time, and place where City of Las Cruces will hold a public hearing to consider the adoption of this resolution; and

WHEREAS, the boundaries of the El Paseo & South Solano and West Picacho Metropolitan Redevelopment Areas are explicitly delineated on Exhibit "A" The Las Cruces Metropolitan Redevelopment Area Boundary Designation Report; and

WHEREAS, the City Council has considered the findings and determinations of the Designation Report and all comments made at the public hearing concerning the conditions that exist in the proposed Metropolitan Redevelopment Areas.

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

(I)

THAT The City Council finds and determines that within El Paseo & South Solano and West Picacho there are many deteriorated structures, sites and other declining improvements, unsafe conditions, and low levels of commercial activity that substantially impair and arrest the sound growth and economic well-being of the area and the City.

(II)

THAT The City Council finds and determines that these blighted areas would benefit from a metropolitan redevelopment project or projects, that the designation of a metropolitan redevelopment areas are appropriate in the interests of public health, safety, and welfare, and it hereby designates a El Paseo & South Solano Metropolitan Redevelopment Area and a West Picacho Metropolitan Redevelopment Area.

(III)

Agenda Item #8.2.

THAT The City Council designates the boundaries of the Metropolitan Redevelopment Areas to be as delineated on Exhibit "A" The Las Cruces Metropolitan Redevelopment Area Boundary Designation Report.

(IV)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS



CITY OF LAS CRUCES METROPOLITAN REDEVELOPMENT AREA (MRA) DESIGNATION REPORT

MARCH, 2023

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CITY OF LAS CRUCES METROPOLITAN REDEVELOPMENT AREA (MRA) DESIGNATION REPORT

MARCH, 2023

Prepared for
THE CITY OF LAS CRUCES,
NEW MEXICO



Prepared by

groundworkstudio

ACKNOWLEDGEMENTS

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Executive Summary

This Report recommends the designation of two areas, referred to as “El Paseo & South Solano area” and the “West Picacho area” in Las Cruces, NM, as Metropolitan Redevelopment Areas (MRA). Through a process of research, data analysis, field investigation, and public outreach, these areas were selected as initial priorities for MRA designation and subsequent MRA planning process. Recommendations are based on the assessment of physical and socioeconomic conditions within several focus areas located generally within the City’s Infill Development Overlay (IDO) District combined with evaluation of highest need, redevelopment potential and City capacity.

Key previous planning efforts, including “Elevate Las Cruces Comprehensive Plan”, and several plans in the El Paseo & South Solano area support and recommend the use of MRA designation and planning for economic revitalization and community benefit. Many communities in New Mexico, including Las Cruces, are utilizing this process to encourage private investment, promote economic activity, and support community-based redevelopment.

New Mexico Metropolitan Redevelopment Code

The New Mexico Metropolitan Redevelopment Code (§3-60A-1 to §3-60A-48 NMSA 1978) provides municipalities with the authority to implement strategies and projects to correct conditions that “substantially impair or arrest sound and orderly development” within the city. The designation and subsequent MRA planning process gives a municipality the ability to provide public resources to private entities, under certain conditions, without violating the state’s anti-donation clause. (New Mexico Constitution Art. IX, § 14.)

Initial assessment revealed the majority of area within the IDO meets criteria for MRA designation. In order to concentrate redevelopment in areas exhibiting high need and high potential for catalytic effect, the project team identified focus areas for more in-depth and comparative analysis. Analysis showed the El Paseo & South Solano area meets every physical and socioeconomic indicator of “blight” as defined by the New Mexico Metropolitan Redevelopment Code. Additionally, this area has been the subject of numerous previous planning efforts, priming it for a community-supported and implementable MRA planning process.

The West Picacho area exhibits all of the physical indicators for “blight” and most of the socioeconomic indicators. The West Picacho Ave. corridor also provides a unique opportunity for affordable housing creation through the redevelopment of numerous dilapidated or declining motel properties. Redevelopment efforts in both areas can build from the Las Cruces Main Street revitalization and may strengthen important connections between the City’s Downtown MRA and New Mexico State University via El Paseo Rd. and South Solano Dr. corridors to the south, and to the west via West Picacho Ave. This designation strategy works from the city core, supporting redevelopment along key corridors. Designation area boundaries were identified through land use analysis, assessment of redevelopment potential, and planning best practices.

Upon adoption of a resolution designating the recommended areas, the City may move forward with an MRA planning process to determine appropriate and actionable redevelopment strategies and projects. Additional areas meeting MRA designation eligibility criteria are listed, with key data related to blight indicators in the appendix, allowing for ease of future designation without the need for additional reports.

Introduction

The City of Las Cruces Metropolitan Redevelopment Area (MRA) Designation Report (also referred to as the El Paseo & South Solano and West Pichaco MRA Designation) is the culmination of an extensive and detailed assessment of multiple focus areas within the Infill Development Overlay District (IDO) of Las Cruces, NM.

MRA assessment took place between October 2022 and January 2023. The City of Las Cruces has already designated one MRA in their downtown, and wish to continue assisting other blighted areas of the city through the MRA designation process. MRA designation, followed by the development of an MRA plan, are the first steps in providing the City of Las Cruces with the tools needed to facilitate the redevelopment of targeted areas of the city.

The proposed Metropolitan Redevelopment Areas designated in this report exhibit deteriorated and blighted conditions due to a variety of factors including underinvestment by property owners as well as issues relating to infrastructure condition, public services, crime, housing condition, and factors contributing to the commercial and residential real estate market. There is a significant need for the improvement of commercial and residential buildings, streets, sidewalks, and utilities throughout the area to ensure the health, safety, and welfare of residents, businesses, and visitors in the proposed MRA.

The City of Las Cruces has demonstrated the revitalization capabilities of an MRA when paired with complementary financing tools such as the Tax Increment Finance District (TIDD). The Downtown MRA has had success with public-private partnerships, infrastructure improvements, placemaking projects, and business improvement grant programs. The MRA planning process will identify specific revitalization goals for each MR area, including recommendations for appropriate financing and programmatic strategies. These may or may not be similar to those currently used with the Downtown MRA.

Downtown Las Cruces MRA Successes

- Main Street Plaza development
- Las Cruces Convention and Visitor's Bureau
- Amador Entertainment Complex project
- Water and Church Street conversions
- Downtown callecitos placemaking





Image 1. Photo of unoccupied building on El Paseo Rd.

PURPOSE OF MRA DESIGNATION

The New Mexico Metropolitan Redevelopment Code (§3-60A-1 to §3-60A-48 NMSA 1978) provides municipalities with the authority to implement strategies and projects to correct conditions that “substantially impair or arrest sound and orderly development” within the city. These powers can only be used within designated Metropolitan Redevelopment Areas (MRAs) after the adoption of an MRA plan.

The powers granted to municipalities in New Mexico through the Metropolitan Redevelopment Act are intended to enable municipalities to promote economic activity in areas designated as MRAs, where growth and development are hindered by physical, economic, and other conditions. The Metropolitan Redevelopment Act provides a number of tools for municipalities to help eliminate conditions of blight in designated areas, including the ability to acquire land, assist in land assembly, offer financial incentives, and provide public improvements to encourage and promote industry, trade, or other economic activity.

The MRA designation, to be followed by an MRA Plan, will assist the community in achieving the following goals:

- Elimination of detrimental public health and welfare conditions
- Conservation, improvement, and expansion of commercial building stock
- Expansion of commercial activity
- Improvement and expansion of available housing
- Improvement of economic conditions through coordinated public and private investments

State Requirements for MRA Designation

MRA Designation is based on findings of “blight” conditions as defined by the Metropolitan Redevelopment Code (§3-60A-8)

The criteria set by the Code for “blight” designation include the following physical and socioeconomic conditions:

- Substantial number of deteriorated or deteriorating structures
- Defective or inadequate street layout
- Unsanitary or unsafe conditions
- Lack of adequate housing
- Low levels of commercial or industrial activity

For a complete definition of “blight” see pg. 4

Definition of Blight

“Blighted area” means an area within the area of operation other than a slum area that, because of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivision or lack of adequate housing facilities in the area or obsolete or impractical planning and platting or an area where a significant number of commercial or mercantile businesses have closed or significantly reduced their operations due to the economic losses or loss of profit due to operating in the area, low levels of commercial or industrial activity or redevelopment or any combination of such factors, substantially impairs or arrests the sound growth and economic health and well-being of a municipality or locale within a municipality or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use.

NM Stat §3-60A-4-F (2020)

MRA PROCESS

The MRA process includes phases of assessment, designation, planning, and implementation. This report represents the completion of the first phase of the MRA process.

The MRA Assessment process involves the evaluation of a Study Area and proposed MRA boundary, determination of “blight”

criteria and need, and completion of an MRA Designation Report.

The MRA Assessment is followed by an MRA designation which involves public notice, a council hearing, and the adoption of an MRA Designation resolution. An MRA Plan must be adopted before implementation.



METHODOLOGY

The Las Cruces MRA Designation Report for the Infill Development Overlay District (IDO) is the outcome of a process that included research of relevant planning history, data analysis, field investigation, and public outreach. This process took place over the fall and winter of 2022-2023.

Data Analysis

Prior to conducting field investigation, physical and socioeconomic data was analyzed for the IDO. Data sources included GIS data provided by the City, U.S. Census data, and ESRI Business Analyst. Data analysis supports identification of designation criteria outlined by the NM Metropolitan Redevelopment Statute.

In order to be designated as an MRA, an area needs to exhibit a combination of economic and physical conditions such as high unemployment rates, low-income levels, low business activity, vacant and underutilized properties, deteriorating buildings and/or public infrastructure, unsafe conditions, housing deficit, zoning conformance issues, or obsolete planning and platting.

Field Investigation

In December of 2022, a two day field investigation was conducted to assess existing physical conditions within the IDO. Due to the large size of the study area, field investigation was focused in areas which had exhibited a combination of physical and economic conditions required for MRA designation. During the physical conditions assessment building and public infratructure conditions were documented.

Socioeconomic conditions analyzed include:

- Population
- Race/ethnicity
- Language
- Median income
- Unemployment
- Poverty rate
- Education attainment
- Households
- Crime

Physical conditions analyzed include.

- Land use
- Zoning
- Development density
- Sidewalk gaps
- Vacant properties and buildings
- Building conditions
- Infrastructure conditions

Planning History

Many neighborhoods within the IDO have an extensive community planning history and adopted neighborhood plans or blueprints. Recognized neighborhood planning boundaries were utilized to focus the MRA assessment in areas with adopted plans. Adopted plans can provide a foundation for future MRA planning processes. Planning documents reviewed are listed in the green box on the next page.

Areas in the IDO with plans adopted by City Council, called Neighborhood Planning Areas include Alameda Depot Neighborhood Planning Area, Amador Proximo Neighborhood Planning Area, Apodaca Neighborhood Planning Area, and El Paseo Neighborhood Planning Area.

Additional focus areas without adopted plans, but which demonstrated MRA designation criteria were also analyzed. Focus areas include the Lift Up Focus Area, South of Amador Focus Area, South Solano Focus Area, and Bellamah/East of Solano Focus Area. Both the Neighborhood Planning Areas and Focus Areas can be seen on Figure 2.

Documents Reviewed

Citywide Plans

- Elevate Las Cruces Comprehensive Plan (2020)
- City of Las Cruces Affordable Housing Plan (2016)
- Capital Improvement Projects list (2022-23)

Plans in the Study Area (IDO)

- IDO Land Use Inventory (2022)
- Apodaca Blueprint (2018)
- Las Cruces Downtown Master Plan (2016)
- Amador Proximo Community Blueprint (2015)
- Downtown Las Cruces Metropolitan Redevelopment Area (MRA) Plan (2007)
- Infill Policy Plan (1998)

Plans in the Proposed MRAs (El Paseo & South Solano and West Picacho)

- El Paseo-South Solano Corridor Memo – Final Recommendations (2021)
- El Paseo Corridor Blueprint (2012)
- El Paseo Corridor Preliminary Brownfield Assessment Report (2011)
- Picturing El Paseo: Making Redevelopment Work for the Neighbors (2011)
- West Picacho Small Business Meeting Notes

Public Outreach

During the MRA assessment and designation process, the City and consultant conducted various public outreach events to notify residents and businesses within the IDO about the City's goals for MRA designation.

Community Information Sessions

Two hybrid webinars were conducted in person at Cruces Creatives and over Zoom on January 5, 2023. Approximately 50 people attended the information sessions. Topics covered include MRA 101, MRA project examples from around NM, MRA eligibility criteria, and the Las Cruces MRA assessment and designation process. City staff and consultants answered participants' questions and noted comments and concerns.

City Council Work Sessions

On January 23, 2023 initial findings and recommendations were presented at a regular City Council Work Session. The El Paseo and South Solano area was presented as an MRA recommendation. Through discussion with City Council, West Picacho was added to the MRA designation.

Public Open Houses

Two public open houses were held on the evening of January 23, 2023 at City Hall and during the day of January 24, 2023 at Cruces Creatives. Approximately 25 people attended the Open Houses. The purpose of the open houses was to keep the public abreast of the MRA process, discuss recommended areas for designation, continue the conversation around next steps and outline the benefits of MRA designations in general.

A flyer for MRA Designation Open House. The top half has a dark blue background with the title "MRA Designation Open House" in white. Below the title, it says "Join us to learn about Metropolitan Redevelopment Areas (MRAs) and how they can help revitalize Las Cruces." The bottom half has a yellow background with two event details: "January 23rd, 5:00-7:00 PM at City Hall Conference Rooms 2007 B/C 700 N Main St, Las Cruces, NM 88001" and "January 24th, 10:00 AM-2:30 PM at Cruces Creatives 205 E Lohman Ave, Las Cruces, NM 88001". At the bottom, it says "Contact econdev@las-cruces.org for more information." and "Drop in any time during the Open Houses to discuss:" followed by a bulleted list: "• areas being considered for designation", "• next steps in the designation process", and "• how the community can be involved in future MRA planning efforts". The City of Las Cruces logo is at the bottom left.

MRA Designation Open House

Join us to learn about Metropolitan Redevelopment Areas (MRAs) and how they can help revitalize Las Cruces.

January 23rd, 5:00-7:00 PM
at City Hall Conference Rooms 2007 B/C
700 N Main St, Las Cruces, NM 88001

January 24th, 10:00 AM-2:30 PM
at Cruces Creatives
205 E Lohman Ave, Las Cruces, NM 88001

Contact econdev@las-cruces.org for more information.

Drop in any time during the Open Houses to discuss:

- areas being considered for designation
- next steps in the designation process
- how the community can be involved in future MRA planning efforts

 **City of Las Cruces**

Image 1. Open House Flyer

West Picacho Housing and Revitalization Meetings

Prior to the MRA assessment and designation process, extensive community engagement was conducted in the West Picacho area to address community safety, business vitality, and housing concerns. Small business meetings started in June 2022 leading to ongoing engagement with business owners and residents. One outcome of these meeting is the Small Biz Watch program.

Motel owner engagement was another outcome of the small business meetings. The first meeting was hosted September 13th, 2022 and one-on-one engagement with the owners is ongoing. Local officers have offered safety and security assessments of businesses and Community Development staff has conducted site visits to specific motels.

A clean up event was held on October 29th, 2022. Over 40 volunteers participated and 70 bags of trash were collected. That same day 10+ local organizations collaboratively presented a community health fair. Over 100 area residents from the West Picacho area received resources and information on local community services.

The MRA planning and implementation process can build from this important previous and ongoing engagement and investment in the West Picacho area.



Image 2. Small business meeting in the West Picacho area

MRA STUDY AREA - INFILL DEVELOPMENT OVERLAY DISTRICT (IDO)

The Infill Development Overlay District (IDO), was used as a general Study Area boundary for assessment of “blight” indicators in the City of Las Cruces. City staff recommended using the IDO for the purpose of an MRA Study Area due to the purpose of the IDO and planning history. The purpose of the IDO is to provide a streamlined review process for the development of vacant and underutilized parcels within the overlay zone. Metropolitan Redevelopment Area designation could be a useful tool to accomplish infill goals. The IDO boundaries were used as rough boundaries for the study; however adjoining areas were also assessed in the analysis. It’s important to note that the IDO Development Code is an entirely separate mechanism from the MRA designation process. Additionally, the rationale for utilizing the IDO is provided by adopted policy within the Comprehensive Plan. See the IDO purpose statement below.

IDO Boundaries:

- Interstate Highway 25
- Northern boundary of University
- Avenue Corridor Overlay Zone
- Valley Dr., (NM Highways 188 & 185)
- Hoagland Rd.
- Alameda Blvd.
- Three Crosses Ave.
- North Main St. (U.S. Highway 70)

IDO Purpose

The purpose of the Infill Development Overlay district is to implement land use and development policies as established in the infill policy plan. Specifically, the purpose of this overlay zone is to provide a streamlined review process for the development of vacant and underutilized parcels or those parcels ready for redevelopment within the urban core area of Las Cruces regardless of the property’s zoning. The goal is to develop active uses that are compatible with surrounding land uses while promoting economic development in the Central part of the City, in accordance with the comprehensive plan.

City of Las Cruces Land Development Code
Sec. 38-48. - IDO—Infill development overlay
district.

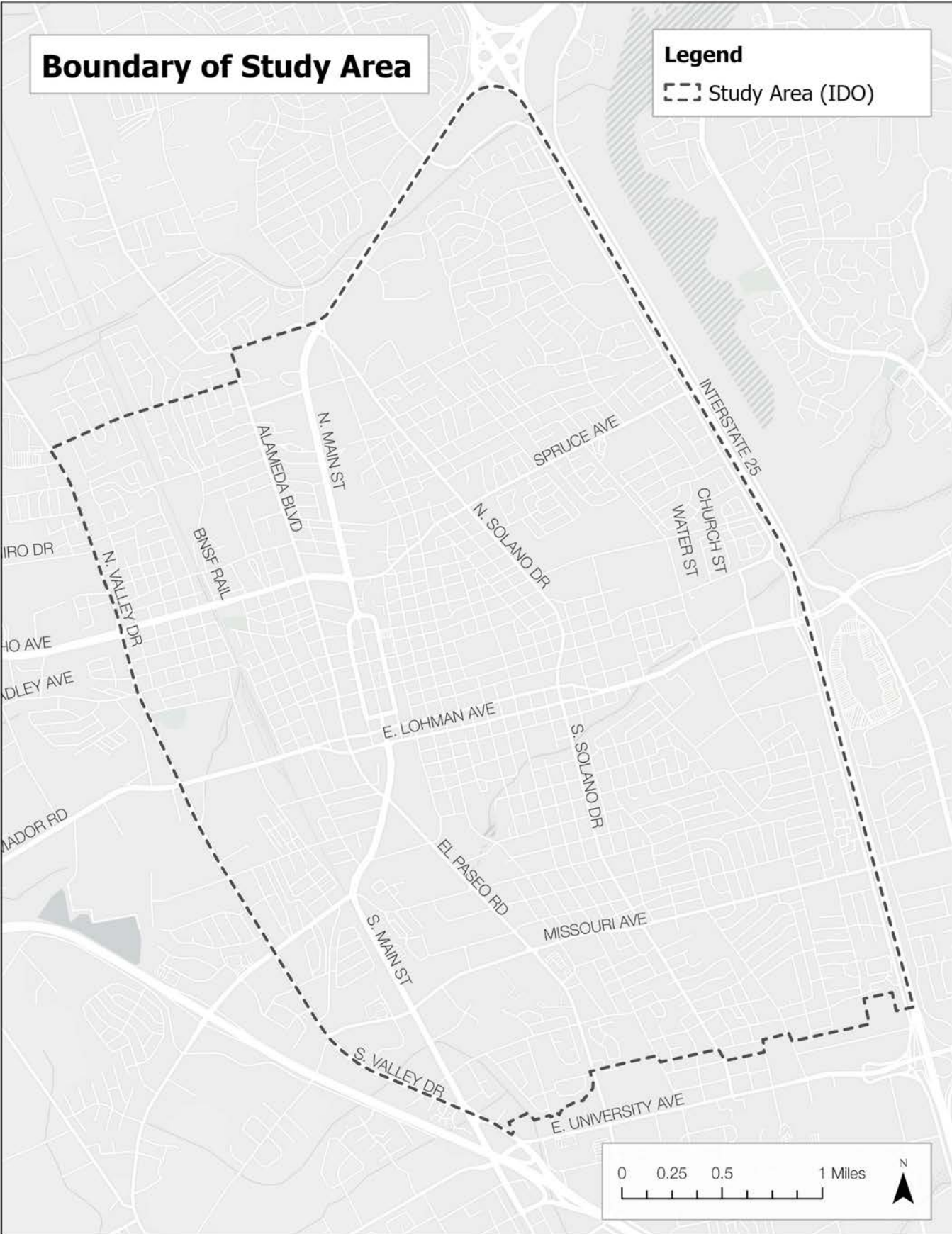


Figure 1. IDO boundary

DEMOGRAPHIC OVERVIEW OF IDO

There are stark differences between the socio-economic conditions of the Las Cruces IDO, the City of Las Cruces, Doña Ana County, and the State of New Mexico. These disparities were part of the rationale for selecting the overlay boundary for MRA assessment.

A total of 43,180 people live within the Las Cruces Infill Development Overlay District (IDO), comprising a total of 18,046 households. Both the unemployment rate and the poverty rate in the IDO are higher than that of the city, county and state. In the 12 census tracts within the IDO, 35% of households live in poverty compared to 24% in Las Cruces, 19% in Doña Ana County, and 18% in New Mexico.

Median household income in this overlay district ranges from \$15,831 in the lowest socioeconomic census tract to \$44,775 in the highest. This is significantly lower than the City's median household income of \$50,453.

Additionally, when looking at available housing units, 1,747 vacant housing units are available for development. Home ownership on average in the IDO is significantly lower than at the city, county, and state levels. Initial data analysis clearly indicates an area in need of support to improve quality of life and economic conditions.

Demographic Overview (2020)	Las Cruces IDO	City of Las Cruces	Doña Ana County	New Mexico
Total population	43,180	113,029	219,561	2,117,522
Total Households	18,046	46,644	85,021	834,007
Unemployment Rate	6.9%	5.4%	3.7%	3.9%
Median Household Income	\$15,831 - \$44,775 (Range)	\$50,453	\$45,178	\$53,992
Poverty Rate	35.44%	24%	19.4%	18.5%
Housing Units	20,393	49,414	89,804	940,859
Occupied Housing Units	18,646	45,774	82,366	829,514
Vacant Housing Units	1,747	3,640	7,438	111,345
Median Rent	\$707	\$787	\$751	\$906
Home Ownership Rate	40.13%	56.2%	63.1%	69.5%

¹ _____

Figure 2. Demographic overview of the IDO with comparisons to the the City of Las Cruces, Doña Ana County, and the State of New Mexico.

MRA DESIGNATION RATIONALE

Preliminary analysis revealed the majority of the IDO study area meets the criteria for MRA designation. To adequately focus redevelopment incentives and spur catalytic redevelopment, it is important to focus on smaller sub-areas within the IDO for designation. Thus, an extensive analysis of city planning documents, zoning and land use, and social and economic data was conducted to identify Neighborhood Planning Areas and additional Focus Areas (as shown in figure 2) for further field investigation.

Neighborhood Planning Areas are places within the city with plans that have been adopted by City Council and defined boundaries, such as El Paseo Neighborhood Planning Area. Focus Areas are places without adopted plans, but are places that exhibited “blight” indicators during preliminary analysis.

An existing conditions field assessment was conducted in December 2022 to document the physical conditions of buildings, properties, and streetscapes within the various Neighborhood Planning Areas and Focus Areas for consideration as MRA districts. While most of the IDO and all of the focus areas within it meet the criteria for MRA designation, this report and attached resolution identify two areas for immediate designation.

In consideration of the timeline and cost of the MRA planning process as well as the community and political capacity to implement MRA plans, it is appropriate to select two areas to designate at this time and pass additional designation resolutions as staff capacity builds. Additional areas eligible for future designation are presented in the appendix.

EL PASEO & SOUTH SOLANO AREA

Existing conditions assessment, market research, and demographic analysis demonstrate that the El Paseo & South Solano area meets the statutory criteria for Metropolitan Redevelopment Area designation. Analysis showed the El Paseo & South Solano area meets every physical and socioeconomic indicator of “blight” analyzed during the MRA assessment (see appendix A). The area has low levels of commercial activity, high levels of vacant and abandoned properties, significant building and infrastructure deterioration, high levels of unemployment, low income levels, as well as unsafe and unhealthy conditions.

The El Paseo and South Solano area provides opportunity for redevelopment through commercial, industrial and higher density zoning areas along current or future mixed-use corridors. The El Paseo & South Solano MRA has three north-south corridors (South Main St., El Paseo Rd., and South Solano Dr.) which connect the existing Downtown MRA with New Mexico State University and are lined by commercial and higher density properties primed for infill development.

An MRA designation for El Paseo & South Solano area offers the opportunity to address the issue of vacant, underutilized, and deteriorating properties through property acquisition and incentives to private investors for commercial revitalization and affordable housing development. The MRA planning process will identify opportunity sites where redevelopment will offer community benefits and catalyze further private investment.

(continued on page 15)

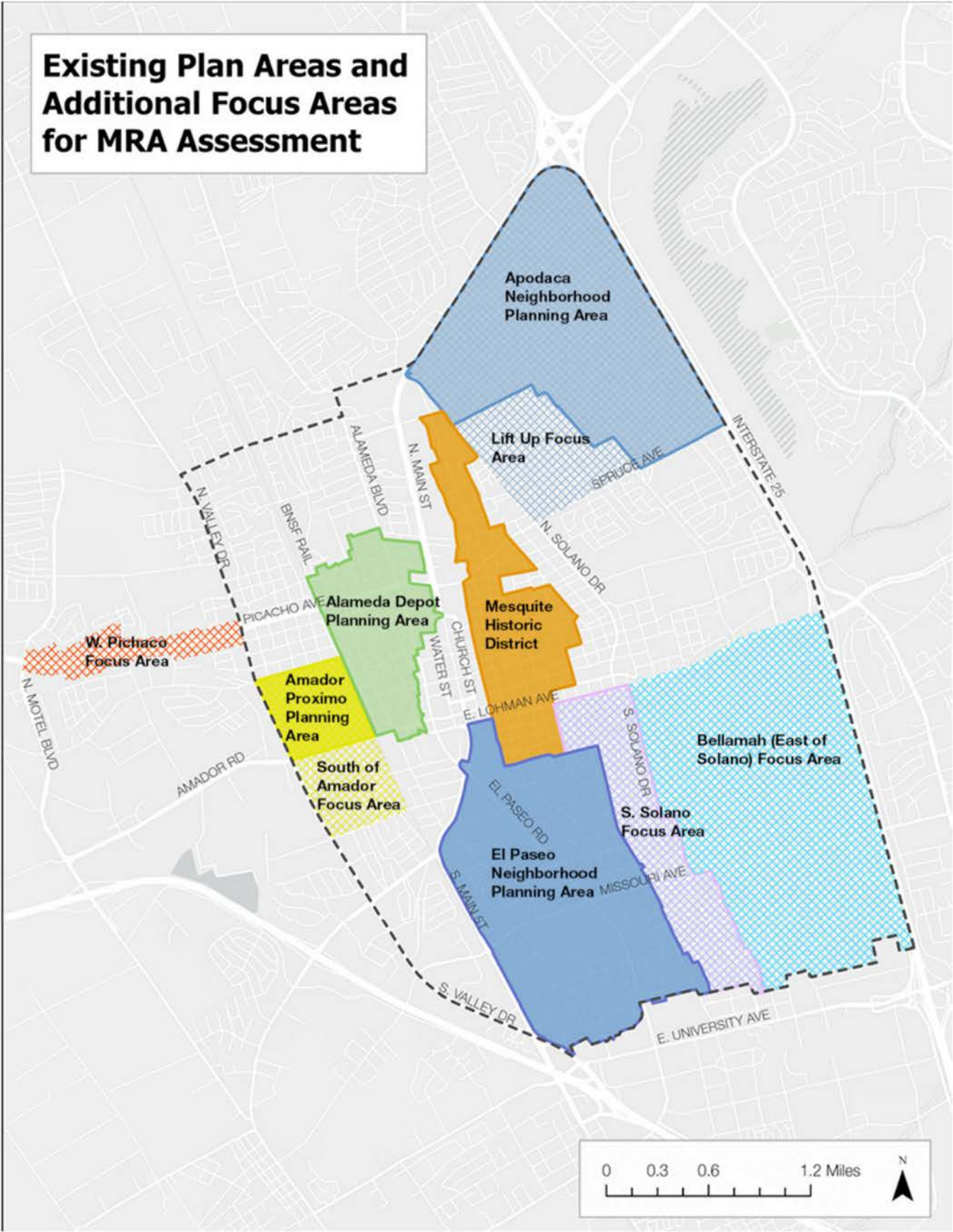


Figure 3. Focus Areas within the IDO were identified using demographic analysis, planning history research, and physical conditions assessment

The El Paseo & South Solano area contains single and multi-family residential areas which would benefit from diversification and improvement of housing stock while ensuring attainable housing options for people of all ages and incomes.

Lastly, it's critical to note that this area has been the subject of numerous previous planning efforts, priming it for a community-supported and implementable MRA planning process. The "El Paseo Blueprint" is an adopted plan which can support the future MRA planning process by identifying areas of concern as well as possible projects that could be aided by an MRA.

WEST PICACHO AREA

Existing conditions assessment, market research, and demographic analysis demonstrate that the West Picacho area meets the statutory criteria for Metropolitan Redevelopment Area designation. The area exhibits all of the physical indicators for "blight" and most of the socioeconomic indicators analyzed during the MRA assessment (see Appendix A). The area has low levels of commercial activity, high levels of vacant and abandoned properties, significant building and infrastructure deterioration, high levels of unemployment, low income levels, as well as unsafe and unhealthy conditions.

The West Picacho MRA is anchored by the West Picacho Ave. commercial corridor and provides a unique opportunity for affordable housing creation through the redevelopment of numerous dilapidated or declining motel properties. Additionally, the boundary contains a declining industrial zone along West Hadley Ave. which could offer opportunities for business incubation and job creation programs.

The area contains single and multi-family residential areas which would benefit from diversification and improvement of housing stock while ensuring attainable housing options for people of all ages and incomes.

Lastly, it's important to note that this area has been involved in extensive community engagement, priming it for a community-supported and implementable MRA planning process.

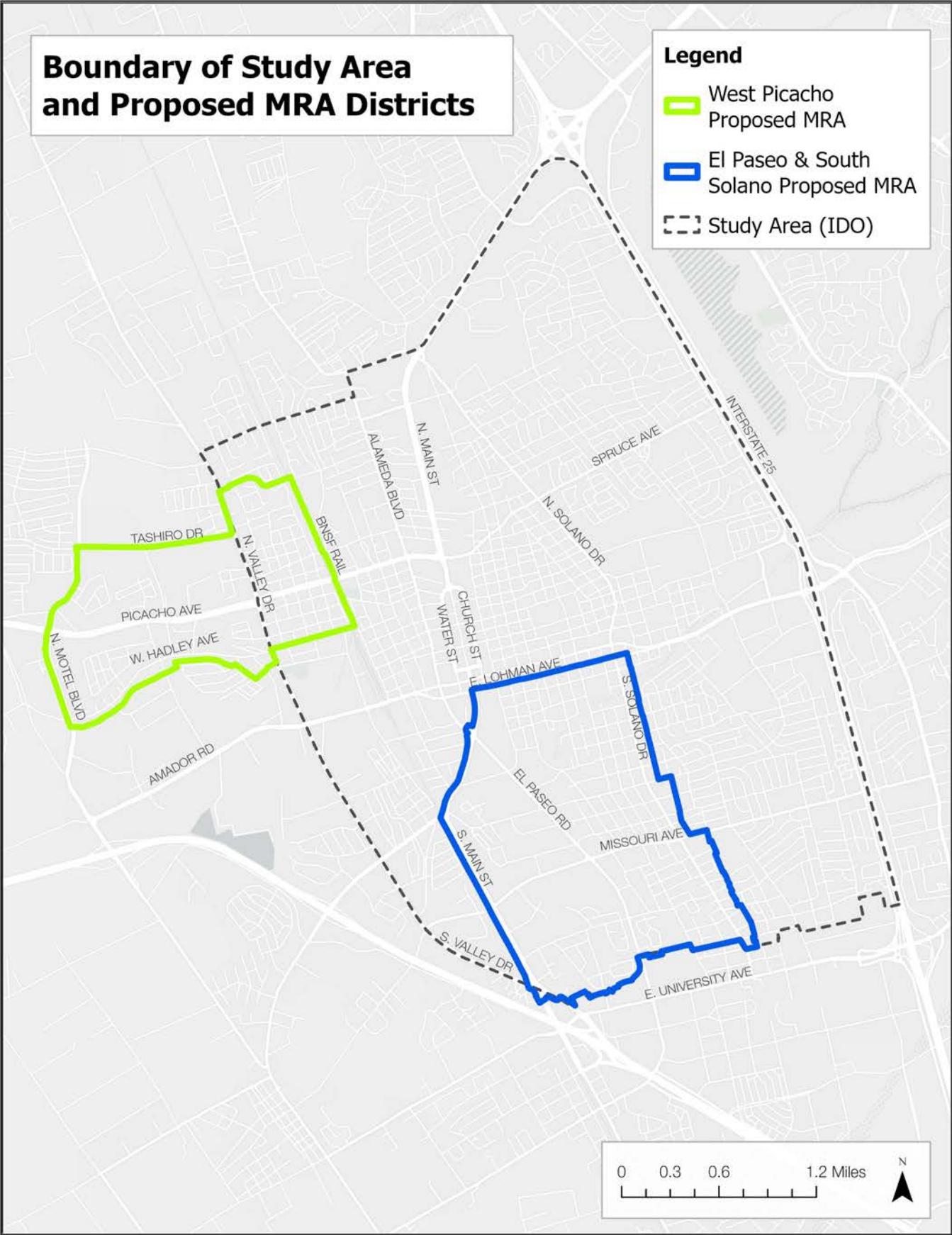


Figure 4. IDO Study Area and Proposed MRA Districts

BOUNDARIES OF PROPOSED MRA DISTRICTS

EL PASEO & SOUTH SOLANO PROPOSED MRA

The El Paseo & South Solano proposed MRA is approximately 1.78 square miles and is anchored by two north-south commercial corridors on El Paseo Rd. and South Solano Dr. The proposed boundary expands the El Paseo Neighborhood Planning Area to include commercial and multi-family residential parcels to the east of South Solano Dr.

Redevelopment and revitalization of commercial and multi-family residential parcels along El Paseo Rd., South Solano Dr., and S. Main St. could support the development of urban neighborhood, mixed-use corridors that connect the Downtown to the north and New Mexico State University to the south. Large vacant parcels within the boundary offer opportunities for infill and mixed-use development.

The proposed El Paseo & South Solano MRA is bounded by:

- East Lohman Ave. to the north
- South Main St. to the west
- Approximately one block off of East University Ave. to the south
- Approximately one block off of South Solano Dr. to the east

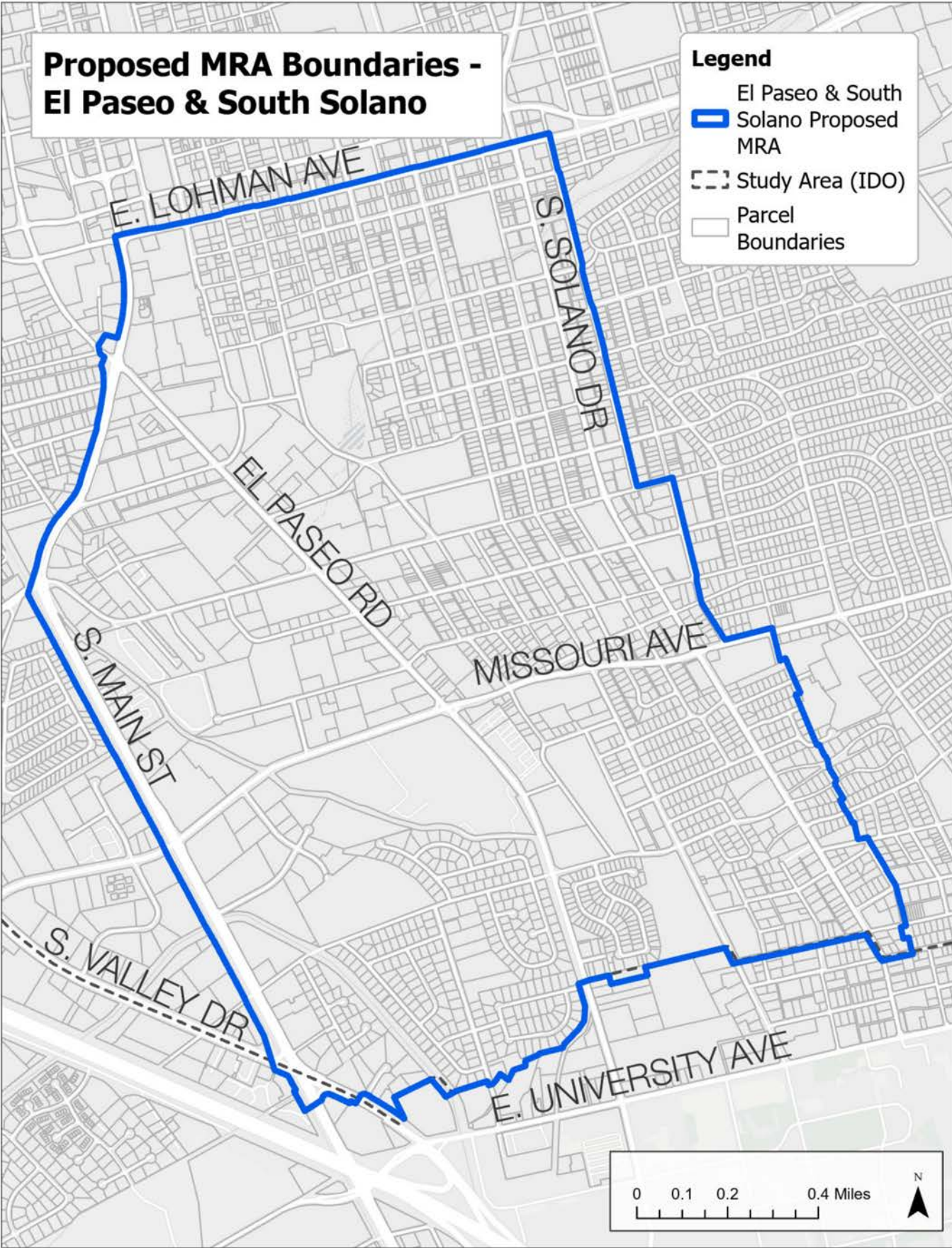


Figure 5. El Paseo & South Solano Proposed MRA Boundaries

WEST PICACHO PROPOSED MRA

The West Picacho (WP) proposed MRA is approximately 1.17 square miles and is anchored by the commercial corridor along West Picacho Ave. The area serves as an important gateway to the City from the west. The proposed MRA boundary extends to one parcel south of West Hadley Ave between North Motel Blvd. and North Valley Dr. to include vacant commercial and industrial properties. On West Hadley Ave between North Valley Dr and the BNSF rail-line, the boundary meets the northern border of the Amado Proximo Neighborhood Planning Area. The boundary extends to Tashiro Dr. at the north to contain large vacant properties. In the northeast, it extends to McClure to include a large city property in need of revitalization.

Infill development of vacant properties and revitalization of existing commercial and motel properties along W. Picacho Ave., N. Valley Dr., W. Hadley Ave., and N. Motel Blvd. could support the development of a regional commercial, mixed-use corridor and expand housing options.

The proposed West Pichaco MRA is bounded by:

- Tashiro Dr. and McClure Rd. to the north
- North Motel Blvd. to the west
- West Hadley Ave. to the south
- Train tracks to the east

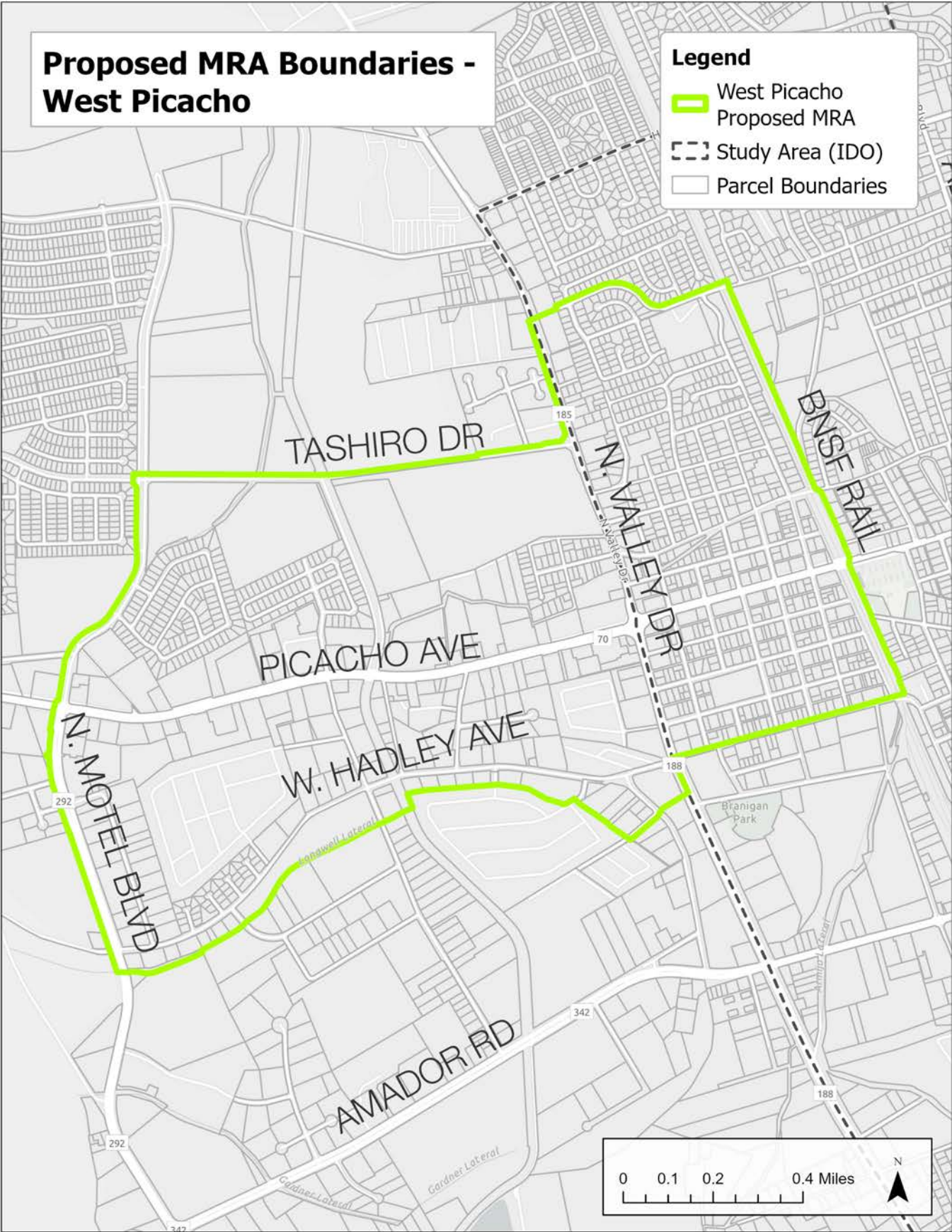


Figure 6. West Pichaco Proposed MRA Boundaries

PROPOSED MRA CONDITIONS SUMMARY

The El Paseo & South Solano and the West Picacho areas are culturally and economically significant areas in Las Cruces which have experienced decline over multiple decades. The designation of both as Metropolitan Redevelopment Areas can aid the City with its goals for future growth and development, while improving health, safety, and welfare outcomes for local residents and economic conditions for the entire municipality.

The existing conditions field assessment, combined with social and economic data, demonstrates that the proposed El Paseo & South Solano MRA and the proposed West Picacho MRA exhibit a combination of factors that contribute to blight, and that both areas would benefit from MRA designation. The analysis contained in this report and summarized below shows that the following conditions have inhibited new development and redevelopment within the proposed MRAs and impaired the sound growth and and more broadly, the City’s overall economic health.

LOW LEVELS OF COMMERCIAL ACTIVITY OR REDEVELOPMENT

The proposed MRAs contain what were once thriving commercial stretches in Las Cruces, but business owners and residents report that they’ve watched both areas decline over the past decades. The areas are likely to see further decline without strategic intervention to incentivize redevelopment.

VACANT AND UNDERUTILIZED PROPERTIES

There are many vacant and underutilized properties. Stakeholders report that landlords struggle to sell properties or find new tenants to fill vacant businesses. The presence of vacant properties can lead to declining property values, threats to public health and safety, strain on public resources, and challenges attracting private investment.

DETERIORATING BUILDINGS

In addition, many of the buildings in the proposed MRA are in poor condition, out-of-date, or otherwise in disrepair and will need significant improvements to attract new tenants. The poor condition of the buildings contributes to ongoing, low levels of commercial activity, and creates a disincentive for private investment.

MISSING OR DETERIORATING INFRASTRUCTURE

There is a general deterioration of public infrastructure within the proposed MRAs, which includes deteriorating roads, damaged or missing sidewalks, non-ADA compliant ramps and driveway crossings, drainage issues, and unmaintained landscaping.

UNSAFE AND UNHEALTHY CONDITIONS

City crime data indicates higher than average crime levels in both of the proposed MRAs. Violent and property crime are significant challenges for local residents and businesses. In El Paseo & South Solano there are multiple identified brownfield properties and in West Picacho there are significant vacant industrial properties. Brownfields contamination can pose a risk to public health. Crime and/or the perception of crime, as well as the existence of or concern over brownfields and contamination can limit economic activity and disincentivize private investment in an area.

HIGH UNEMPLOYMENT AND LOW INCOME LEVELS

The proposed MRAs have significantly higher rates of poverty than the city, county and state. Additionally, the unemployment rates within the El Paseo & South Solano and West Picacho areas are higher than average. This coupled with low median incomes, high vulnerability indicators (such as high rates of disabilities and lack of access to vehicles) and lower educational attainment all point to a need for improved active transportation options, workforce development programs and quality job creation.

LACK OF ADEQUATE HOUSING

Both MRAs contain a declining housing stock in poor condition. Households within the El Paseo & South Solano and West Picacho areas have higher rentership rates than Las Cruces, Dona Ana County and New Mexico. They experience higher rent burdens due to low income levels and rising rental housing costs. There is a need to develop affordable housing within these areas and to diversify housing types.



Image 3. Low levels of commercial activity and extensive vacant buildings are found throughout the proposed El Paseo & South Solano MRA.



Image 4. View of West Picacho Dr. looking east.

Physical Conditions Assessment

A physical conditions assessment of the IDO Study Area was conducted through analysis of zoning and land use, followed by field investigation of building, street, and infrastructure conditions. Land use analysis was conducted to understand existing development patterns as well as the extent and location of vacant land and buildings. This assessment provides a foundation for future planning efforts and supports identification of opportunity sites within the MRA. Additionally, comparing current land use with zoning, provides insight into areas where current development intensity is lower than zoning allows. This helps to identify to opportunities to increase density and encourage mixed-use and transit-oriented corridors.

The map to the right indicates areas assessed prior and during field investigation. During the field investigation, these areas were reviewed for presence of vacant properties, condition of streetscapes and buildings, and the instance of incompatible land uses or possible brownfields. The following narrative summarizes the existing physical conditions in the El Paseo & South Solano Proposed MRA and the West Pichaco Proposed MRA which may be contributing to blight and disinvestment.



Image 5. Abandoned dry cleaners, boarded up windows and outdated signage could discourage new investment along the El Paseo & South Solano corridors.

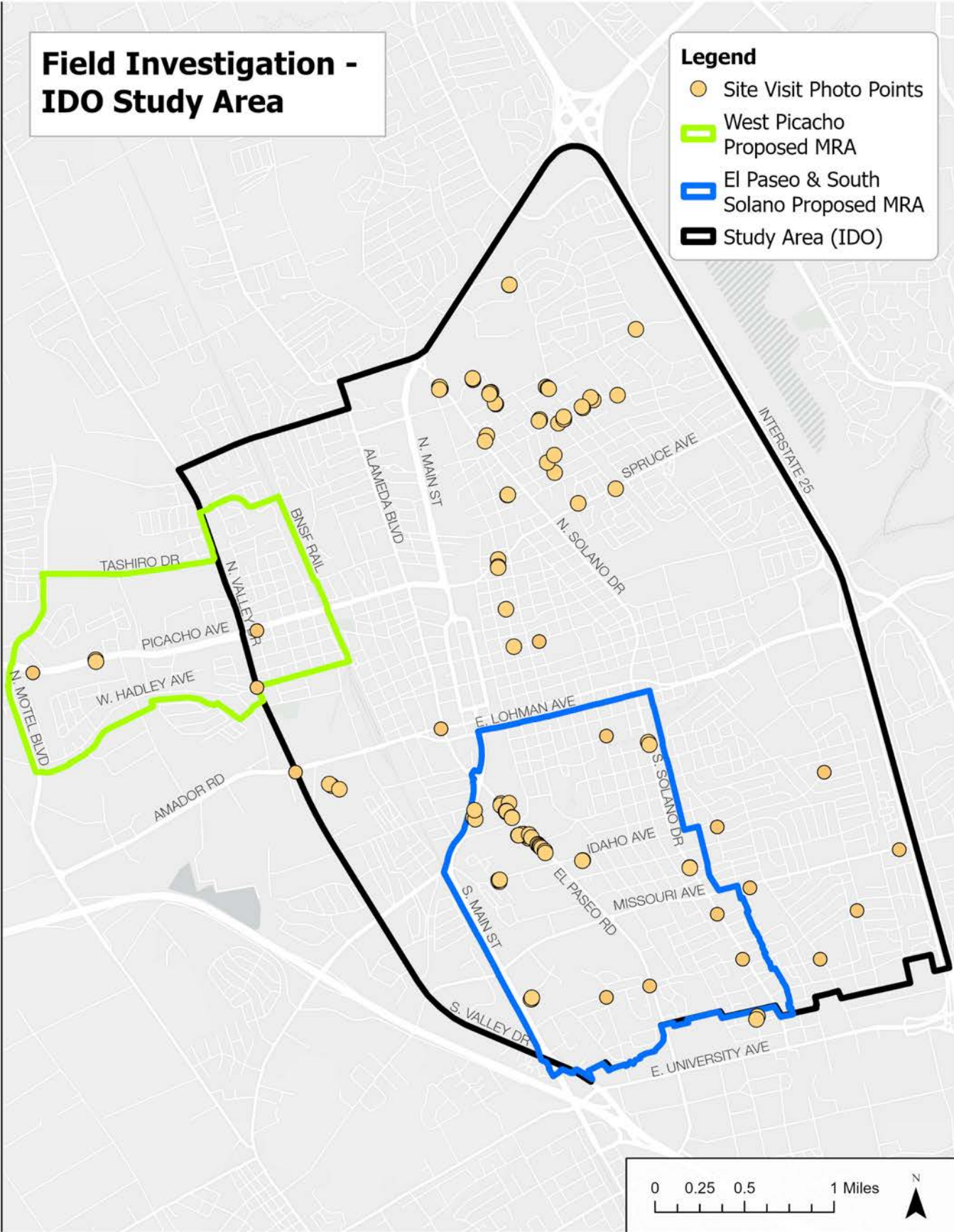


Figure 7. Points on the Field Investigation Map show specific areas visually analyzed during the existing conditions assessment.

EL PASEO & SOUTH SOLANO PROPOSED MRA PHYSICAL CONDITIONS ASSESSMENT

EL PASEO & SOUTH SOLANO LAND USE

The proposed El Paseo and South Solano MRA contains a mix of residential and non-residential land uses. Existing land uses are predominantly residential. There is an eclectic mix of single family and multi-family housing, varying from larger apartment buildings and public housing complexes, duplexes and smaller southwestern bungalows, to larger contemporary single family homes. Due to the proximity to NMSU, the area features a large distribution of student-oriented housing, particularly near the southeastern boundary.

Commercial land uses concentrated along the north-south commercial corridors (South Main St., El Paseo Rd., South Solano Dr.) north of Missouri Ave. Despite being zoned for medium and high intensity commercial, much of the commercial land use is low-density, single story development.

The El Paseo corridor is characterized by scattered, small retail and restaurant uses near the street and big box retail at the back of expansive parking lots. There is a significant amount of vacant land as well as vacant residential and commercial buildings.

The El Paseo and South Solano MRA has two proposed mixed-use corridors along El Paseo Rd. and South Solano Dr. (see p. 35 of “Elevate Las Cruces Comprehensive Plan, Volume I”). Opportunities exist for higher density, mixed-use, and transit-oriented development as to align with the vision for future growth outlined in “Elevate Las Cruces”.

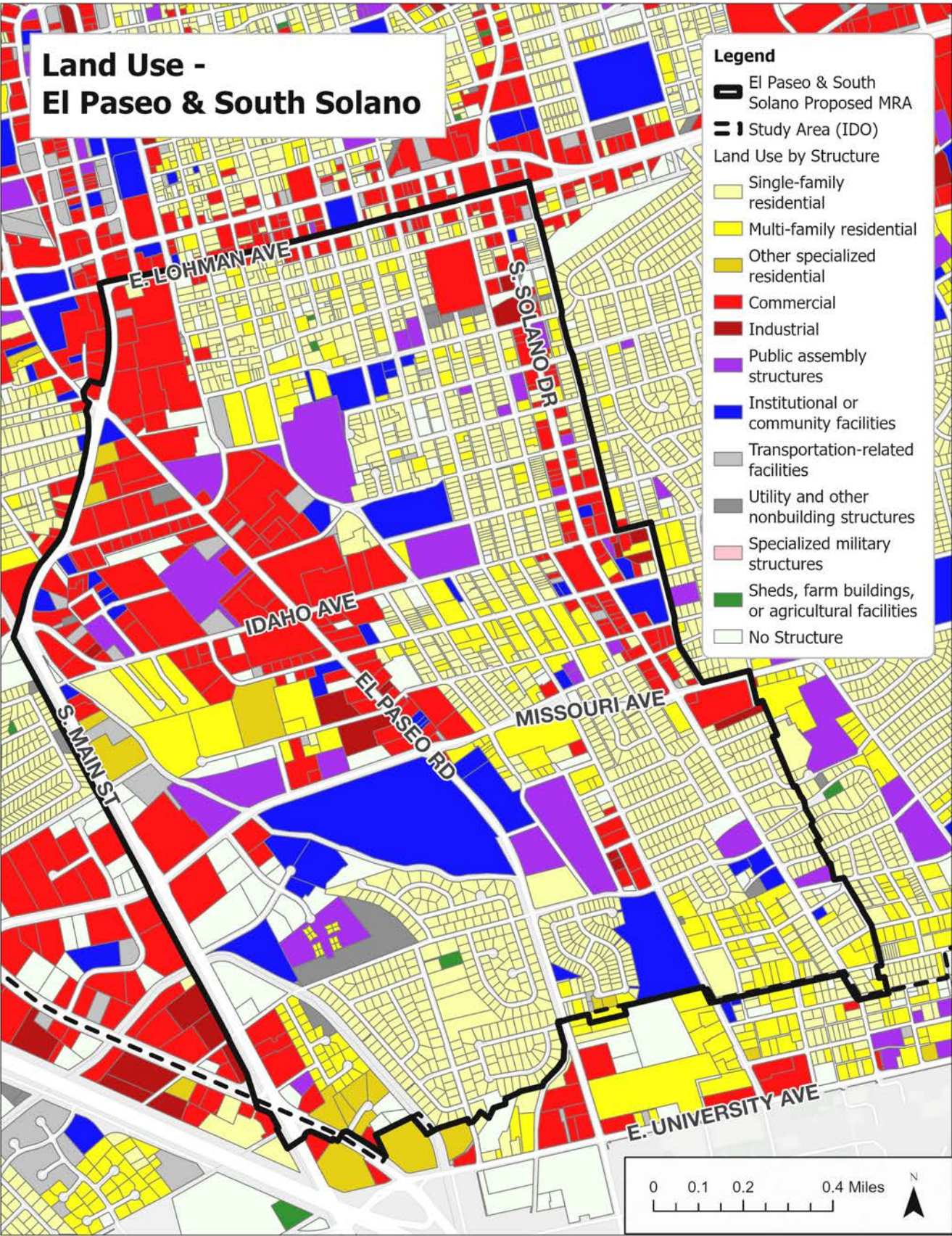


Figure 8. The El Paseo & South Solano Land Use Map shows three north-south commercial corridors

EL PASEO & SOUTH SOLANO ZONING

In the proposed El Paseo & South Solano MRA, the majority of parcels are zoned residential. Approximately 75% of the total area is zoned residential with a mix of Single-Family-Medium Density (R-1a) and Multi-Family including Low to High Density. The majority of single family residential parcels are found south of Boutz Rd. or Missouri Ave., while a diverse mix of single family and multi-family are found north of Missouri Ave. between El Paseo Rd. And South Solano Dr.

There are three clear commercial corridors along South Main St., El Paseo Rd., and South Solano Dr. There is a concentration of commercially zoned properties to the north of El Paseo Rd. which is contiguous with the existing Downtown MRA. Of the commercially zoned areas, the majority are zoned Medium Density (C-3) followed by High Density (C-4) which allows for mixed-use development. These zoning districts are meant to provide retail and service activities to both adjacent neighborhoods and regional markets. Allowable heights in these areas are up to 45 feet in C-3 and 60 feet in C-4 zones.

Several parcels along El Paseo Rd and South Solano Dr. are zoned for High Density & mixed-use residential development. There are conditional use permits for Multi-Family residential in several parcels zoned for High-Intensity Commercial. This indicates a need or interest in higher density development within the district. Any future zoning updates should encourage higher-density, mixed-use and transit-oriented development along these mixed-use corridors.

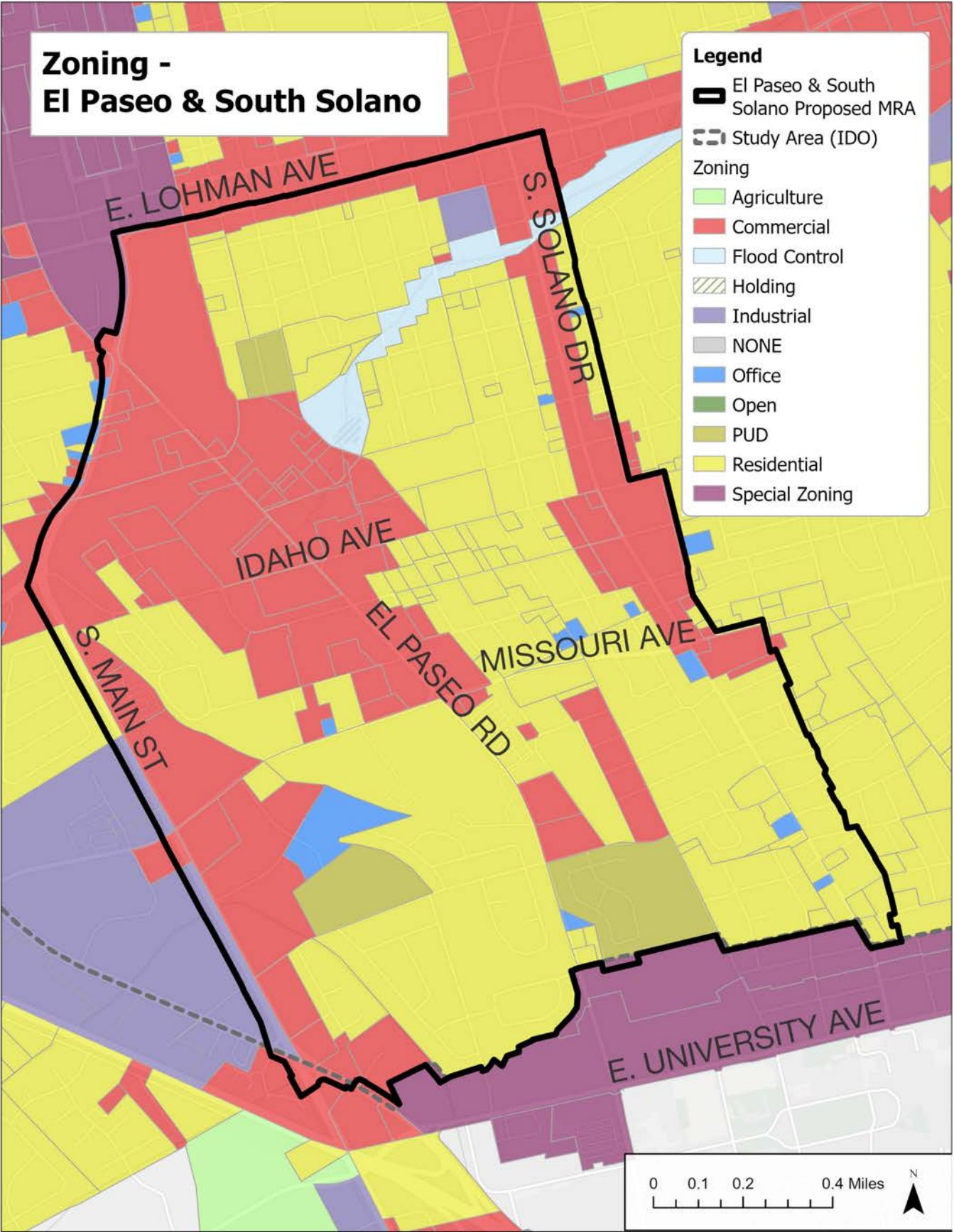


Figure 9. EP&SS Zoning Map

EL PASEO & SOUTH SOLANO DEVELOPMENT DENSITY

Development density analysis is conducted by looking at the relationship between building footprints and surrounding spaces such as streets, sidewalks, yards, parks, and vacant lots. This can be seen in the figure ground map which shows building footprints in black and the space around them in grey. Analyzing figure ground maps helps to identify underutilized land and opportunities for infill development.

The built environment throughout the proposed El Paseo & South Solano MRA, particularly along El Paseo Rd., is characterized by low intensity, auto-oriented development with long blocks, spread out development, significant setbacks, and expansive parking lots. This development form has been shown to limit walkability, street vitality and commercial activity. This area provides significant opportunity for higher

density, infill development towards the creation of a vibrant mixed-use corridor. South Solano Dr. has a much more compact form, with fewer and smaller parking lots and smaller setbacks. This development pattern tends to support creation of a more attractive and walkable public realm.

There are many large vacant or underutilized parcels between South Main St. and South Espina St. to the south of East Boutz Rd. or Missouri Ave. in areas zoned for commercial and residential. There is potential for infill mixed-use development in this area.



Image 6. Excessive setbacks and large parking lots characterize the commercial development on El Paseo Rd.



Figure 10. El Paseo & South Solano Dr. Figure Ground Map

VACANT AND UNDERUTILIZED PROPERTIES IN EL PASEO & SOUTH SOLANO

As the figure ground map indicates, there is a significant amount of land in the El Paseo & South Solano area which is vacant or underutilized. Analyzing city land use and abandoned building data, 89 parcels within the proposed MRA were identified as vacant with no structure (figure 10). There are approximately 30 or more unoccupied buildings (figure 11), which include residential, office, restaurant, and other commercial buildings.

Along both commercial corridors in the proposed MRA are concentrations of vacant commercial buildings that are available for lease. There are large tracts of undeveloped, and formerly agricultural properties in the southern portion of the proposed MRA, and vast underutilized

parcels currently being used as parking lots along El Paseo Dr.

Vacant properties interrupt the vibrancy and walkability of the public realm, and can pose a threat to environmental health, community development, economic opportunities, and public safety. The presence of vacant properties within a neighborhood can lead to declining property values, a strain on public resources, and challenges attracting private investment. Without proper intervention, conditions can continue to decline, making revitalization goals difficult to achieve.



Image 7. Vacant parcels make up significant acreage within the proposed El Paseo & South Solano MRA.



Image 8. Building on Main St. in need of roof replacement and other rehabilitation.



Image 9. Auto-oriented development along El Paseo creates expanses of underutilized land throughout the El Paseo & South Solano MRA, with significant acreage dedicated to parking lots.

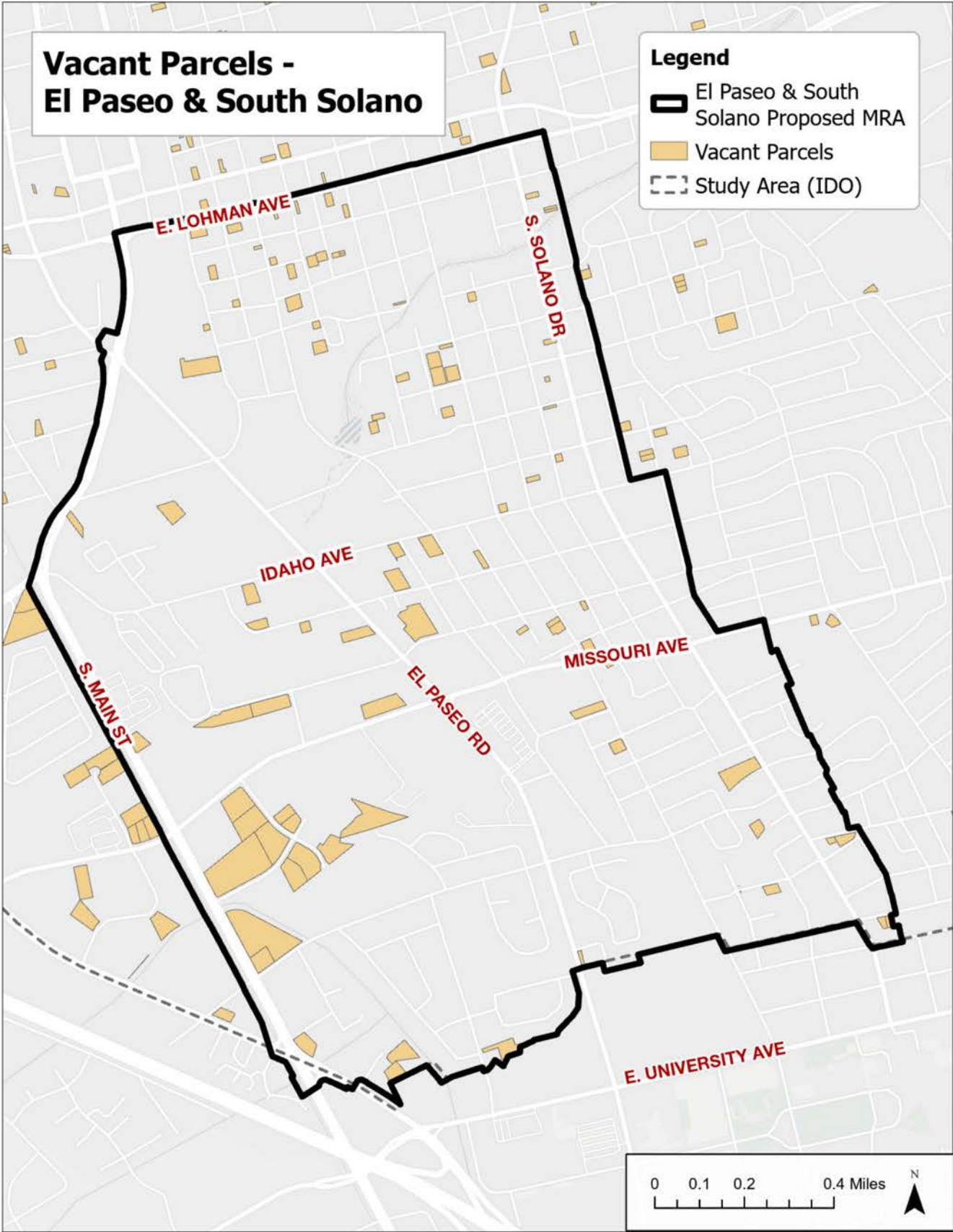


Figure 11. City of Las Cruces vacant parcels' data shows vacant properties throughout the proposed MRA.

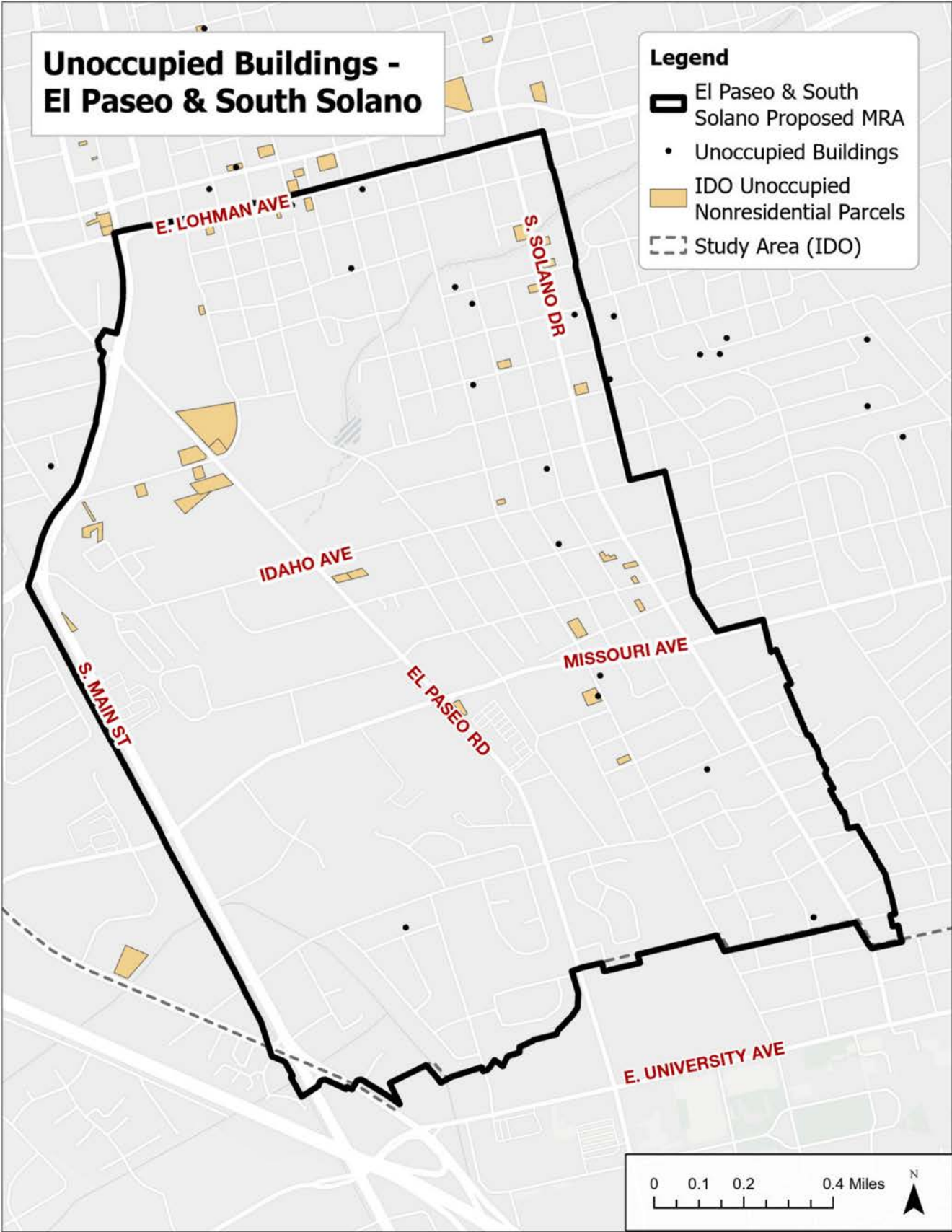


Figure 12. A map of vacant buildings using City-provided data shows a concentration of vacant commercial buildings along El Paseo Rd.

DETERIORATED COMMERCIAL AND RESIDENTIAL BUILDINGS

Numerous buildings lining the three commercial corridors in the proposed El Paseo & South Solano MRA (South Main St., El Paseo Rd., and South Solano Dr.) are in poor condition with crumbling or deteriorating facades, damaged roofs, broken/boarded windows, deferred maintenance or other dilapidation. Both South Solano and El Paseo corridors contain commercial buildings that are vacant, abandoned, or condemned. Many have damaged, outdated, or vandalized signage. These commercial properties are surrounded by unmaintained parking lots, with high levels of litter and weeds. In addition, there are a handful of vacant properties that previously hosted gas stations or dry cleaners. The properties should be assessed for potential contamination.

Throughout the plan area commercial buildings need repair, rehabilitation and in some cases, removal. Additionally, these buildings may include inadequate floor layouts, or internal issues such as outdated electrical, telecommunications, and other equipment that

limits their commercial viability as attractive spaces for new tenants. Rehabilitation of these buildings may involve expensive upgrades that current owners may not be ready to invest in, given current market conditions.

A full 50% of the housing stock in the El Paseo & South Solano Area was built before 1970. Indicators of aging housing within the area include deteriorating residential exteriors, litter, unmaintained lots, and overall decline of building structures.

The poor condition of these buildings contributes to ongoing, low levels of commercial activity and creates a disincentive to new private investment. Not every property within the proposed MRA exhibits blight conditions. However, due to the concentration of these types of properties, the area will likely experience further disinvestment and deterioration without support.

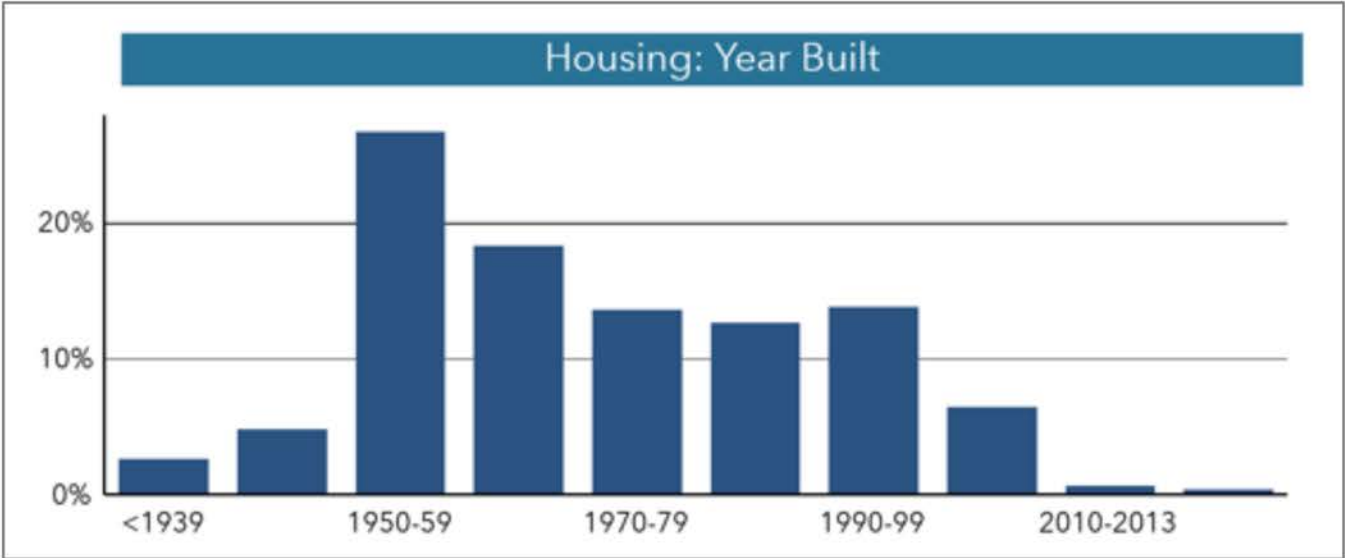


Figure 13. El Paseo & South Solano; Age of Housing ESRI ACS 2022



Image 10. The Kilby Motel on S. Main St.



Image 11. Vacant gas station on South Solano Dr.

DETERIORATION OF PUBLIC INFRASTRUCTURE AND STREETSCAPES

A visual survey of the existing street, sidewalk, and other infrastructure conditions was conducted within the proposed El Paseo & South Solano MRA in December, 2022.

Road conditions vary throughout the area, with evidence of mild to moderate pavement deterioration along major stretches of South Main St., El Paseo Rd., South Espina St., South Solano Dr., East Idaho Ave., as well as several of the smaller side streets. More extreme pavement deterioration is found in isolated stretches of South Solano Dr. and multiple sidestreets.

Additionally, the design of the three major north-south roads (South Main St., El Paseo Rd., South Solano Dr.) encourages faster vehicular travel than the posted speed limit. During public open houses conducted as part of this designation process, residents of the area indicated that cars often speed down these corridors, creating an unsafe environment for pedestrians and cyclists.

Sidewalk gaps exist along north-south corridors and residential side streets; interrupting pedestrian connectivity between residential

and commercial areas of the district. Extensive sidewalk gaps exist along South Main St. and in the neighborhood area bound by East Idaho Ave., Missouri Ave, El Paseo Rd., and South Solano Dr.. Sidewalk gaps are mapped in Figure 12.

Extensive sidewalk deterioration exists along El Paseo Rd. and sidewalks throughout many residential neighborhoods have weeds and other debris that could interrupt pedestrian travel.

Connectivity and ADA compliance are an issue throughout the proposed MRA. Many sidewalks are not ADA compliant, or have infrastructure such as utilities and signage which impedes universal accessibility.

Additionally, landscaping along main corridors is overgrown, dead or otherwise outdated and there is evidence of drainage issues in many areas. Green stormwater infrastructure, mentioned within the adopted blueprints and plans, could address drainage, landscaping and improved walkability along these corridors.



Image 12. Deteriorating pavement along South Solano Dr.



Image 13. Extensive deterioration of sidewalks along El Paseo Rd.



Image 14. Sidewalks are missing in multiple areas throughout the proposed MRA.

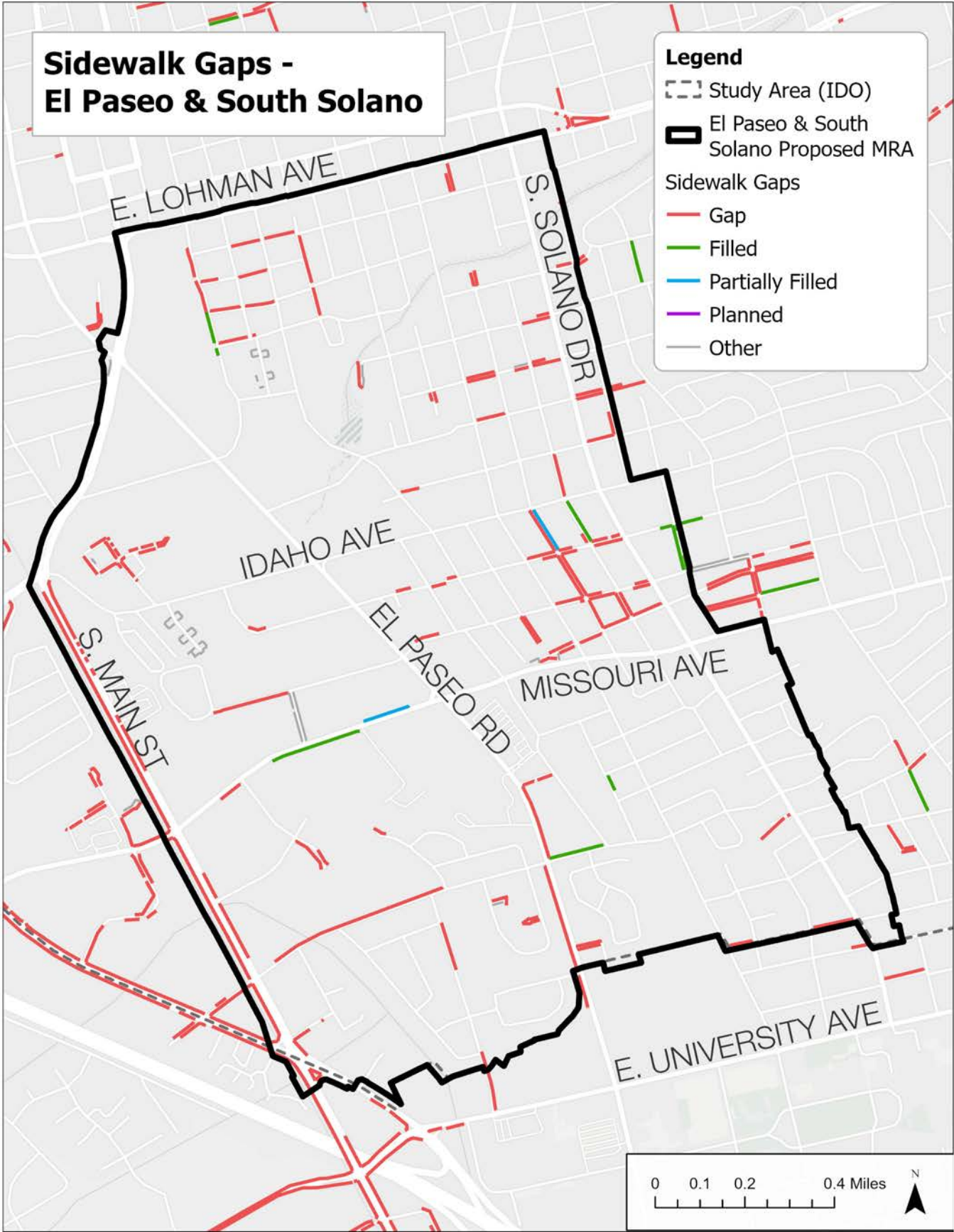


Figure 14. Sidewalk gap map - El Paseo & South Solano

BROWNFIELDS

In 2011, a Targeted Brownfields Assessment (TBA) was done along El Paseo Rd. Of the initial 29 vacant properties identified, 11 were cited as possible sites of asbestos contamination. Further study will be necessary to assess whether these sites should be classified as brownfields to trigger state or federal funding for

remediation and redevelopment (p 11, “Picturing El Paseo”). Similarly, there are a number of vacant properties along the corridor that are former gas stations or dry cleaners which are likely brownfield sites that could benefit from state and federal funding.



Image 15. Possible brownfield site within the proposed El Paseo & South Solano MRA.

WEST PICACHO PROPOSED MRA PHYSICAL CONDITIONS ASSESSMENT

WEST PICACHO AREA LAND USE

Land use in the West Picacho Area is predominantly residential. Buffered from commercial corridors, the area offers a diverse mix of low to medium density housing types including mobile homes, duplexes, small apartment buildings, and single-family detached houses.

Despite the area being zoned primarily Commercial, commercial properties make up a small percentage of current land use, possibly due to land use conversion and vacant properties. Additionally, current commercial land use is lower density than what zoning allows.

Many properties zoned for Industrial use are being used for commercial and residential uses or are vacant. These properties make up the north end of the closest business and industrial park to downtown Las Cruces. Industrial land uses are primarily storage, distribution and light manufacturing and include auto and construction

oriented businesses as well as a brewery.

There are more than 70 vacant parcels throughout the proposed MRA which provide opportunity for pedestrian friendly mixed-use development as well as potential parks and other civic and institutional uses. The commercial corridors on North Motel, West Picacho Ave. and North Valley Dr. are interrupted by significant vacant properties, indicated in the land use map in white (Figure 13). West Hadley Ave. is lined by multiple vacant properties which serve as a buffer between residential uses to the north and industrial or commercial uses to the south of the proposed MRA. Large vacant agricultural fields are found along Tashiro Dr..

This area is in need of specific revitalization strategies to achieve the future development vision of the “regional commercial place type” outlined in “Elevate Las Cruces”.

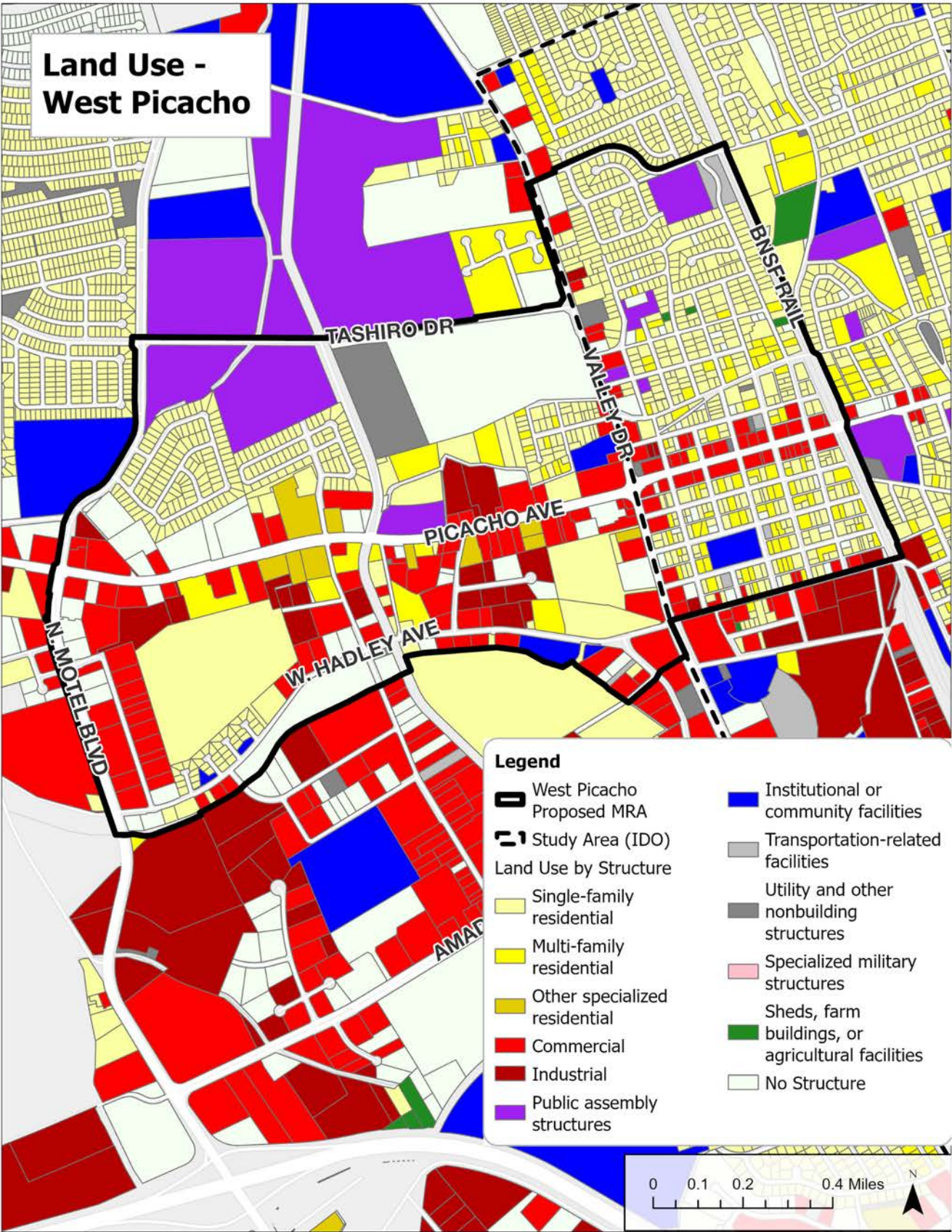


Figure 15. Land Use Map

WEST PICACHO AREA ZONING

The proposed MRA contains areas identified in “Elevate Las Cruces” as suburban neighborhood, regional commercial, and business park industrial place types. By acreage, the predominant zoning districts within the proposed West Picacho MRA are Commercial and Industrial followed by Residential.

There is a mix of residential zones including Single-Family Medium Density (R-1a), Single-Family Medium Density Mobile (R-1aM), Single-Family High Density (R-1b), Multi-family Low Density (R-2), Multi-family Medium Density (R-3), Multi-family High Density & Limited Retail and Office (R-4). The residential area west of Valley Dr. is primarily zoned for medium density, single-family mobile home development. The area to the west of Valley Dr. and to the south of West Picacho Ave. is zoned for low and medium density multi-family housing and to the north of West Picacho Ave. is zoned for single-family medium density. Parcels zoned for higher density and limited retail can be found along West Picacho Ave.

Commercially zoned parcels are found primarily along two intersecting corridors, West Picacho Ave. and North Valley Dr. The primary commercial zoning category is Medium Intensity Commercial (C-2) but there is also some High Intensity Commercial (C-3).

Industrially zoned parcels are clustered to the south of West Picacho between the commercial corridor and West Hadley Ave.

Despite the zoning, the majority of acreage within the proposed MRA is being used for residential purposes. Multiple large commercially zoned parcels along North Valley Dr. to the south of West Picacho Ave., which are intended to provide retail and service activities to adjacent neighborhoods are being used for residential mobile home uses. Many of the parcels zoned for industrial near North Motel Blvd. are currently being used for commercial and institutional purposes. There are more than 30 properties zoned for commercial or industrial which are currently vacant.

This mismatch between zoning and land use and the presence of a large number of vacant properties can indicate a commercial and industrial district in decline or transition. This is an area that would benefit from financial incentives to create a better business environment, while preserving and growing quality jobs for local residents. Supporting development of a mixed-use district with a balance of industrial, commercial and residential is important for employment and economic outcomes in the area.

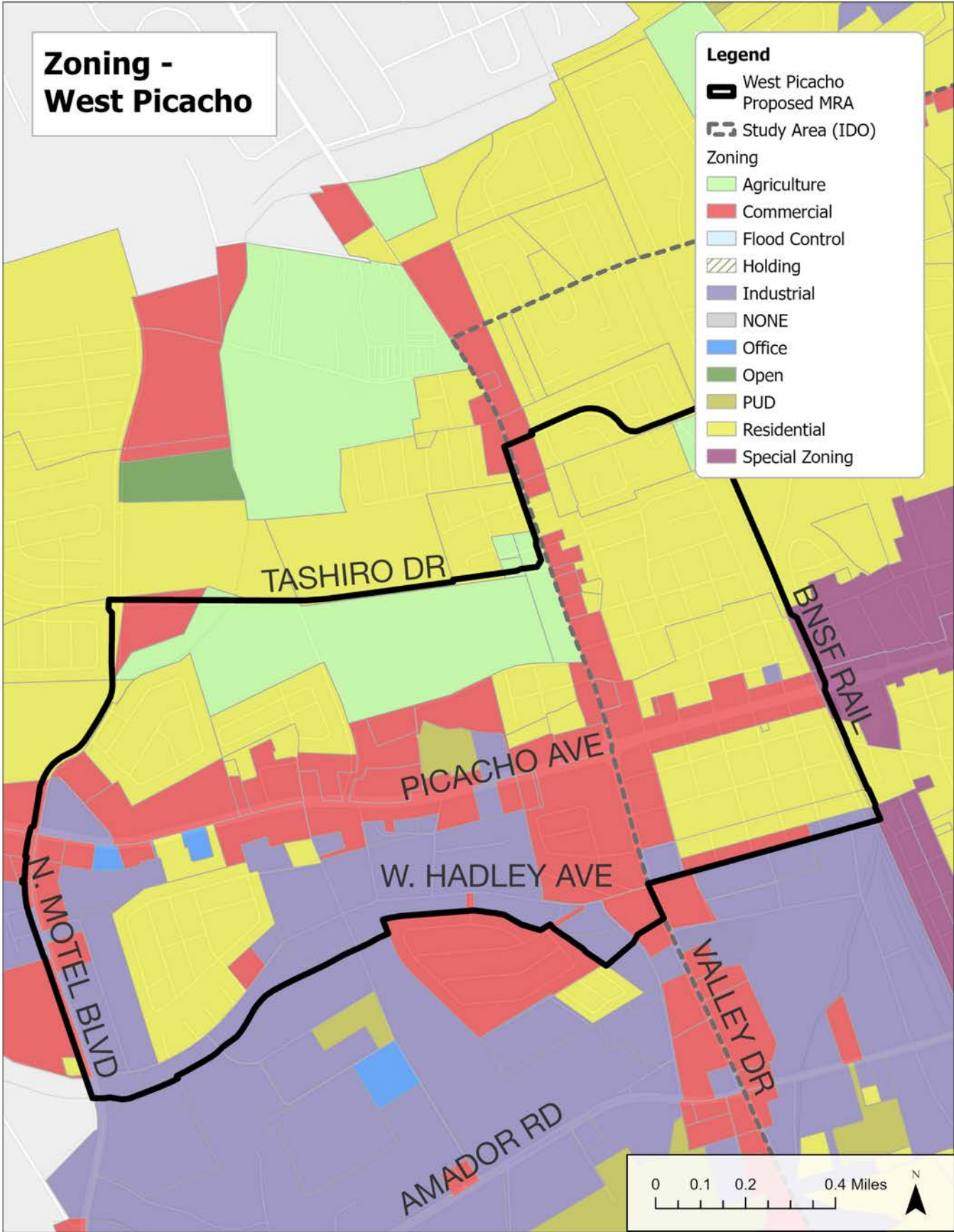


Figure 16. West Picacho Area Zoning Map

WEST PICACHO AREA DEVELOPMENT DENSITY

Development density assessment using figure ground analysis shows the relationship between buildings and surrounding spaces such as streetscapes, parks, and vacant lots. West Picacho Ave. is characterized by low-intensity auto-oriented retail, office, and motel development interrupted by large vacant or underutilized properties. Building setbacks decrease to the east of Quesenberry St., reflecting a more pedestrian and neighborhood scale retail environment mismatched with the

wide scale and speed limit of the West Picacho Ave. street section.

Large remnant agricultural properties along Tashiro Dr., and vacant industrial properties along West Hadley Ave. border the proposed MRA to the north and the south and contribute to the peri-urban feel of the area.



Image 16. Pedestrian and neighborhood scale retail mismatched with the wide street width of West Picacho Ave.



Figure 17. Figure ground map

VACANT AND UNDERUTILIZED PROPERTIES IN WEST PICACHO AREA

The West Picacho Area has approximately 74 vacant properties, which are located primarily in commercial and industrial zoned districts. Many of the vacant commercial parcels are located along West Picacho Ave. which was once a vibrant commercial corridor.

In addition to vacant commercial and industrial properties, there are large tracts of vacant land which are zoned for Agriculture, but which are currently listed as being used for Public Assembly and Transportation Infrastructure according to land use data.

More than 20 vacant buildings in the area are primarily located in residential areas. High levels of residential vacancy can indicate that people

do not want to live in a particular area and can point to a need to incentivize residential revitalization, job creation, and community development to attract and retain residents.

Vacant properties can pose a threat to environmental health, housing and community development, economic opportunities, and public safety. The presence of vacant properties within a neighborhood can lead to declining property values, a strain on public resources and challenges attracting private investment. Without proper intervention, conditions can continue to decline.



Image 17. Vacant and underutilized parcels are common along West Picacho Ave.



Image 18. Vacant agricultural fields along Tashiro Dr.



Image 19. Vacant industrial properties along West Hadley Ave.

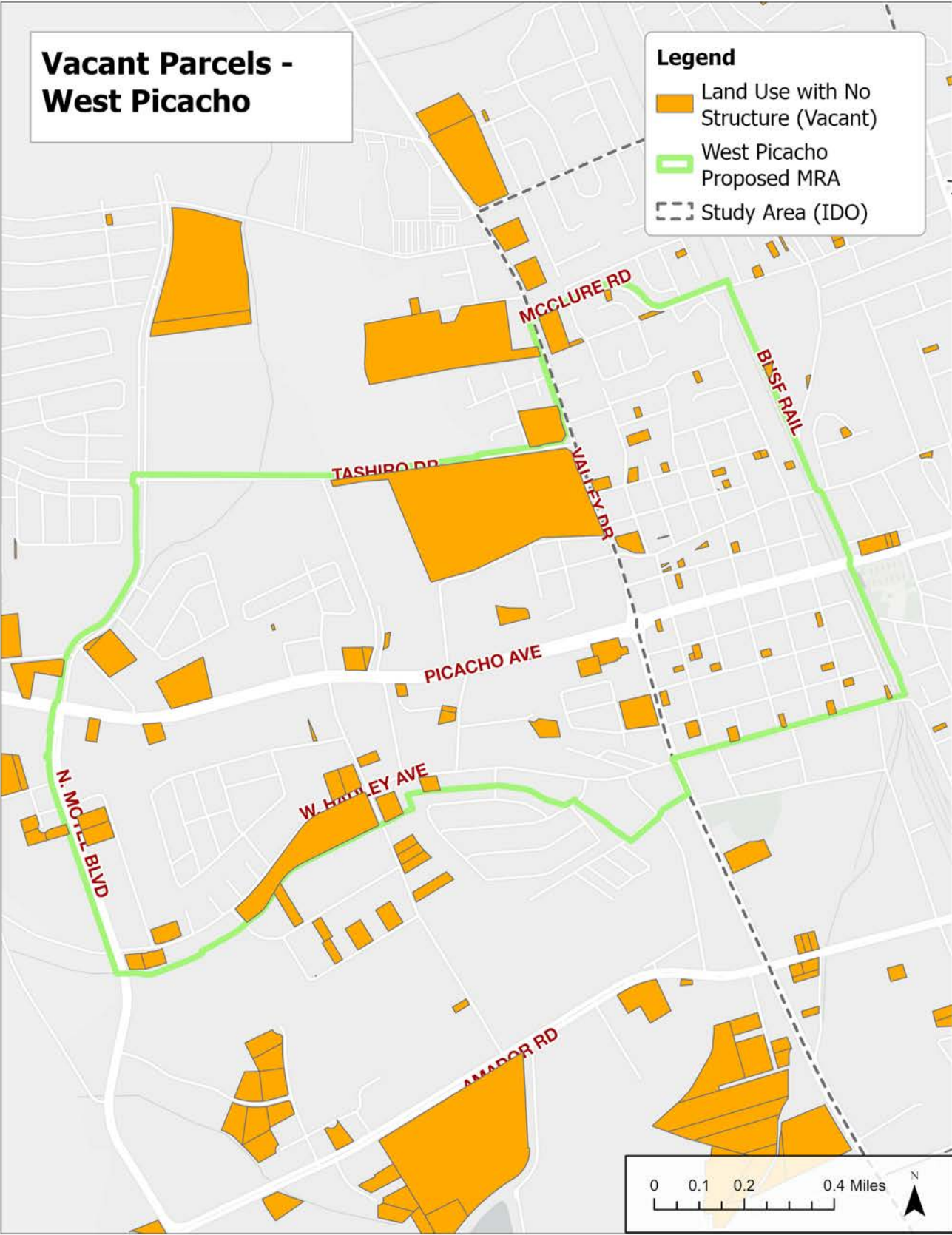


Figure 18. Vacant lots with no structures in the West Picacho area

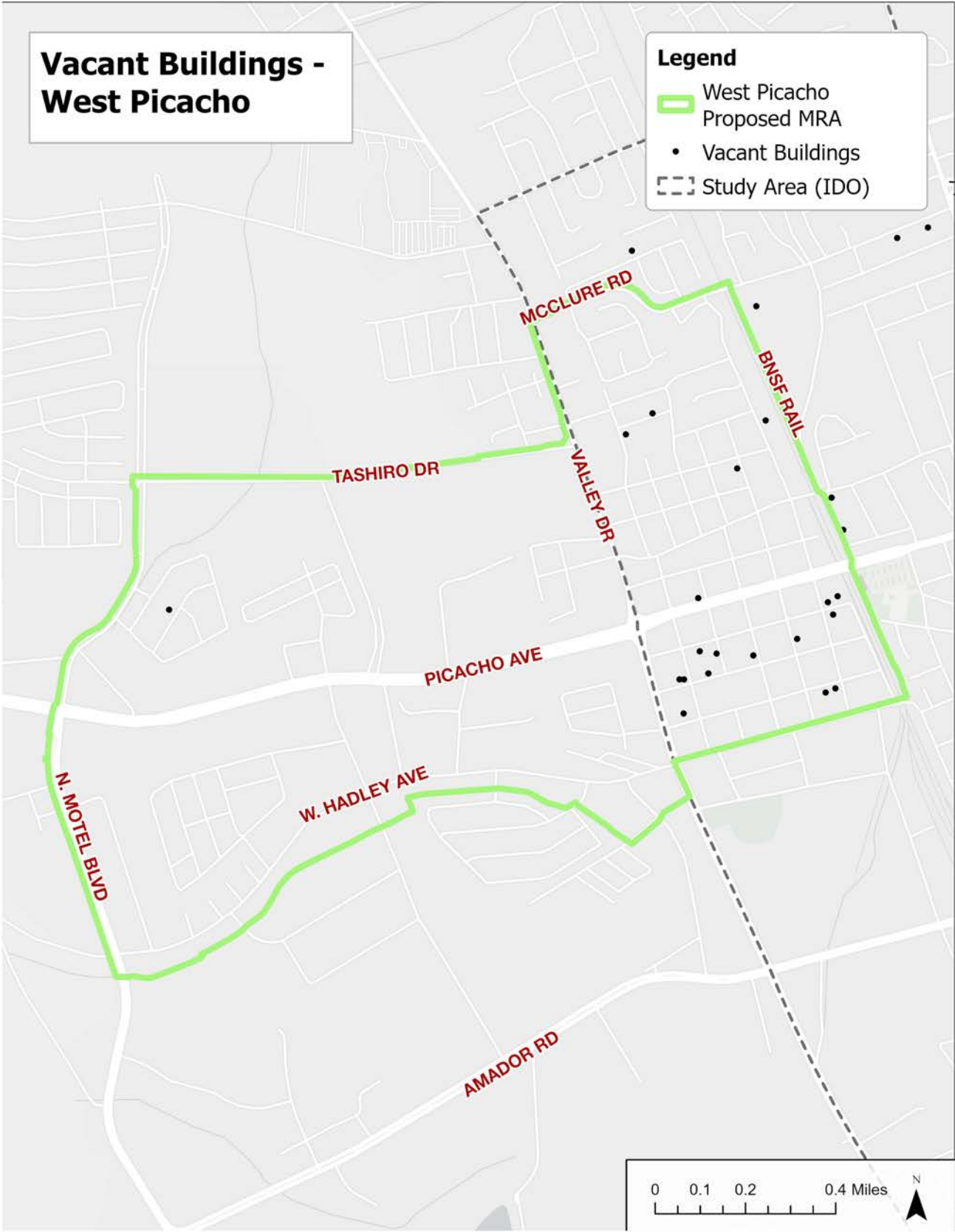


Figure 19. Vacant buildings in the West Picacho area

DETERIORATED COMMERCIAL AND RESIDENTIAL BUILDINGS IN WEST PICACHO

West Picacho Ave. is the gateway into the City of Las Cruces from the west. At one point, the area served as an important stop along the east-west travel route, with motels lining the corridor for travelers and truckers. Currently, West Picacho Ave. from Motel Blvd. to 1st St., is lined with old motels, auto repair and car parts stores, vacant buildings, agricultural fields not in use, and vacant lots.

The motels on this stretch appear to have been built in the 1950s and 1960s and some now serve the function of temporary or emergency housing. Numerous commercial, and some residential, buildings have crumbling and deteriorating facades. There are several vacant buildings and lots with boarded up windows and deteriorated signage. Some buildings have been tagged with graffiti. Weeds and litter are prevalent in the streetscape. There are fences that have not been maintained and are rusting. At least one abandoned gas station exists along the corridor should be assessed for contamination.

In addition, 56% of the housing stock in the West Picacho Area was built prior to 1990. Updated low and middle income housing is needed in the area to support a growing workforce.

Throughout the West Picacho MRA are commercial buildings that need repair, rehabilitation and in some cases removal. Additionally, these buildings may include inadequate floor layouts, or internal issues such as outdated electrical, telecommunications, and other equipment that limits their commercial viability as attractive spaces for new tenants. Rehabilitation of these buildings may involve expensive upgrades that current owners may not be ready to invest, given current market conditions.

The poor condition of these buildings contributes to ongoing, low levels of commercial activity and creates a disincentive to new private investment. Not every property within the proposed MRA exhibits blight conditions. However, the concentration of these types of properties will likely cause the area to experience further disinvestment and deterioration. Many buildings have the opportunity for adaptive reuse solutions to modernize the structures and provide new activity to the community and local economy.

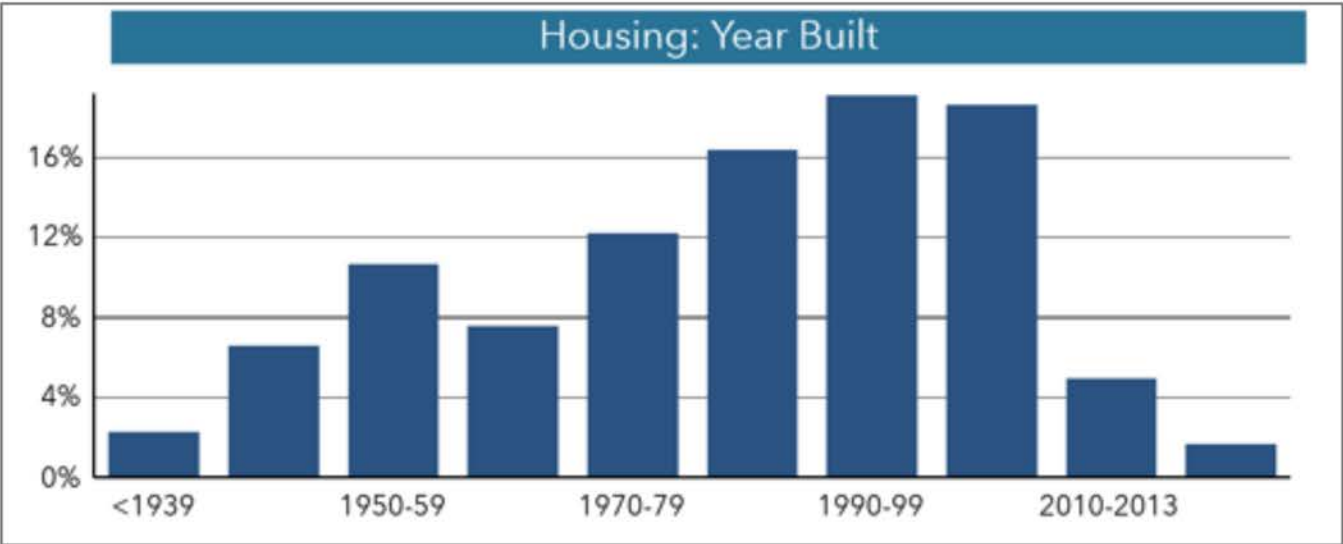


Figure 20. West Picacho Area; Age of Housing ESRI ACS 2022



Image 20. Vacant gas station on West Picacho Ave.



Image 21. Deteriorated and outdated signage on motel buildings.

DETERIORATED PUBLIC INFRASTRUCTURE AND STREETSCAPES

A visual survey of the existing street, sidewalk, and other infrastructure conditions was conducted within the proposed West Picacho MRA in December, 2022.

Narrow, deteriorating sidewalks exist throughout the West Picacho Ave. corridor, making the commercial streetscape loud, dangerous and uncomfortable for pedestrians. The streetscapes are unmaintained, with overgrown vegetation and weeds in front of various businesses. Road conditions vary throughout the area. Mild to moderate pavement deterioration along major stretches of surrounding collector roads leads into manufacturing areas.

Sidewalk gaps exist in some of the residential neighborhoods lining the West Picacho corridor. These gaps interrupt pedestrian connectivity between residential and commercial areas of the district. Extensive sidewalk gaps exist along Stewart Rd. between Valley Rd and 9th St. as

well as on Parker Rd. along the old acequia between 1st St. and 4th St. A large portion of West Hadley Avenue also lacks sidewalks. In the neighborhoods surrounding West Picacho Ave., there is substantial sidewalk deterioration and gaps in sidewalk infrastructure.

Connectivity and ADA compliance are an issue throughout the proposed MRA. Many sidewalks are not ADA compliant or have infrastructure such as utilities and signage which impede universal accessibility.



Image 22. Drainage issues leading to pooling along West Picacho Ave.



Image 23. Lack of sidewalks and deteriorated pavement adjacent to West Picacho Ave.

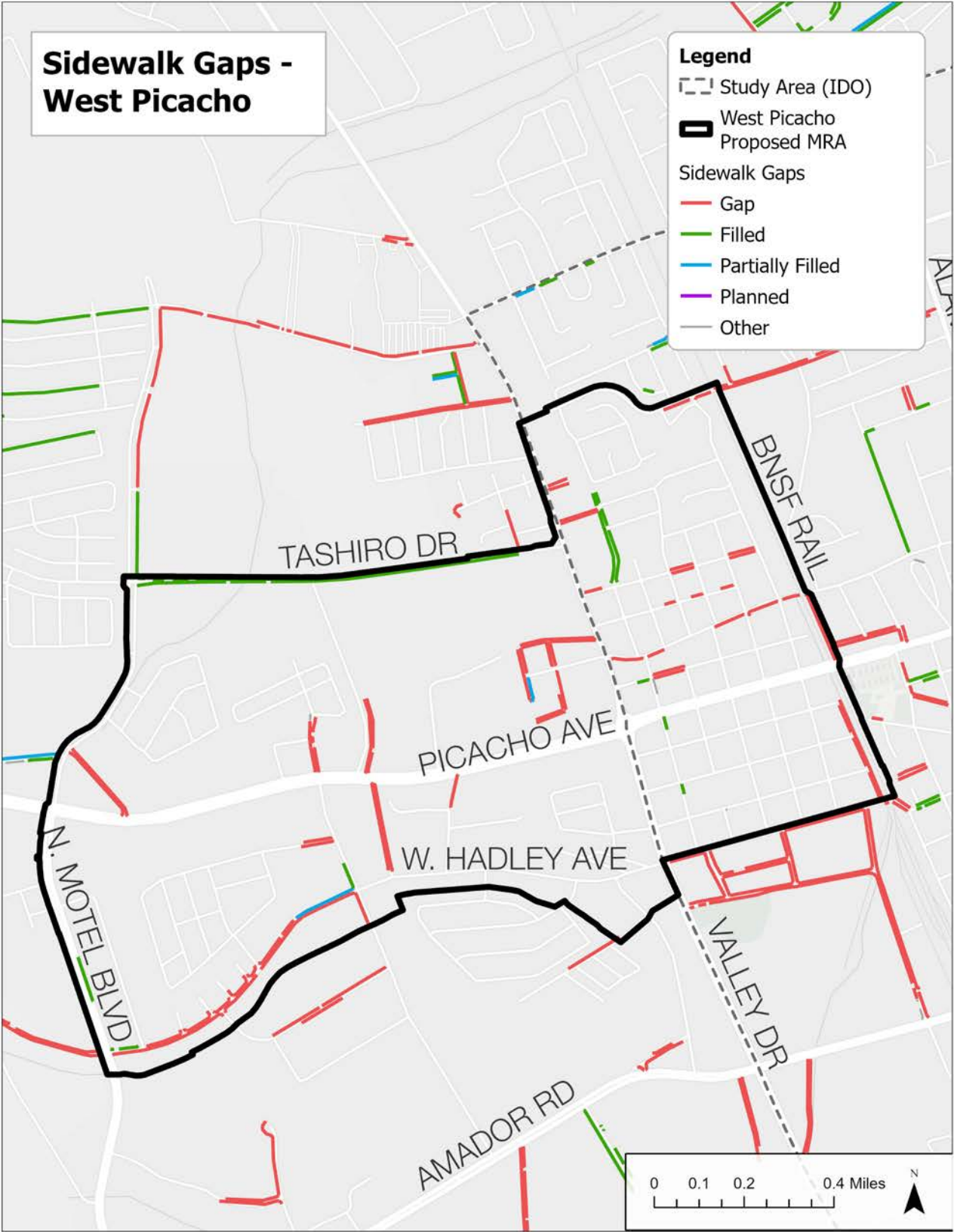


Figure 21. Sidewalk Gap Map

BROWNFIELDS

Although a brownfield inventory has not yet been conducted for the West Picacho area, due to the land use history and age of buildings, it is likely that there are brownfield sites that warrant inventory and assessment. Concern over the presence of potential brownfields and the cost of environmental assessment and remediation can discourage private investment and stall redevelopment.

State and federal programs support partnerships with cities to complete assessment and remediation of brownfield properties which can be part of a strategy within an MRA to provide opportunity sites for public-private partnerships. With proper treatment, formerly industrial sites can be great locations for business incubation, housing, and parks.

Social and Economic Conditions Assessment

In addition to the physical conditions present in the proposed Metropolitan Redevelopment Areas, social and economic conditions were also analyzed. The following analysis provides brief profiles on the demographics, housing, real estate, and retail market and compares the MRA district, the City of Las Cruces, Doña Ana County and the state. Findings from the analysis demonstrates the need for economic development tools to address existing barriers to redevelopment in both El Paseo & South Solano as well as the West Picacho Areas. Data is derived from the U.S. Census Bureau, City of Las Cruces, Doña Ana County, and UNM Bureau of Business and Economic Research (BBER).

EL PASEO & SOUTH SOLANO PROPOSED MRA SOCIAL AND ECONOMIC CONDITIONS ASSESSMENT

POPULATION

The demographics of the El Paseo & South Solano Area in Las Cruces include indicators of vulnerable populations. The area is home to a young population, with the largest age group in their 20s. Over 41% of the households include an individual with a disability, compared to 27% in Las Cruces, and 526 households do not have access to a vehicle. Considering the large number of individuals with disabilities and households which lack vehicles, the MRA could aid in updating public transportation infrastructure. Furthermore, previous area plans name public transit and active transportation as a top priority.

RACE, ETHNICITY & LANGUAGE

46% of the residents in the El Paseo & South Solano Area identify as white and about half of them identify as Hispanic white. A full quarter of the population identifies as multiracial and another 21% did not identify with any of the racial categories on the census survey. Perhaps most relevant is the large bilingual population. 2,257 individuals noted that they spoke Spanish, and of those Spanish-speakers, close to 87% of them said that they speak both English and Spanish well. Future business development can capitalize on the large bilingual population in the area.

HOUSEHOLDS

The El Paseo & South Solano Area of Las Cruces contains 3,058 households, made up of 6,496 individuals. The average household size is 2.11 persons, and the median age is 30.5. 63% of residents are of working age between 18 and 65, while 22.4% are under age 18 and 14.3% are over 65.

EMPLOYMENT AND INCOME

The El Paseo & South Solano corridors have high rates of poverty and unemployment. The unemployment rate is at 9%, compared to 5.4% in Las Cruces, 3.7% in Dona Ana County, and 3.9% in New Mexico. The area's median household income is \$20,271, compared with \$50,453, \$45,178, and \$53,992 in the city, county and state respectively. In the El Paseo & South Solano Area, 36% of households (1055 households) live below the poverty line, compared with a poverty rate of 24% city-wide, 19.4% at the county level and 18.4% in New Mexico as a whole. Close to 53% of workers in this area are white collar workers, another 34% work in the service industry and the remaining employees work in blue collar jobs.



EDUCATIONAL ATTAINMENT

Within the El Paseo & South Solano area, 22% of residents have a bachelor's degree or higher, 34% have attended some college, 26% are high school graduates, and 19% have no high school diploma. In contrast, in New Mexico 29% of the population has a bachelor's degree or higher, 31% have attended some college, 27% are high school graduates and 13% do not have a high school diploma. The EPSS area and the County have similar rates of educational attainment, with the exception of a higher rate of people with bachelor's and higher degrees at the County level (29%).

Education levels of neighborhood residents can help to inform economic development strategies and workforce development programs that are considered during the MRA planning process.

BUSINESS & COMMERCIAL CONDITIONS

The El Paseo Road & South Solano Drive corridors connect the Downtown MainStreet area to University Avenue and New Mexico State University (NMSU) to the south. Census data reports that the area is home to approximately 514 businesses that employ more than 5,000 people. The most prevalent business types are retail trade (84), health care & social assistance (64), professional services (57), and accommodation & food service (50).

Despite their close location to the University, the corridors lack bars/pubs, coffee shops, or juice bars, which opens up commercial possibilities within this designation area. The northern end of the corridor is highly commercial and becomes more residential when approaching the University area to the south.

The "Picturing El Paseo Report" notes: *"the corridor is also home to some of the highest commercial vacancy rates in the city. The design is heavily auto-oriented and is dominated by*

small strip malls with asphalt parking lots that face El Paseo and often have several access points from the road. These design factors, combined with heavy automobile traffic, make the area unpleasant and dangerous to pedestrians." (p.7)

This and previous reports of the area highlight the importance of concurrent pedestrian infrastructure improvements, complete streets redesign, and public-private partnerships to improve commercial facades and housing availability.

"Picturing El Paseo" asserts that the El Paseo corridor serves as an important mixed-use connection between the University Area and Downtown. This area has seen significant decline over the past decade. Efforts to revitalize the area through an MRA is an important step towards improving local economic development outcomes and quality of life for local residents.

HOUSING & REAL ESTATE MARKET

In the El Paseo & South Solano Area, most residents are renters. As of 2022, only 26% of households were homeowners while 74% rent. On average, individuals spend 39% of their income on housing which reflects a rent burdened population. On average in Doña Ana County, residents spend 18.9% of their income on housing and in New Mexico overall, the average is 19.3%. Considering recent increases in rental costs, the higher rent burden in these neighborhoods illustrates a need for more affordable housing and resources that support low to middle income home buyers.

This proposed MRA is significantly below the Doña Ana County and New Mexico State homeownership rates of 64% and 68% respectively. The median home value is \$150,000, which sits below the county and state values of \$179,606 and \$208,207 respectively.

In the El Paseo & South Solano areas, there are a total of 3971 housing units, with 317 of them vacant. Of the vacant housing in the area, 78% are units for rent, 5% are for sale, 12% are rented but unoccupied (the rest are either seasonally occupied or marked other).

High vacancy rates can indicate that people are not interested in renting or buying in a particular area. The El Paseo & South Solano neighborhoods have 9 homes for sale and currently 10 apartments are listed for rent.

A commitment is needed to revitalize the housing stock as well as incentivize improvements to the quality of housing and surrounding amenities.

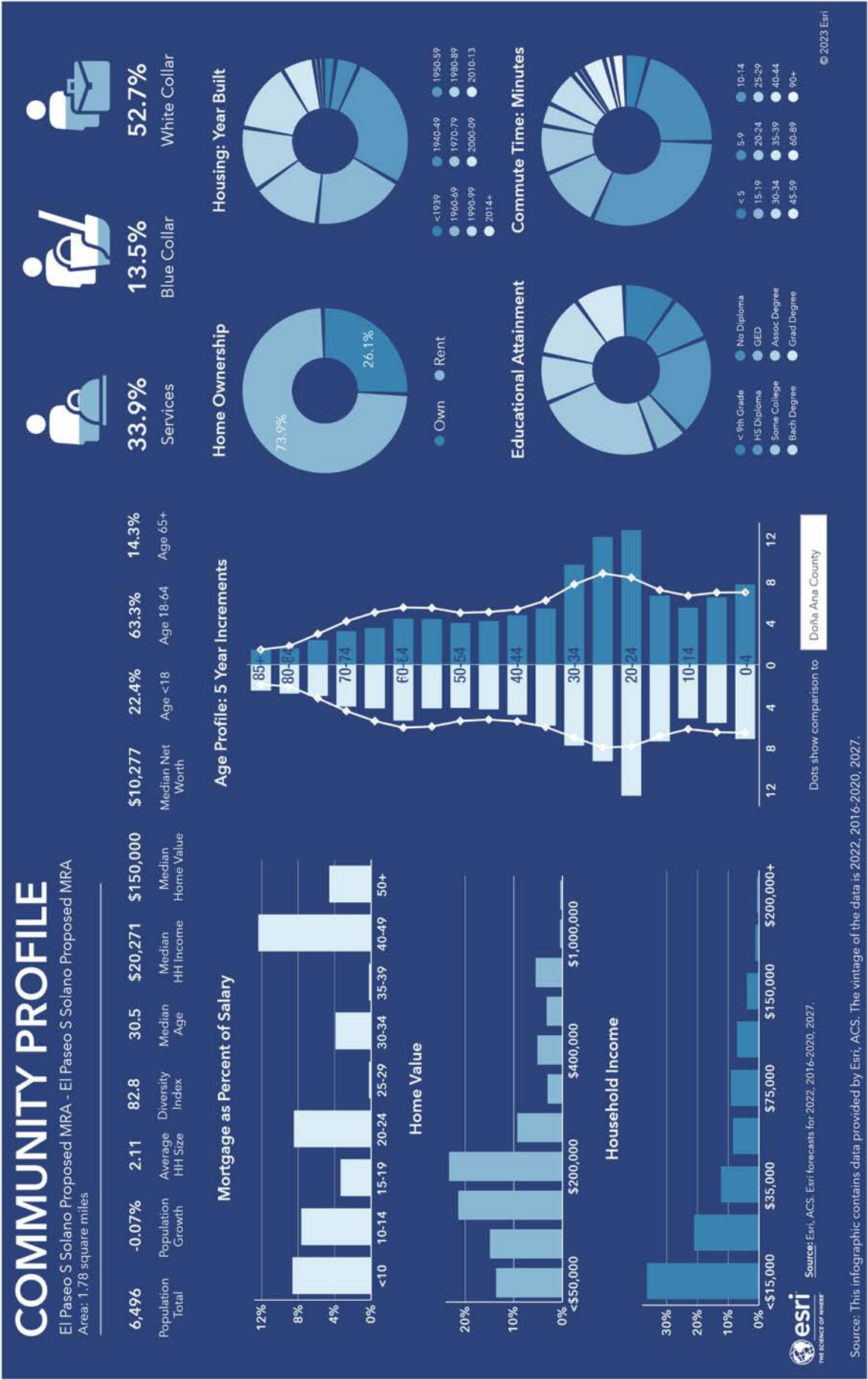


Figure 23. Community profile of El Paseo & South Solano proposed MRA

CRIME

Crime is a significant social factor within the proposed El Paseo & South Solano MRA boundaries which may inhibit revitalization and growth. Property and violent crime data indicates higher concentration of crime than in other parts of the IDO and city more broadly. Stakeholders interviewed noted the challenges posed to

business and property owners associated with petty crime and the cost to repair broken windows and vandalized buildings.

High crime rates create an unsafe environment for local residents and business owners and can deter reinvestment and business expansion.

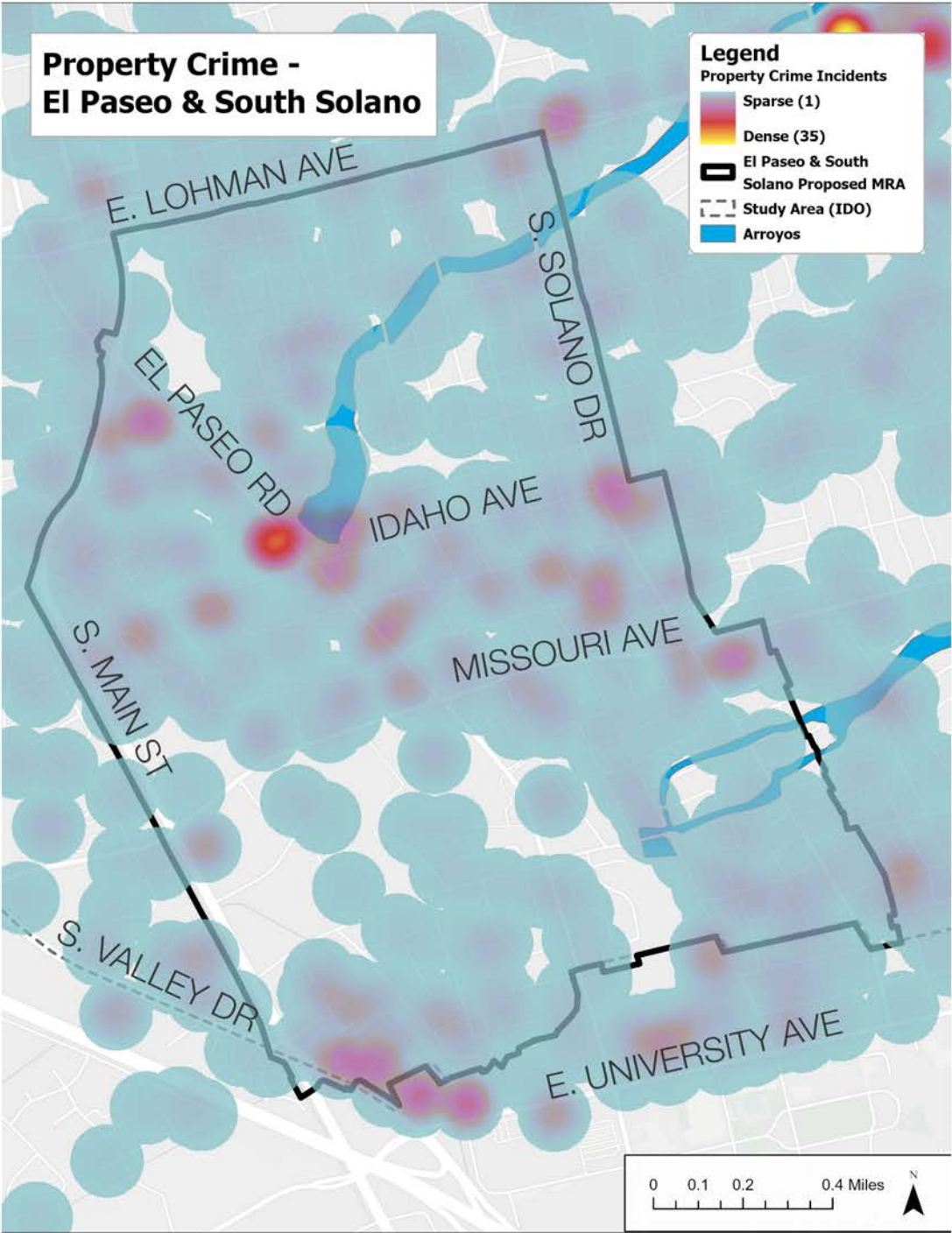


Figure 24. Property crime heat map

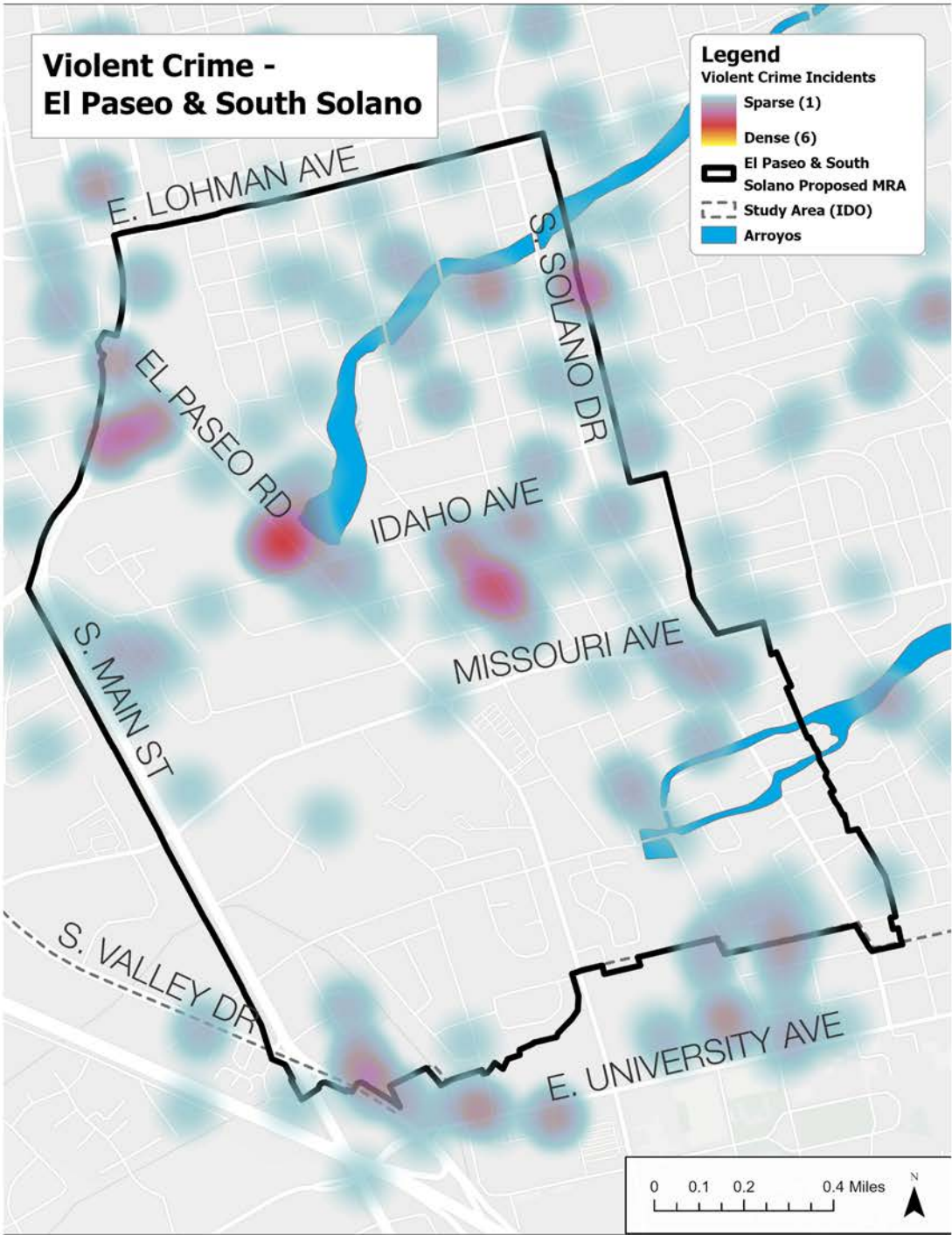


Figure 25. Violent crime heat map

WEST PICACHO PROPOSED MRA SOCIAL AND ECONOMIC CONDITIONS ASSESSMENT

POPULATION

Similar to El Paseo & South Solano, in the West Picacho Area, there are indicators of vulnerable populations. Close to one-third of the households include people with disabilities, and 164 of the households lack access to a vehicle. The largest age group is in their 20s with a growing youth population. Considering the large number of individuals with disabilities and households which lack vehicles, the MRA could aid in updating public transportation infrastructure for a vulnerable population.

RACE AND ETHNICITY

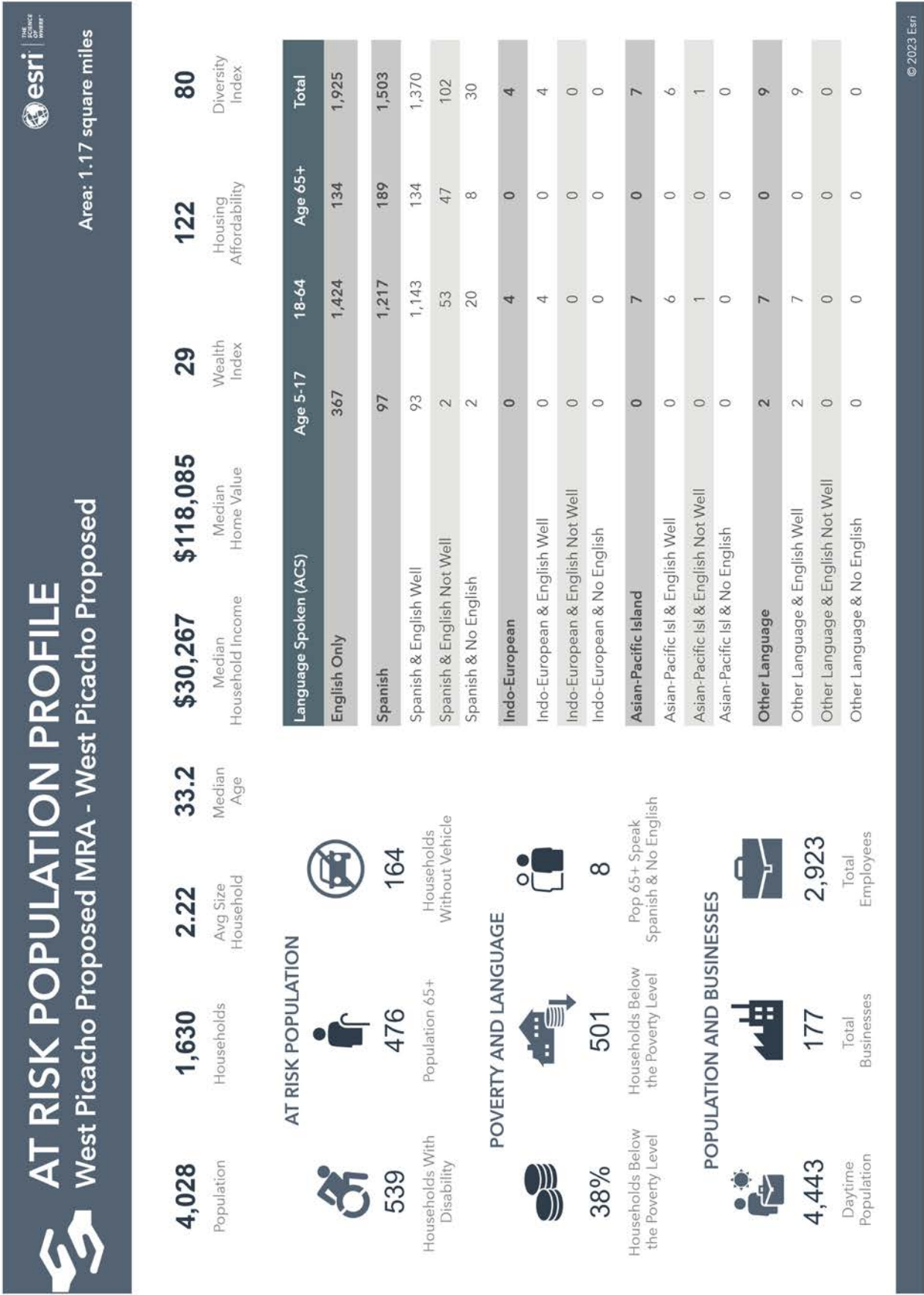
In the West Picacho Area, 49% of residents identify as white and about half of those identified as Hispanic white. Mirroring the El Paseo & South Solano Area, 25% of residents identified with two or more races and 22% didn't identify with any of the census categories presented. 1,503 residents in the West Picacho Area speak Spanish, most of whom report speaking both English and Spanish well. 132 Spanish speakers either speak no English or do not speak English well. It will be critical during the MRA planning process to include materials and interpretation in both English and Spanish.

HOUSEHOLDS

There are 4,028 residents living in the West Picacho area that make up 1,630 households. The average household size is 2.22 people, and the median age is 33. The age breakdown looks similar to El Paseo & South Solano, with 63% of the residents between the ages of 18 and 65, while 25% are under 18 and 12% are over 65.

EMPLOYMENT AND INCOME

The West Picacho area has an unemployment rate of 7.6% which is higher than the Las Cruces rate of 5.4% or the Doña Ana County rate of 3.7%. The median household income is \$30,267, while per capita income is \$16,396. Most notably some of the block groups along the West Picacho corridor have median household incomes as low as \$14,000. A full 38% (501) of households in this area live below the poverty level. When assessing the sectors in which residents work, 57% work in white collar professions, while 25% work in the service sector and the remaining work in blue collar careers.



EDUCATIONAL ATTAINMENT

In the West Picacho Area, the statistics are notably similar to those of El Paseo & South Solano. 33% of residents report having attended some college. 26% completed high school, and 23% have no high school diploma. The remaining 19% achieved a bachelor's degree or higher-level graduate education. For comparison, the state and county percentage of residents with college or higher degrees is at 30%.

Taking area educational levels into account during the MRA planning process will be a crucial piece of developing appropriate workforce development programs and economic development strategies for area populations.

BUSINESS & COMMERCIAL

West Picacho Ave. serves as a gateway into Las Cruces from the west, marking a peri-urban transition from the agricultural fields of the Mesilla Valley to the civic center of Las Cruces. The area once functioned as an important stopping point along the east-west travel route, with motels lining the corridor for travelers and truckers.

To the south of West Picacho Ave. is a large industrial area along West Hadley Ave. which extends beyond the proposed MRA. This area offers direct connection to the Las Cruces Innovation and Industrial Park and has access to major arteries connecting to Deming and El Paso. The proposed MRA also contains one of the busiest intersections in west Las Cruces at West Picacho Avenue and North Valley Drive. The corridor is lined by medium to high density commercial properties with opportunities for mixed-use development.

Despite its geographic significance, business in the area has been declining for decades. There is a prevalence of vacant properties and storefronts. Census data reports approximately 177 total businesses in the area that employ 2,923 people. The most prevalent business types are Retail Trade (34), Construction

(27), Other Services (24), and Accommodation & Food Service (15). Vehicle parts dealers, and automotive repair make up a large percentage of the retail trade and service sectors.

A detailed retail gap analysis should be conducted for the area to determine potential gains in jobs and gross receipts tax that could be realized through strategic interventions to improve existing businesses, attract new businesses and industries, and promote innovation and entrepreneurship.

Many of the motels now serve as extended stay housing and are in need of significant updates. West Picacho Avenue from Motel Boulevard to 1st St., is lined with old motels which have the opportunity to be converted to alternative housing and mixed-use developments. Motel and hotel conversions are a cost-effective and successful strategy to repurpose underutilized and problematic properties to support business and housing expansion.

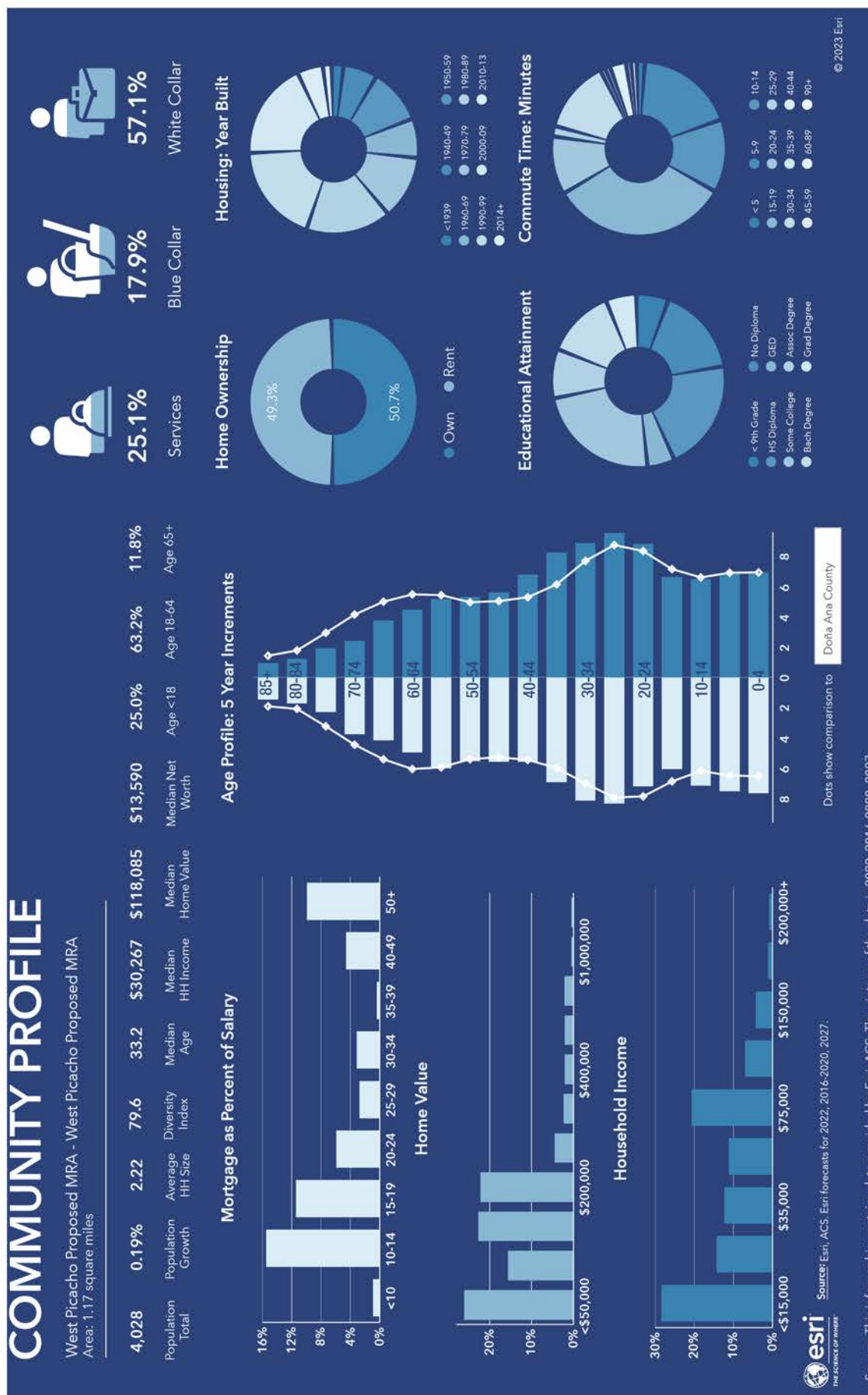


Figure 27. Community profile of the West Picacho proposed MRA

HOUSING & REAL ESTATE MARKET

The West Picacho Area has a higher-than-average percentage of renters. Only 51% of those living in this area own their home compared to 68% homeownership at the state level and 64% at the county level.

In the proposed MRA, residents spend an average of 21% of their income on housing costs. On average, in Doña Ana County, residents spend 18.9% of their income on housing and in New Mexico overall, the average is 19.3%. In light of increasing rental costs and the higher rent burden in these neighborhoods, there is a demonstrated need for more affordable housing and resources that support low to middle income individuals.

The median home value of \$118,085 sits far below the county and state values which are \$179,606 and \$208,207 respectively. This signals

a need to revitalize a diverse range of housing stock for all income levels, as well as incentivize improvements to the quality of housing.

In the West Picacho Area, there are a total of 1783 housing units, 153 (8.6%) of which are vacant. Of the vacant housing in the West Picacho Area, 61% of these units are for rent, 11% are for sale, and the rest are either unoccupied, seasonally occupied or listed as other. High vacancy rates can indicate that people are not interested in living in a particular area or that buildings are no longer being maintained. Currently, there are 4 homes for sale, all built between 1940 and 1958 that are in various states of disrepair. Another 4 apartments are listed for rent, 3 of which need repair or updating.



Image 24. Unmaintained housing unit in the West Picacho area

CRIME

City crime data indicates that both violent and property crime are significant issues in the proposed West Picacho MRA. Concentrations of reported crimes are located particularly along the West Picacho Ave. and N. Valley Dr. corridors.

Local business owners and residents have pointed to challenges with break-ins, car theft, drug use, prostitution, and gun violence along West Picacho Ave. Crime poses a threat to public safety and can deter private investment.

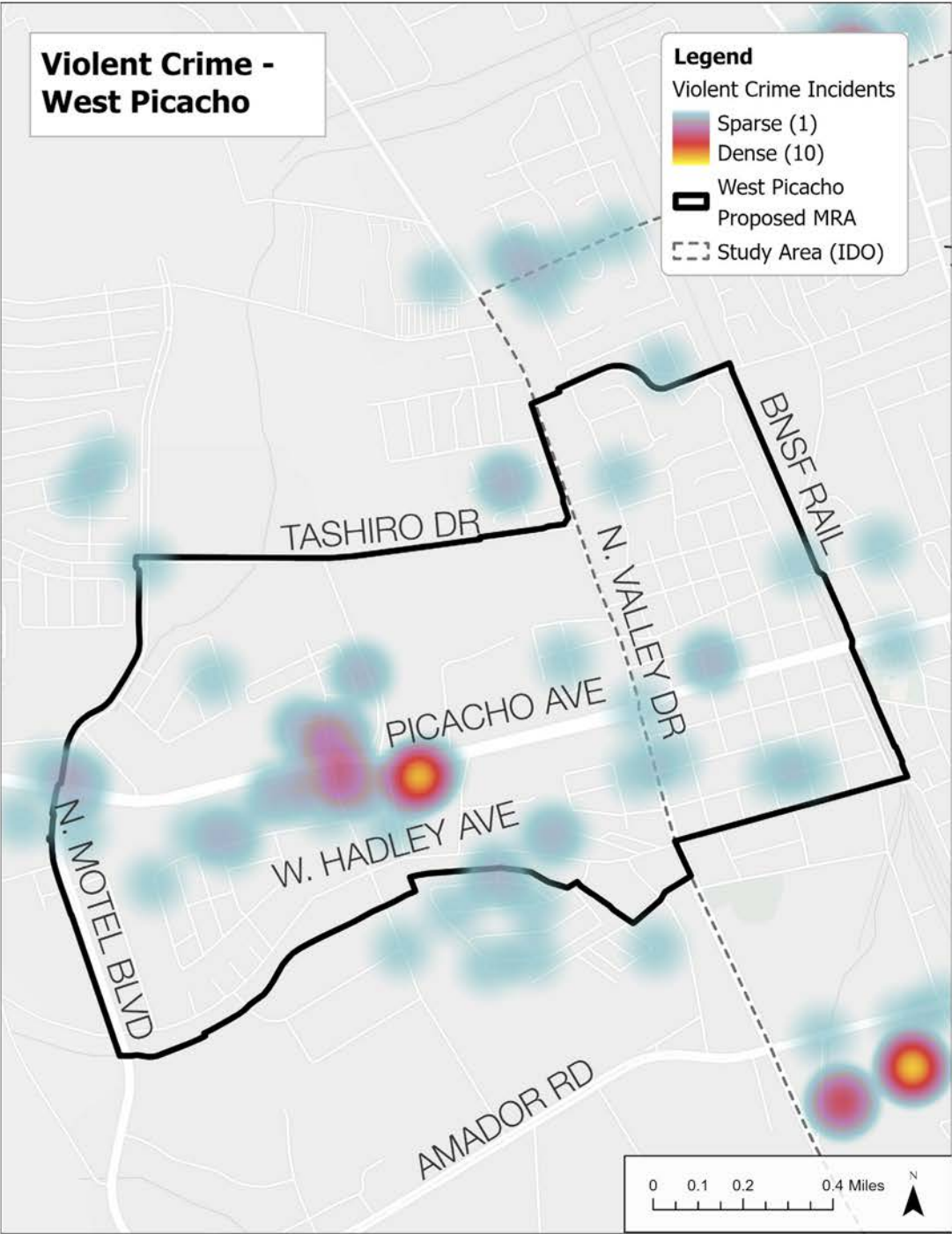


Figure 28. Property crime heat map

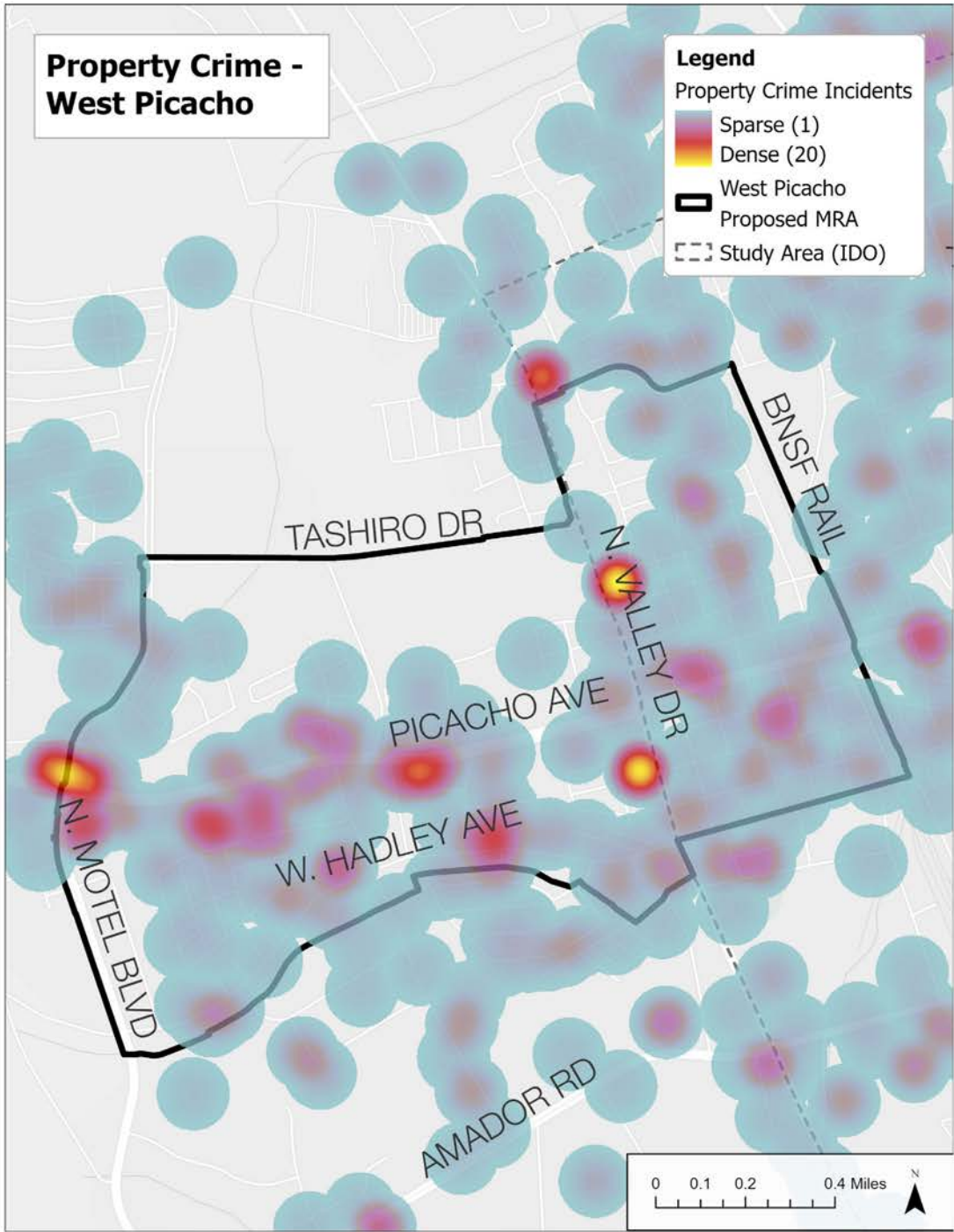


Figure 29. Violent crime heat map

Planning Background

The City of Las Cruces has completed several planning efforts previously that informed this MRA Designation analysis and report. Plans reviewed are listed on p. 6 of this report. These documents were used to inform Neighborhood Planning Areas within the IDO to focus on during MRA assessment. Further, the designation and subsequent planning of these MRAs will assist the City with realizing future development goals laid out in the “Elevate Las Cruces Comprehensive Plan”.

ELEVATE LAS CRUCES COMPREHENSIVE PLAN

The “Elevate Las Cruces Comprehensive Plan” serves as the City’s key policy framework to guide growth and transformation for Las Cruces over the next 20 plus years. It seeks to enhance the livability, prosperity, and environment of the City of Las Cruces and provides a roadmap for achieving sustainable community growth. The plan places emphasis on revitalization of older areas of the city through strategic infill and transit-oriented development and the creation of vibrant mixed-use corridors, strategies that will be relevant for both the El Paseo & South Solano and West Picacho areas.

The plan’s “physical framework” includes the Future Development Program which “identifies the location and character of preferred development over the next 25-year period,”

and the Future Thoroughfare Program which identifies “the arrangement of the City’s future street network”. MRA designation of the El Paseo and South Solano and the West Picacho MRAs demonstrates the commitment of the City of Las Cruces to invest within the proposed areas and take steps towards implementation of aspects of the Future Development Program.

The Future Development Program is a place-based approach to future development and includes place classifications and types which indicate the intended future development character and intensity of places throughout the city. The MRA planning process will support alignment with the Future Development vision and ensures that future growth in the MRAs follows the City’s intended intensity, character, and mix of land uses.

The proposed El Paseo and South Solano MRA is classified as an Urban Neighborhood, described in more detail on p. 44 of “Elevate Las Cruces” and contains two place type overlays: Neighborhood Center (p.51) and Mixed-use Corridor (p.55).

The proposed West Picacho MRA contains a Mixed-use Corridor as well as areas with different place type classifications: Regional Commercial (p.42), Suburban Neighborhood (p.40) and Business Park and Industrial place type (p.48). For more information about Place Classifications and Place Types, please see the “Elevate Las Cruces Comprehensive Plan”.

FIGURE 1.11, FUTURE DEVELOPMENT MAP,
PLACE CLASSIFICATIONS

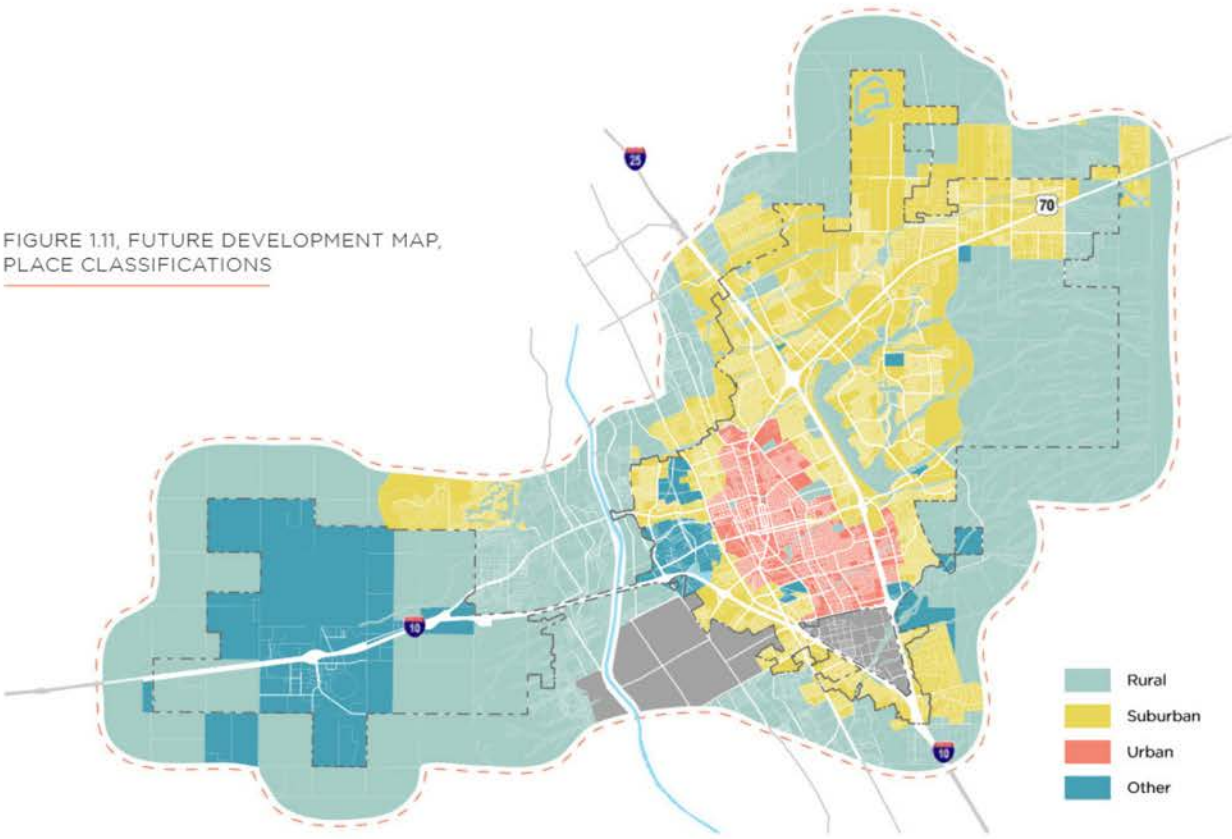


Figure 30. Future Development Map from “Elevate Las Cruces Comprehensive Plan”

Some of the goals and policies contained in the Comprehensive Plan that provide policy guidance for investment in the proposed MRA districts are listed below.

Goal CE-1: Balanced Growth - Encourage efficient land use development patterns that accommodate projected growth in a sustainable manner.

- **Policy CE-1.2:** Promote investment within older areas of the city through redevelopment

Goal CE-2: Areas of Special Consideration - Integrate new development into the community in a manner that complements significant built and natural features.

- **Policy CE-2.1:** Promote infill development strategies to sustain the city's established neighborhoods and historic residential areas.
- **Policy CE-2.4:** Coordinate planning efforts with NMSU to create vibrant corridors and neighborhoods adjacent to campus.

Goal CE-3: Centers and Corridors - Support community growth through concentrated development at activity centers and along key corridors.

- **Policy CE-3.2:** Allow for a mix of development type and intensity along major thoroughfares that reflects surrounding urban, suburban, and rural contexts

Goal CE-4: Complete Neighborhoods

- Develop mixed-use neighborhoods that incorporate a wide range of recreational, commercial, employment, and civic uses.

- **Policy CE-4.1:** Encourage a variety of housing types into new and redeveloping neighborhoods to provide options for all ages and incomes throughout the city.
- **Policy CE-4.3:** Develop street networks that provide connectivity within and between residential areas and supporting centers of activity.

Goal CE-5: Building and Site Design - Establish standards to integrate new development with surrounding built and natural features while mitigating long-term natural resource and climate impacts.

- **Policy CE-5.3:** Ensure that development concepts provide an interconnected network of pedestrian facilities linking streets, buildings, parking, and public gathering spaces.
- **Policy CE-5.5:** Incorporate landscaping techniques into new development that are aesthetically pleasing while mitigating environmental impacts

Goal CE-6: Context Sensitive Street Design

- Design streets to support varying levels of pedestrian activity based on the intended built context of surrounding development

- **Policy CE-6.2:** Design and construct city streets that support vehicular, truck, bus, pedestrian, and bicycle travel within the same right-of-way.

Goal CP-7: Attainable Housing - Provide affordable, clean, and safe housing options for all residents regardless of income.

- **Policy CP-7.4:** Provide incentives for developing or re-purposing attainable units

Goal CP-8: Special Housing Needs -

Ensure that the housing needs of traditionally underserved populations are met.

- **Policy CP-8.1:** Support efforts to provide transitory populations permanent, stable homes.

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

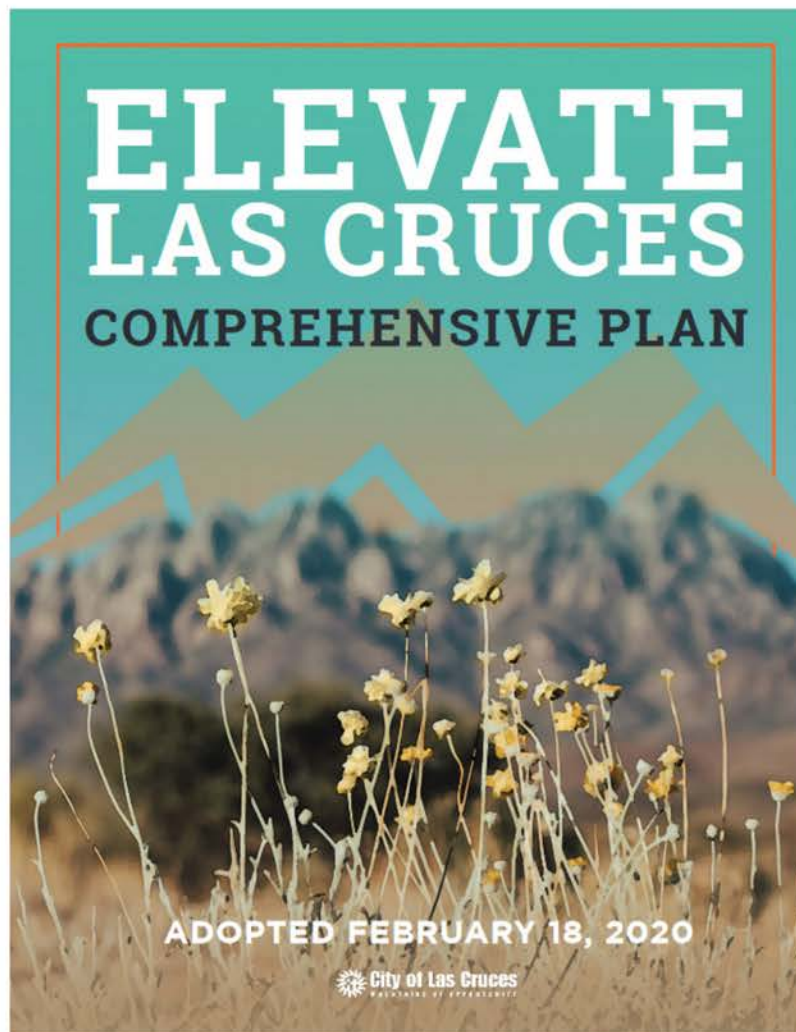
- **Policy CP-9.2:** Promote denser housing options in the urban neighborhood, downtown, town centers, neighborhood centers, and mixed-use corridors identified in the future development map.

Goal CL-2: Neighborhood Conservation -

Strengthen neighborhood condition through improvements to the built-environment.

- **Policy CL-2.2:** Encourage redevelopment of vacant properties within neighborhoods.

Goal CL-8: Multi-Modal System - Develop an equitable, multi-modal transportation system that presents feasible travel options for residents.



El Paseo & South Solano Documents

The “El Paseo Corridor Blueprint” has the goal to, *“Investigate options to incentivize redevelopment such as investing in infrastructure improvements, pilot/catalyst projects, public-private partnerships; shared parking provisions, density bonus allowances; streamlining the application process, and organizing design competitions and charrettes.”*
(Goals 1- 6) (p.5)

The “Picturing El Paseo” study conducted major outreach to the surrounding community and gathered input to inform future development in the neighborhood. When surveyed about economic revitalization along the corridor,

bookstores, specialty stores, homegrown entrepreneurs, incubator businesses and youth-oriented businesses were the most desired in this area. Coffee shops, outdoor eateries and ground-floor restaurants were the second most commonly desired addition.

Questions about land use and development yielded very strong support for more parks and public spaces as well as mixed-use development that includes retail, office and residential within the same buildings or parcels. The public was also highly in favor of additional vegetation that includes green stormwater infrastructure and a more walkable/bikeable streetscape.



Image 25. Complete Streets example streetscape from UNC Chapel Hill Community & Economic Development

Conclusions

This report demonstrates that the existing conditions in the proposed El Paseo & South Solano MRA and the proposed West Picacho MRA meet the criteria for “blighted” area designation as defined by the Metropolitan Redevelopment Code. The conditions described in this report detail a combination of factors which “...substantially impairs or arrests the sound growth and economic health and well-being of a municipality or locale within a municipality or an area that retards the provisions of housing accommodations or constitutes an economic or social burden and is a menace to the public health, safety, morals or welfare in its present condition and use...”

By passing a resolution to designate the El Paseo & South Solano MRA and the West Picacho MRA, and embarking on a robust MRA planning process, the City of Las Cruces demonstrates a commitment to addressing these persistent issues. The MRA planning process will need to prioritize realistic implementation strategies, considering the longstanding nature and complexity of the needs that have been demonstrated in this report.

With the powers made available to municipalities by the New Mexico Metropolitan Redevelopment Code, the City of Las Cruces will be working with the private and non-profit sectors to create opportunities to preserve existing businesses in these areas, expand business and job opportunities, expand and revitalize the housing stock, as well as implement much needed improvements to the public realm. Authentic and effective community process will ensure that the revitalization strategies and catalytic projects that the City pursues are place-based and reflect the unique history, identity, culture and vision of the community.

APPLICABLE METROPOLITAN REDEVELOPMENT CODE

Findings and Declarations of Necessity [NM Stat § 3-60A-2 (2)(2)]

A. It is found and declared that there exist in the state slum areas and blighted areas that constitute a serious and growing menace, injurious to the public health, safety, morals and welfare of the residents of the state; that the existence of these areas contributes substantially to the spread of disease and crime, constitutes an economic and social burden, substantially impairs or arrests the sound and orderly development of many areas of the state and retards the maintenance and expansion of necessary housing accommodations; that economic and commercial activities are lessened in those areas by the slum or blighted conditions, and the effects of these conditions include less employment in the area, lower property values, less gross receipts tax revenue and reduced use of buildings, residential dwellings and other facilities in the area; that the prevention and elimination of slum areas and blighted areas and the prevention and elimination of conditions that impair sound and orderly development is a matter of state policy and concern in order that the state shall not continue to be endangered by these areas that contribute little to the tax income of the state and its local governments and that consume an excessive proportion of its revenues because of the extra services required for police, fire, accident, hospitalization or other forms of public protection, services and facilities.

Definition of Blight [NM Stat §3-60-8)

As used in the Community Development Law [3-60-1 to 3-60-37 NMSA 1978] “blighted area” means an area, other than a slum area, which is found by the local governing body by reason of the presence of a substantial number of slum, deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, unsanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, improper subdivisions or obsolete platting, or the existence of conditions which endanger life or property, or any combination of such factors to substantially impair or arrest the sound growth of the municipality, retard the provision of housing accommodations or constitute an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

Findings of Necessity by Local Government [NM Stat § 3-60A-7 (2020)]

No municipality shall exercise any of the powers conferred upon municipalities by the Redevelopment Law [3-60A-5 through 3-60A-13, 3-60A-14 through 3-60A-18 NMSA 1978] until after its local governing body shall have adopted a resolution finding that:

A. one or more slum areas or blighted areas exist in the municipality; and

B. the rehabilitation, conservation, slum clearance, redevelopment or development, or a combination thereof, of and in such area or areas is necessary in the interest of the public health, safety, morals or welfare of the residents of the municipality.

Appendices

A. MRA INDICATOR PRELIMINARY ANALYSIS

B. ADDITIONAL FOCUS AREAS FOR FUTURE MRA DESIGNATION

Amador Proximo & South
Apodaca & Lift Up
East of Solano / Bellamah
Mesquite

A. MRA INDICATOR PRELIMINARY ANALYSIS

The following spreadsheet on pages 82-85 allows for easy comparison of presence of blight indicators between different focus areas.

Physical Conditions					
Area	High level vacant property -land w/no structure (CLC data)	Concentrations of unoccupied commercial/ industrial properties (CLC data)	High level abandoned buildings (CLC data)	Deteriorating buildings (visual assessment)	Deteriorating street conditions (visual assessment)
El Paseo/S. Solano	x	x	x	x	x
East of Solano neighborhood area			x	x	x
Mesquite	x		x	x	x
Amador Proximo + South of Amador	x	x	x	x	x
West Picacho	x	x	x	x	x
Apodaca/Lift Up	x			x	x

Physical Conditions				
Area	Deteriorating sidewalk conditions (visual assessment)	Prevalence of Sidewalk Gaps (CLC Sidewalk Gap data)	Litter/Illegal Dumping (visual assessment)	Unmaintained landscaping/weeds (visual assessment)
El Paseo/S. Solano	x	x	x	x
East of Solano neighborhood area	x	x	x	x
Mesquite		x	x	x
Amador Proximo + South of Amador		x	x	x
West Picacho	x	x	x	x
Apodaca/Lift Up	x	x	x	x

	Socioeconomic Conditions				
Area	Low Median HH Income (Compared to State \$47,151)	High levels households below poverty level (compared to City 24 %)	High Unemployment Rate (compared to county 3.7%)	Population Decline (forecasted annual growth rate)	High renter population (compared to City 45%)
El Paseo/S. Solano	X	X	X	X	X
East of Solano neighborhood area	X	X	X	X	X
Mesquite	X	X			X
Amador Proximo + South of Amador	X		X		X
West Picacho	X	X	X		X
Apodaca/Lift Up	X	X	X		

Socioeconomic Conditions					
Area	Aging Housing Stock - Predominantly Built before 1980	High level Households with a disability (compared to city - 27%)	High level of Households without a vehicle (compared to County - 6.2%)	Low median home value (compared to City \$176,737)	High Crime Rate (ESRI Business Analyst - Total Crime Index more than 100 - national comparison)
El Paseo/S. Solano	x	x	x	x	x
East of Solano neighborhood area	x	x	x	x	x
Mesquite	x	x	x	x	x
Amador Proximo + South of Amador	x	x	x	x	x
West Picacho		x	x	x	x
Apodaca/Lift Up		x	x	x	x

B. ADDITIONAL FOCUS AREAS FOR FUTURE MRA DESIGNATION

Appendix B provides basic justification for the Metropolitan Redevelopment Area (MRA) designation of four areas within the Infill Development Overlay district. Based on existing conditions assessment, market research and demographic analysis, each of these areas meet the NM state redevelopment code criteria for MRA designation.

- Amador Proximo and South
- Apodaca & Lift Up
- East of Solano neighborhood area
- Mesquite

AMADOR PROXIMO & SOUTH

The Amador Proximo & South area, bound generally by W. Hadley Ave. to the north, BNSF Rail to the east, Brown Rd. to the south, and N. Valley Dr. to the west is the result of combining the Amador Proximo Planning Area with an area of approximately the same size just to the south which exhibits similar physical and socio-economic conditions. The 0.36 square mile area has a history of agricultural and industrial use with very little residential devleopment and a popultaion of around 185 people. The area has been the focus of significant community planning efforts (Amador Proximo Blueprint), which identifies a vision for redevelopment and provides a foundation for future MRA planning processes.

Existing conditions assessment, market research, and demographic analysis demonstrate that the area meets the statutory criteria for Metropolitan Redevelopment Area designation. The area had most of the physical and socioeconomic indicators of “blight” analyzed during the MRA assessment (see Appendix A). The area has low levels of commercial activity, high levels of vacant and abandoned properties, deteriorating buildings, lacking infrastructure, high levels of unemployment, low income levels, as well as unsafe and unhealthy conditions. The following is a summary of key data points and physical conditions that provide provide justification for MRA designation.

Low levels of commercial activity

The area has approximately 55 businesses which employ 759 people. The “Amador Proximo Blueprint” identifies opportunity in the area to expand business activity. The plan identifies restaurants, retail, entertainment, and healthcare as the top four commercial needs in the area. The least preferable business type is industrial, indicating a desire to transition away from historic land use.

High levels of vacant property

The area has more than 15 vacant parcels including large industrial and commercial properties which provide opportunities to encourage infill, mixed-use development.

Deteriorating buildings

The majority of the housing stock in Amador Proximo was built in the 1950s and 73% of the housing was built prior to 1980. This area is in need of housing upgrades and revitalization.

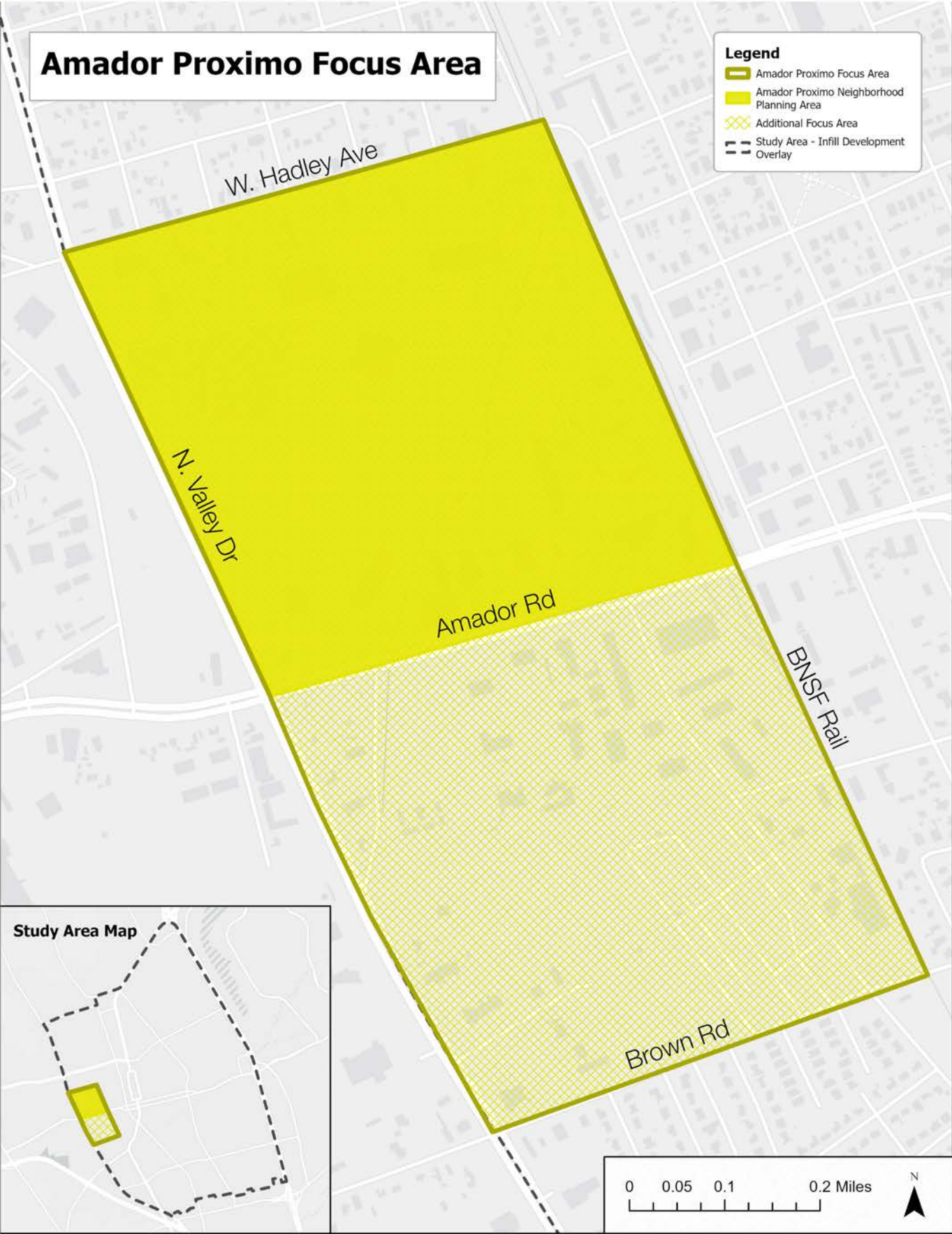
Deteriorating infrastructure

City data indicates that the area has significant sidewalk gaps which significantly limit universal access and limit opportunities for mixed-use development. A visual survey demonstrated the presence of moderate to extensive pavement deterioration on roads throughout the area.

Continued on pg. 87

Key “Blight” Indicators in Amador Proximo and South Area for MRA Designation								
High Levels Vacant Property	High Levels Abandoned Buildings	Deteriorating Buildings	Deteriorating Infrastructure	Low Median Home Value	Low Income Levels	High Unemployment	High Crime Rates	Low Levels Commercial Activity
X		X	X	X	X	X	X	X

Appendix Figure 1. Key “blight” indicators in Amador Proximo and South Area



Appendix Figure 2. Amador Proximo and South Area

Unsafe and unhealthy conditions

The Total Crime Index value for the Amador Proximo area is 244. The Crime Index is an indication of the relative risk of a crime occurring and is measured against the overall risk at a national level. Values above 100 indicate the area has an above average risk of occurring compared to the US. Additionally, due to the area's agricultural and industrial land use history there are possible brownfield sites which could require assessment and remediation. The presence or perceived presence of crime and brownfields can deter private investment in an area and delay redevelopment activity.

High unemployment and low income levels

The median household income for the area is \$25,000 and 26% of households live below poverty level. While a relatively small population, the demographics of the area are similar to that of the adjacent proposed West Picacho MRA. Additionally, the area is home to two non-profits which provide services to unsheltered individuals and there is a sizeable homeless population in the area which would benefit from affordable housing expansion.



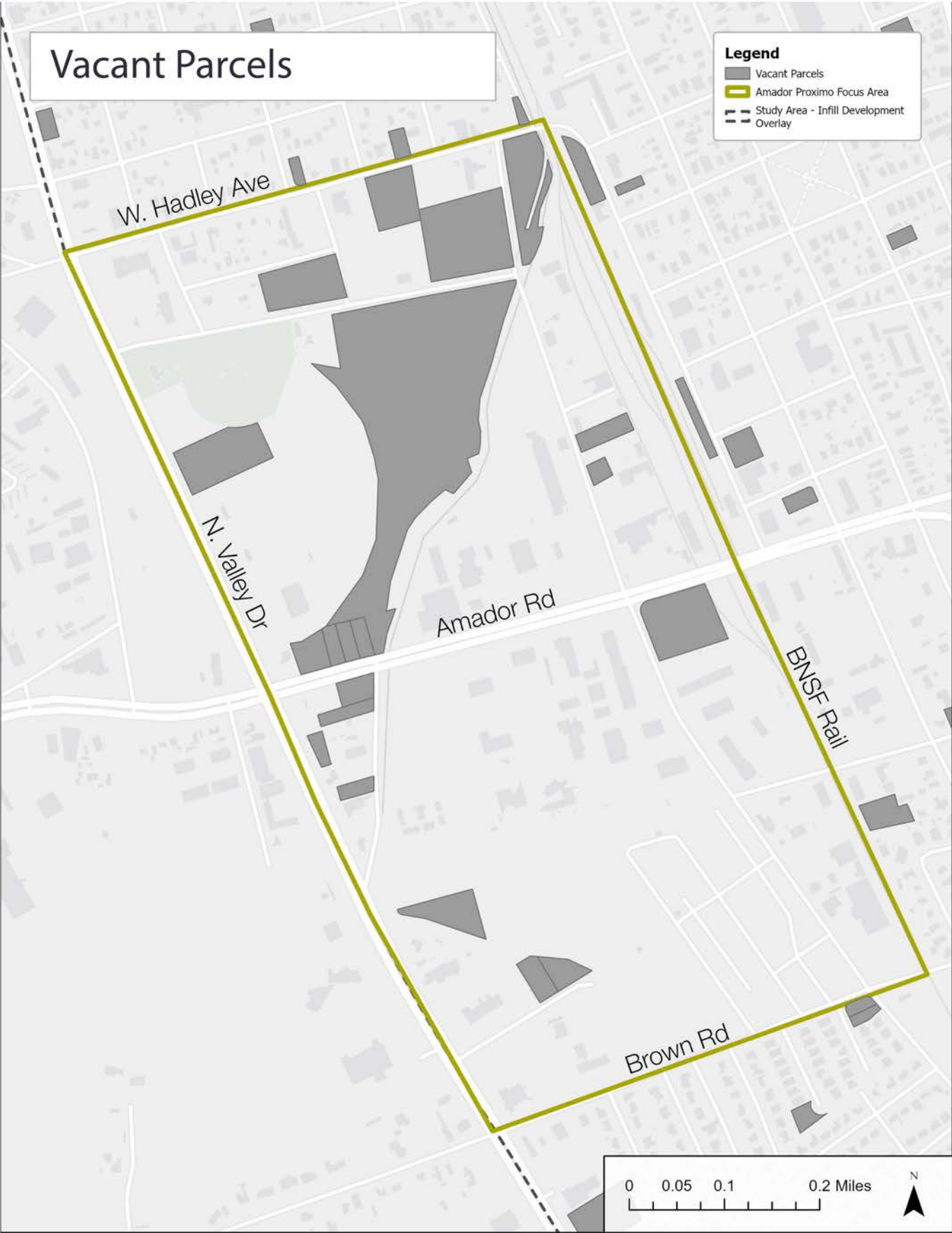
Appendix Image 1. Large vacant parcels are found throughout the Amador Proximo and South area



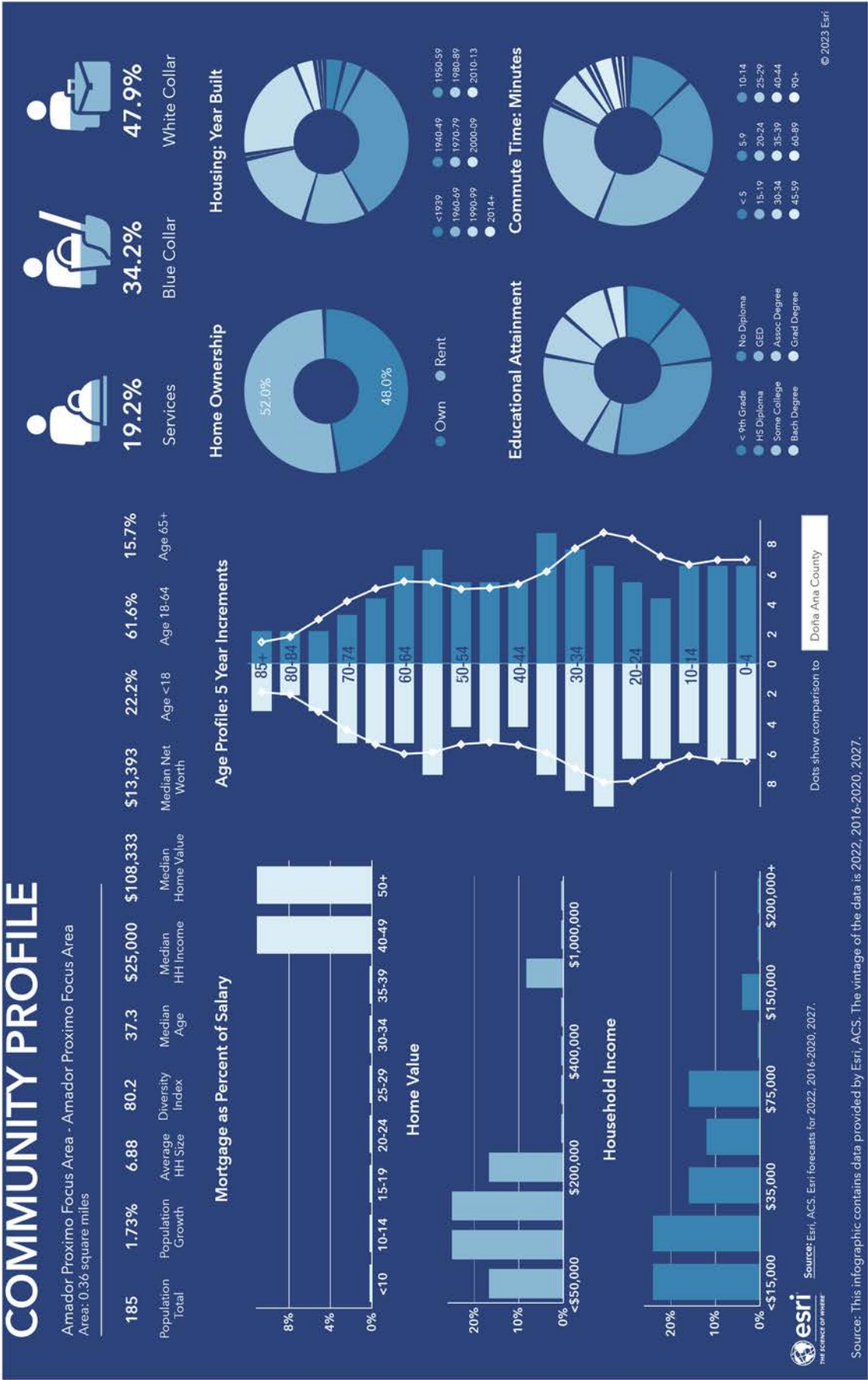
Appendix Image 2. A lack of sidewalks limits universal access and can limit opportunities for mixed-use development.



Appendix Image 3. Deteriorating street conditions in Amador Proximo and South area.



Appendix Figure 3. Vacant Parcels in Amador Proximo and South Area



Appendix Figure 4. Community Profile for Amador Proximo and South Area

APODACA & LIFT UP

The Apodaca & Lift Up area, bound generally by N. Main St. to the north, Interstate 25 to the east, Spruce Ave. to the south, and N. Solano Dr. to the west is the result of combining the Apodaca Planning Area with the bordering Lift Up Las Cruces area. The area is home to approximately 6,245 people and has been the focus of multiple community planning efforts (Apodaca Blueprint, Apodaca Neighborhood Plan, Lift Up Las Cruces), which identify area issues, lay out a vision for revitalization, and can provide a foundation for future MRA planning processes.

Existing conditions assessment, market research, and demographic analysis demonstrate that the Apodaca & Lift Up area, meets the statutory criteria for MRA designation due to low levels of commercial activity, high levels of vacant and abandoned properties, deteriorating buildings and infrastructure, high levels of unemployment, low income levels, as well as unsafe and unhealthy conditions. The following is a summary of key data points and physical conditions that provide provide justification for MRA designation.

Low levels of commercial activity

There are approximately 90 businesses in the Apodaca area which employ approximately 1,300

people. During the Apodaca Blueprint planning process, residents indicated that there is a need for business expansion and increased job opportunities for area residents. Restaurants, retail, entertainment, and healthcare were selected as the most important commercial needs in the area.

High levels of vacant property

The area contains over 40 vacant parcels including two large vacant properties, the Las Cruces Country Club (158 acres) and the Villa Mora property (77 acres) which are focus areas in the Apodaca Blueprint. MRA designation and complementary tools could support redevelopment and infrastructure improvements in areas that might otherwise remain vacant.

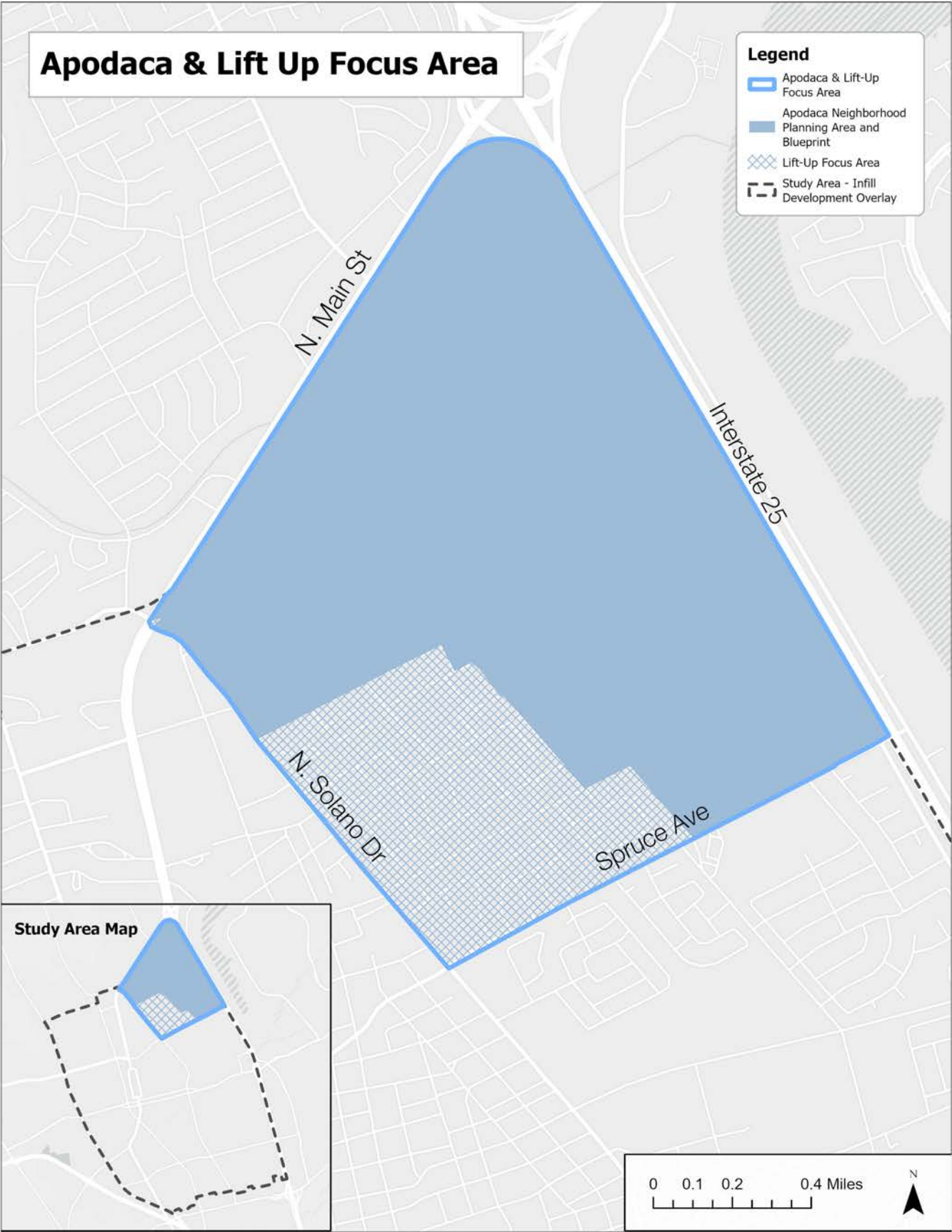
Deteriorating buildings

Housing stock throughout the area is aging. The majority of housing in this area was built in the 1950s and 60's and a full 69% of homes here were built prior to 1990. Many properties in the area exhibit advanced signs of disinvestment and deferred maintenance.

Continued on pg. 93

Key “Blight” Indicators in Apodaca & Lift Up Area for MRA Designation								
High Levels Vacant Property	High Levels Abandoned Buildings	Deteriorating Buildings	Deteriorating Infrastructure	Low Median Home Value	Low Income and/or High Poverty Levels	High Unemployment	High Crime Rates	Low Levels Commercial Activity
X		X	X	X	X	X	X	X

Appendix Figure 5. Key “blight” indicators in Apodaca & Lift Up Area



Appendix Figure 6. Apodaca and Lift Up Area

Deteriorating public infrastructure

Deteriorating streets and sidewalks, sidewalk gaps, and localized street flooding have been identified as issues within the area, all of which interrupt vehicle and pedestrian circulation. There are over 640 households with individuals with disabilities and over 300 households without vehicles. An MRA could aid in updating streetscape and public transportation infrastructure for vulnerable populations.

High unemployment and low income levels

While there is one census block group within the area that has a median household income exceeding the city-wide figure, more than 30% of residents earn incomes below \$25,000 per year and 38% of households are below the poverty level. 5 of the City’s 19 affordable housing complexes are located in the area. Additionally, the unemployment rate is 9.9% which is significantly higher than the city or county.

Unsafe and unhealthy conditions

The Total Crime Index value for the Apodaca & Lift Up Area is 147. The Crime Index is an indication of the relative risk of a crime occurring and is measured against the overall risk at a national level. Values above 100 indicate the area has an above average risk of occurring compared to the US. Additionally, incompatible land use and the presence of potential brownfield sites could pose a risk to public health. The presence or perceived presence of crime and brownfields can deter private investment in an area and delay redevelopment activity.



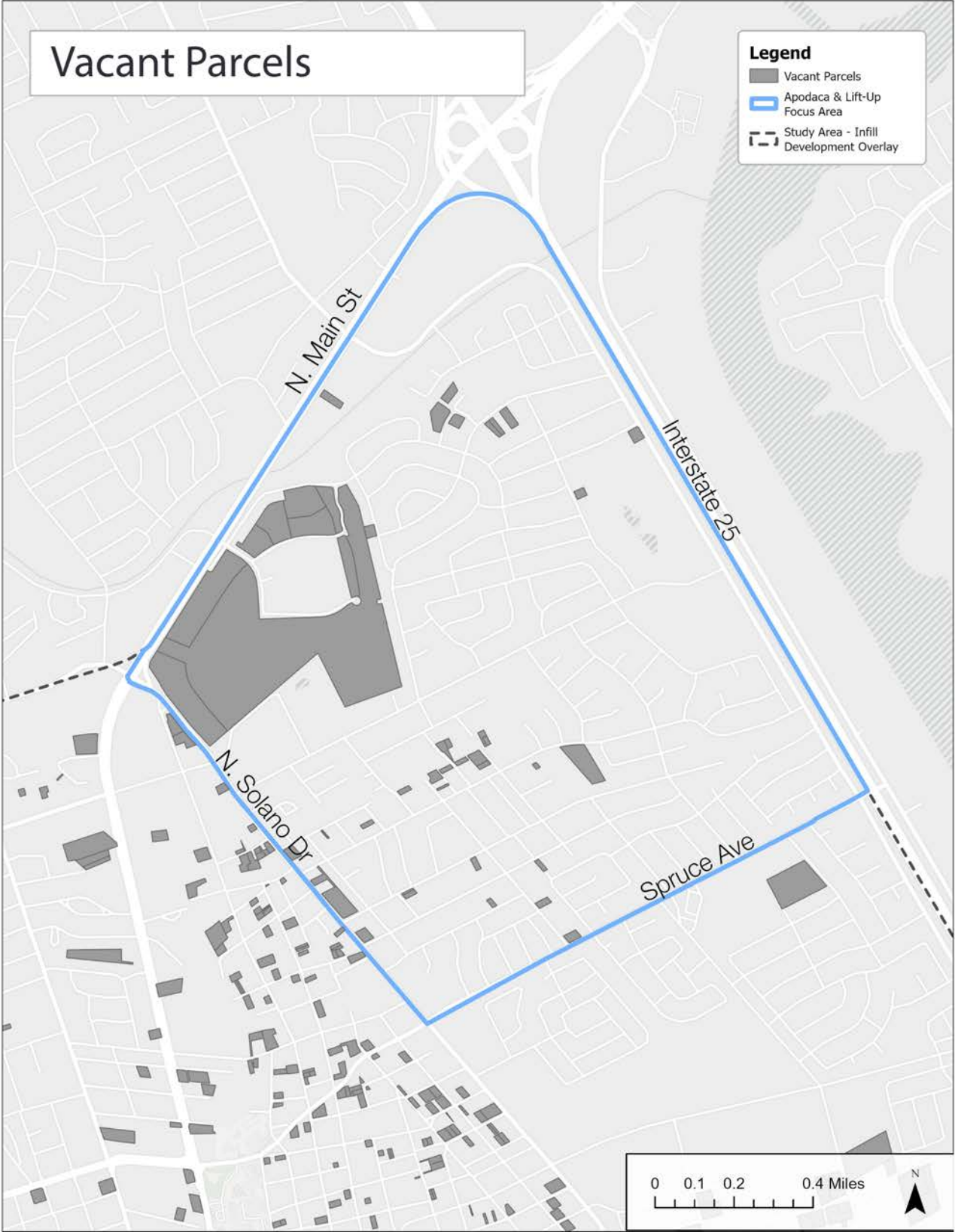
Appendix Image 4. Closed swimming pool at Apodaca Park.



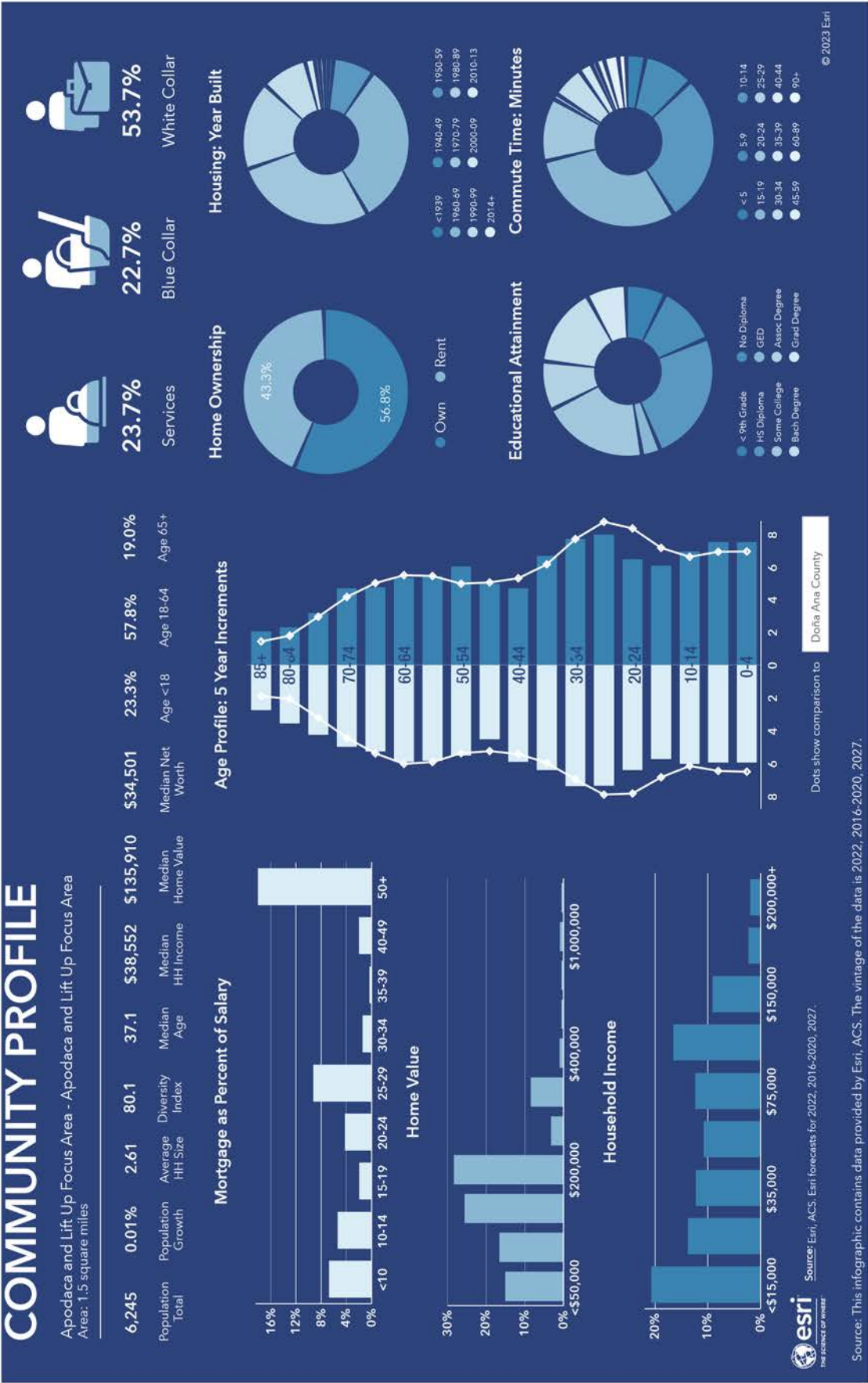
Appendix Image 5. Illegal dumping and vandalism are present along many streets in the Apodaca & Lift Up area.



Appendix Image 6. Residential and industrial uses are in close proximity throughout the Apodaca & Lift Up area.



Appendix Figure 7. Vacant Parcels in Apodaca & Lift Up Area



BELLAMAH (EAST OF SOUTH SOLANO)

The Bellamah (East of Solano) Area, bound generally by E. Lohman Ave. to the north, Interstate 25 to the east, the university area to the south, and Espanola St. to the west, was identified during the preliminary existing conditions’ assessment as exhibiting multiple criteria for MRA designation. Portions of the area have been considered for Historic District designation. The 1.58 square mile area which is predominantly residential has a population of over 10,400 residents.

Existing conditions assessment, market research, and demographic analysis demonstrate that the Bellamah area meets the statutory criteria for Metropolitan Redevelopment Area designation due to deteriorating buildings and infrastructure, high levels of unemployment, low income levels, as well as unsafe conditions. The following is a summary of key data points and physical conditions that provide justification for MRA designation.

Deteriorating buildings

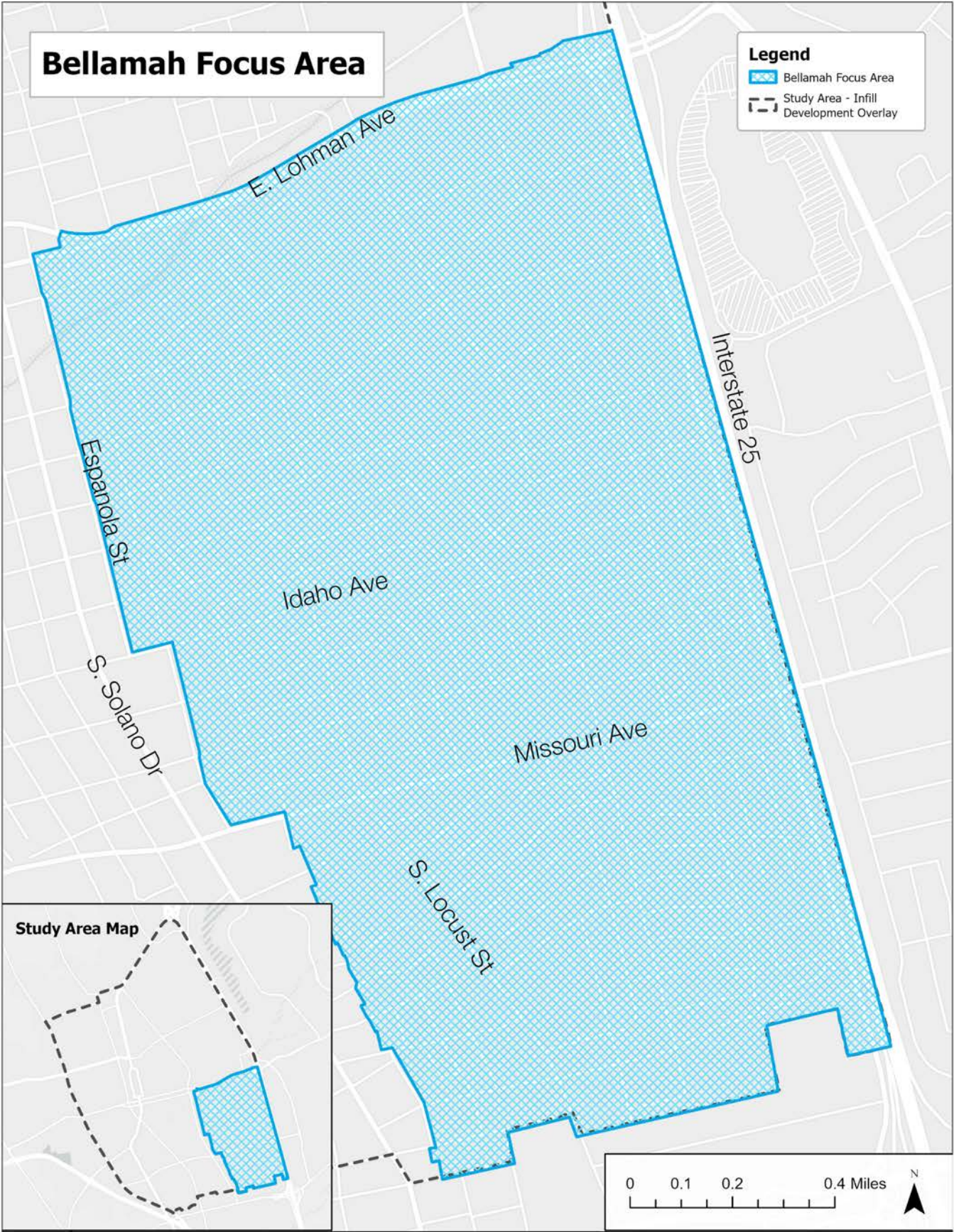
The housing stock in Bellamah is in need of revitalization and/or preservation. 88% of housing in this area was built before 1990. The area contains housing built during the 1950’s and 1960’s by Dale Bellamah called the Bellamah Addition. The Dona Ana Historical Society is leading discussions about potential historic designation for parts of the neighborhood.

Deteriorating public infrastructure

During the existing conditions assessment, deteriorating pavement conditions were observed throughout the area. There are sidewalk gaps and the area is lacking ADA compatible infrastructure which interrupts universal accessibility. Overgrown vegetation and weeds are present along streets and sidewalks.

Key “Blight” Indicators in Bellamah for MRA Designation								
High Levels Vacant Property	High Levels Abandoned Buildings	Deteriorating Buildings	Deteriorating Infrastructure	Low Median Home Value	Low Income Levels	High Unemployment	High Crime Rates	Low Levels Commercial Activity
X		X	X	X	X	X	X	

Appendix Figure 9. Key “blight” indicators in the Bellamah Area



Appendix Figure 10. Bellamah Area

High unemployment and low income levels

This area has a low median household income rate at \$29,915, significantly lower than that of the City of Las Cruces at \$50,453 or New Mexico at \$56,735. Additionally, the unemployment rate here is 9.9%, almost double that of New Mexico’s unemployment rate of 5.3%.

Unsafe conditions

The Total Crime Index value for the Apodaca & Lift Up Area is 186. The Crime Index is an indication of the relative risk of a crime occurring and is measured against the overall risk at a national level. Values above 100 indicate the area has an above average risk of occurring compared to the US.



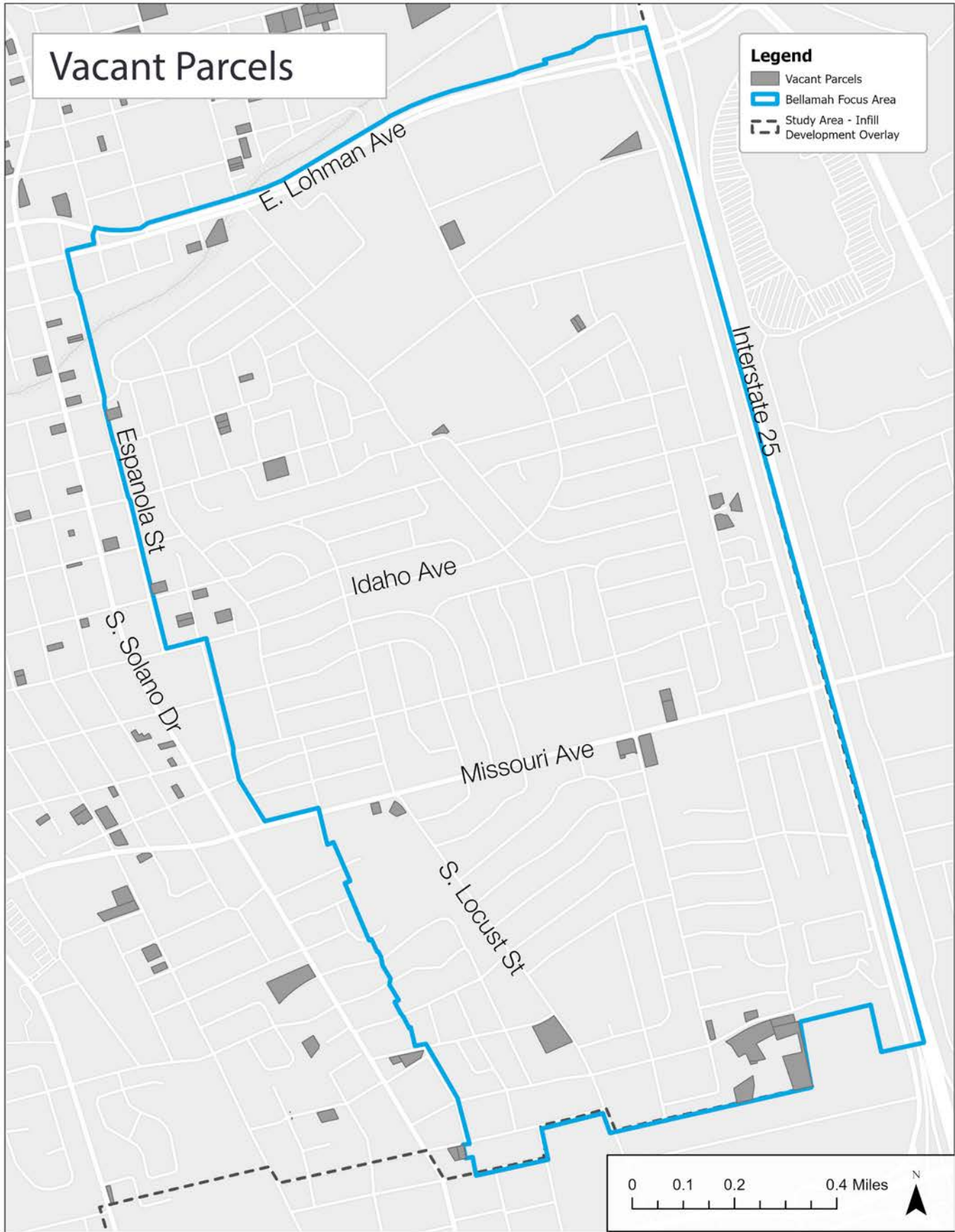
Appendix Image 7. Sidewalk gaps and deteriorating pavement conditions along Montana Ave.



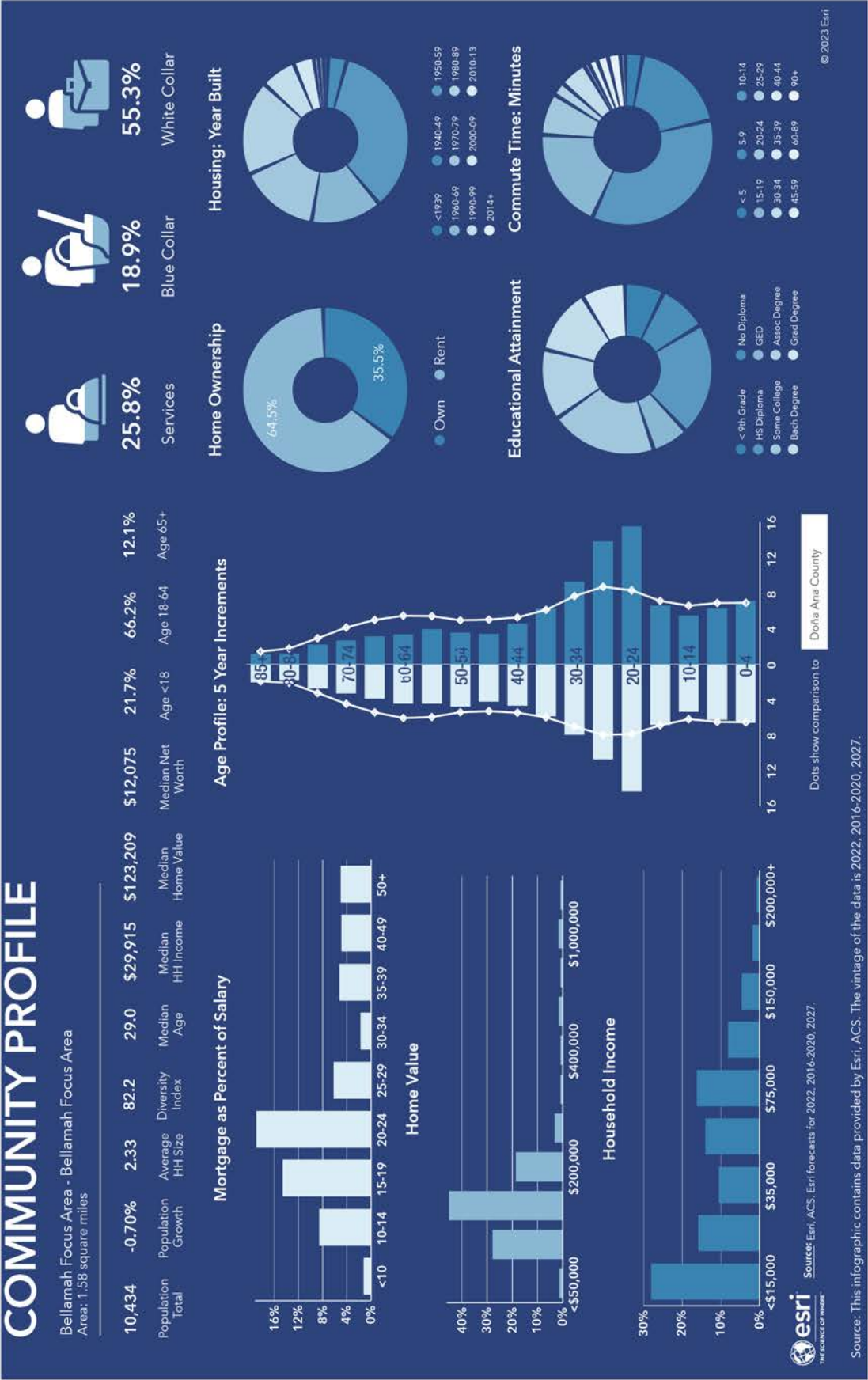
Appendix Image 8. Bellamah Addition housing from the 1950's or 1960's



Appendix Image 9. Large vacant residential parcel on Nevada Ave.



Appendix Figure 11. Vacant parcels in the Bellamah Area



Appendix Figure 12. Community profile for the Bellamah Area

MESQUITE

The Mesquite area in this document references the same boundary as the existing Mesquite Historic District. The area is home to approximately 2,310 people and has been the focus of significant community planning efforts (Mesquite Historic District Neighborhood Design Plan, Arts and Culture District Plan). These efforts lay out a vision for revitalization and economic development, and can provide a foundation for future MRA planning processes.

Existing conditions assessment, market research, and demographic analysis demonstrate that the Mesquite Historic District area meets the statutory criteria for Metropolitan Redevelopment Area designation due to low levels of commercial activity, high levels of vacant and abandoned properties, deteriorating buildings and infrastructure, high levels of unemployment, low income levels, and unsafe conditions. The following is a summary of key data points and physical conditions that provide justification for MRA designation.

Low levels of commercial activity

There are 93 total businesses in this area, employing 801 people. The vast majority, 83%, of these jobs are in the service sector, typically providing lower wage employment. Supporting businesses and organizations that create middle and upper income jobs could help to raise median income in Mesquite.

Additionally, the “Las Cruces Arts & Cultural District Plan” identifies the goal of supporting business assistance organizations and programs to foster creative sector businesses in the area. Related to this goal,

Vacant and abandoned properties

The area has over 115 vacant parcels, which is the greatest concentration of vacant property in the IDO. These are primarily residential properties.

Deteriorating buildings

The 1930s and 1960s saw the highest housing construction rates in this area. 83% of housing in Mesquite was built prior to 1990. Considering the age of housing stock in this area, support is needed to revitalize and construct updated housing.

Deteriorating public infrastructure

Due to the age of this historic area, sidewalks are quite narrow. Sidewalks need to be brought up to ADA compliance. The existing conditions assessment revealed an abundance of weeds and vegetation overgrowth. Various side streets along Mesquite lack sidewalks. The “Las Cruces Arts & Cultural District Plan” identified a need to address pedestrian safety and walkability with a particular focus on establishing sidewalks where needed.

Continued on pg. 107

Key “Blight” Indicators in Mesquite Area for MRA Designation								
High Levels Vacant Property	High Levels Abandoned Buildings	Deteriorating Buildings	Deteriorating Infrastructure	Low Median Home Value	Low Income and/or High Poverty Levels	High Unemployment	High Crime Rates	Low Levels Commercial Activity
X		X	X	X	X		X	X

Appendix Figure 13. Key “blight” indicators in Mesquite Area



Appendix Figure 14. Mesquite Area

High unemployment and low income levels

The Mesquite area has a median household income of \$27,313 which is significantly lower than the median household income in Las Cruces of \$50,543. The unemployment rate is relatively low at 4.6%, compared to the state and county. However, wages remain low and there is a need for higher wage jobs in the area.

Unsafe conditions

The Total Crime Index value for the Mesquite Area is 272. The Crime Index is an indication of the relative risk of a crime occurring and is measured against

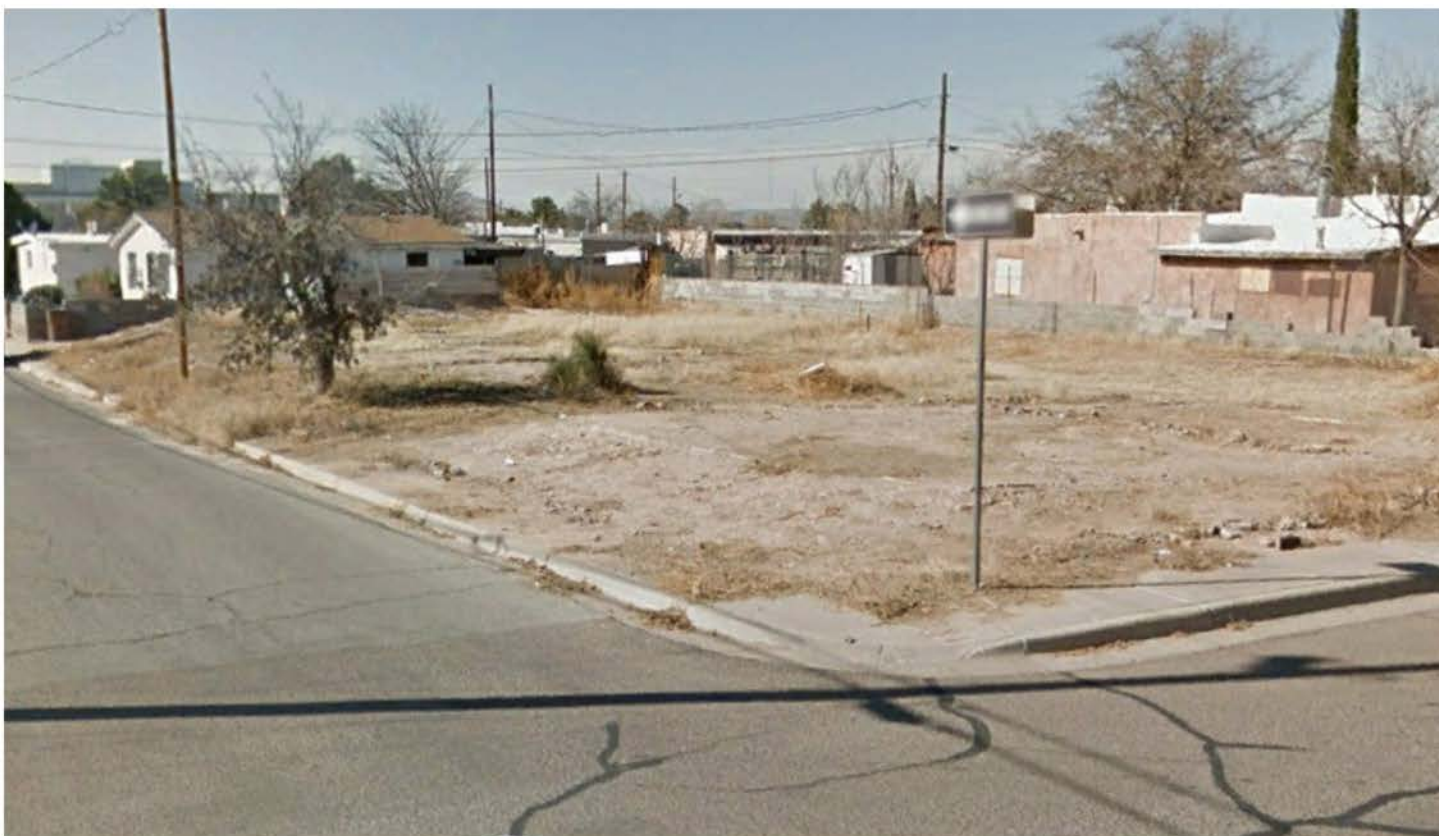
the overall risk at a national level. Values above 100 indicate the area has an above average risk of occurring compared to the US. Additionally, incompatible land use and the presence of potential brownfield sites could pose a risk to public health. The presence or perceived presence of crime and brownfields can deter private investment in an area and delay redevelopment activity.



Appendix Image 11. Commercial properties throughout the MRA could benefit from facade improvement programs.



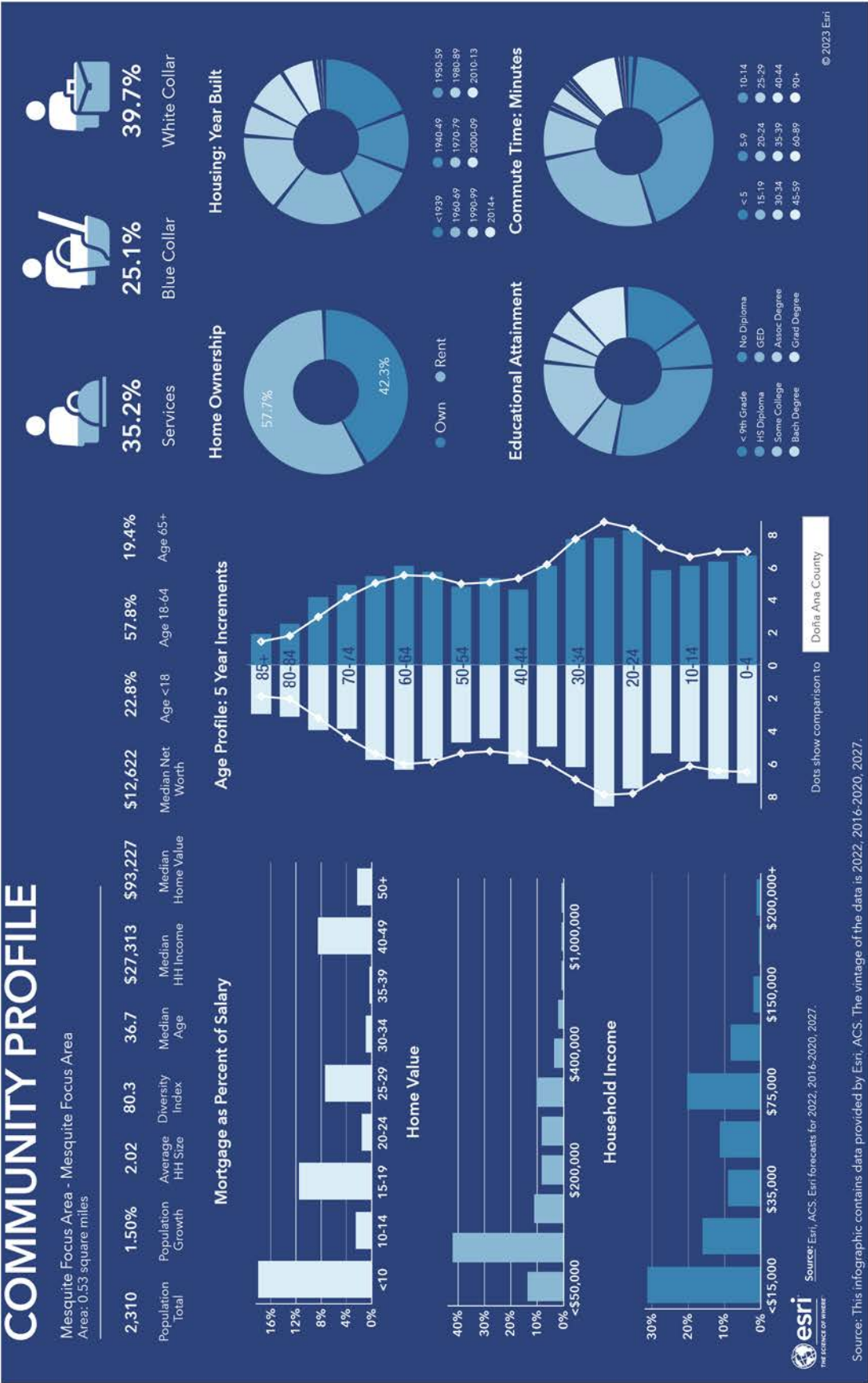
Appendix Image 12. Many of the sidewalks in the Mesquite area are not ADA accessible and create a barrier to universal access throughout the neighborhood.



Appendix Image 13. The Mesquite Area has the greatest concentration of unoccupied parcels in the IDO and a high prevalence of vacant lots.



Appendix Figure 15. Vacant parcels in Mesquite Area



Appendix Figure 16. Community profile in Mesquite Area



City of Las Cruces

City Council Action and Executive Summary

23-110

Type of Action:

☒ Resolution

☐ Ordinance

☐ TIDD Resolution

District: ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☒ 6 ☐ N/A

1st Reading: **Adopted:** March 20, 2023

Drafter: Tony Trevino **Department:** Public Works

Program: Office of the Director **Line of Business:** Administration

Title: **A RESOLUTION APPROVING A PRE-DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SIERRA NORTE LAND HOLDINGS, LLC FOR THE DEVELOPMENT, DESIGN, AND PURSUIT OF FEDERAL FUNDING FOR THE MESA GRANDE DRIVE PROJECT.**

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

PURPOSE(S) OF ACTION:

To approve a pre-development agreement.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

The City of Las Cruces (City) has been approached by Sierra Norte Land Holding, LLC (Developer) with an innovative strategy to develop and design the Mesa Grande Drive extension from Highway 70 to Lohman Avenue through a private-public partnership. Setting the Mesa Grande Drive Extension Project as a priority will provide mobility benefits and serve as a catalyst project for the East Mesa Development as depicted in the Elevate Las Cruces Comprehensive Plan. The Developer has provided the framework to City staff that would facilitate the utilization of private resources for the planning, design, pursuit of funding, and allocation of local match funding required.

The framework presented would require the City to allocate staff time and otherwise act as the grant applicant for federal resources, made available through the Infrastructure Investment and Jobs Act (IIJA). As well, as other federal mobility programs that will provide opportunities to support the funding of the project. The pre-development agreement will serve as the first step towards the implementation of the Mesa Grande Drive Extension Project in a manner that leverages an innovative public-private partnership opportunity and develops infrastructure with significant impacts on the community.

At this time, staff recommends City Council approve the pre-development agreement, as detailed in Exhibit "A".

SUPPORT INFORMATION:

[Exhibit "A" - Pre-Development Agreement](#)

PLAN(S):

Elevate Las Cruces

COMMITTEE/BOARD REVIEW:

None

Agenda Item #8.3.

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 Pre-Development Agreement.
2. Vote "No"; this will not approve the Pre-Development Agreement.
3. Vote to "Amend"; this could delay approval of the agreement and may require direction and specific amendments from City Council.
4. Vote to "Table"; this could delay the approval of the agreement. Staff may require additional direction from City Council on how to proceed.

RESOLUTION 23-110

A RESOLUTION APPROVING A PRE-DEVELOPMENT AGREEMENT BETWEEN THE CITY OF LAS CRUCES AND SIERRA NORTE LAND HOLDINGS, LLC FOR THE DEVELOPMENT, DESIGN, AND PURSUIT OF FEDERAL FUNDING FOR THE MESA GRANDE DRIVE PROJECT.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) has been approached by Sierra Norte Land Holding, LLC (Developer) with an innovative strategy to develop and design the Mesa Grande Drive extension from Highway 70 to Lohman Avenue through a private-public partnership; and

WHEREAS, setting the Mesa Grande Drive Extension Project as a priority will provide mobility benefits and serve as a catalyst project for the East Mesa Development as depicted in the Elevate Las Cruces Comprehensive Plan; and

WHEREAS, the Developer has provided the framework to City staff which would facilitate the utilization of private resources for the planning, design, pursuit of funding, and allocation of local match funding required; and

WHEREAS, the framework presented would require the City to allocate staff time and otherwise act as the grant applicant for federal resources, made available through the Infrastructure Investment and Jobs Act (IIJA), as well as other federal mobility programs that will provide opportunities to support the funding of the project; and

WHEREAS, the pre-development agreement will serve as the first step towards the implementation of the Mesa Grande Drive Extension Project in a manner which leverages an innovative public-private partnership opportunity and to develop infrastructure with significant impacts to the community.

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

(I)

THAT the pre-development agreement is approved, as detailed in Exhibit "A", attached hereto and made part of this resolution.

(II)

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

DONE AND APPROVED this day of

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

ARTICLE I – GENERAL PROVISIONS**Section 1.1 Purpose and Term of Agreement****A. Purpose of Agreement and Background:**

The purpose of this Agreement is to establish a public-private partnership between the Parties to facilitate the planning, design, and pursuit of federal grant funding necessary to fund the construction of the Mesa Grande Drive project (hereinafter referred to as "the Project"). If federal funding is obtained, via a grant award or grant agreement, the Developer and the City will further define roles and responsibilities as part of a Development Agreement. This Agreement is pertinent to activities leading up to the Development Agreement.

B. Agreement Term:

The pre-development period is for three (3) years from the date of execution of this Agreement. At or before that time, the project will, either enter into a development agreement phase, be terminated, or will be extended, for a duration set mutually by the parties.

C. Project Description:

The Project consists of the extension of Mesa Grande Drive from Highway 70 to Lohman Avenue, inclusive of connecting roadway facilities, as generally consistent with Exhibit "A" attached hereto and made a part of this Agreement. The project scope and limits may be modified after execution of this Agreement, as consistent with mutually agreed upon changes through the Project's planning and design process. The ultimate project scope and limits will be determined in the Development Agreement.

The proposed project is consistent with the City's Active Transportation Plan, is reflective of the goals and objectives of the City's Complete Streets design criteria and is contained within the Mesilla Valley MPO's Thoroughfare Plan.

ARTICLE II – GENERAL REQUIREMENTS OF THE DEVELOPER**2.1 General**

- A.** The Developer shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.
- B.** The Developer shall designate in writing a representative who is authorized to act on the Developer's behalf with respect to the Project.
- C.** The Developer shall perform the planning, design, engineering and other Project-related activities in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

- D. The Developer shall perform all the services required by this Agreement at its sole expense. The Developer acknowledges that neither it, its officers, its employees, its agents, nor any persons it may hire to assist in carrying out its obligations under this Agreement, or any subsequent Development Agreement that may arise therefrom, will receive any payment or reimbursement of funds from the City, including from any grant funds the City may obtain for the funding of the Project. The obligations of the City to the Developer are limited to those contained within this Agreement.**

2.2 General Consultation

- A. When applicable law requires that services be performed by licensed professionals, the Developer shall provide those services through qualified, licensed professionals in accordance with all applicable legal standards.
- B. The Developer shall prepare, and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

2.3 Progress Reports

- A. The Developer shall keep the City informed of the progress and quality of the work on the Project. On a monthly basis, or otherwise as agreed to by the City and Developer, the Developer shall submit written progress reports to the City, showing estimated percentages of completion and other information identified below:
- a. Work completed for the period;
 - b. Project schedule status;
 - c. Submittal schedule and status report; and,
 - d. Additional information as agreed to by the City and Developer.

2.4 Developer's Schedules

- A. The Developer, promptly after execution of this Agreement, shall prepare and submit an updated schedule for the work, for the City's information and approval. The schedule, including the time required for planning, design, and funding pursuit for construction, shall not exceed the time limits under the Agreement. The schedule shall be updated regularly as applicable.

2.5 Developer's Responsibilities

- A. The Developer, at its sole expense, will retain and fund engineering and other qualified consultant firms to complete the Project's design phase activities. The City will retain absolute authority to accept or reject Project designs prepared by the Developer or its agents.
- B. The Developer will coordinate with the City at the onset of design to identify and define City design requirements.
- C. The Developer will provide plans, specifications, and estimates for the

project limits with submittal to the City at milestones consistent for City Public Works Projects, as determined by the City Public Works Director.

- D. The Developer will complete a traffic analysis which is considerate of best practices and tools available, to evaluate traffic impacts and benefits on surrounding facilities.
- E. The Developer will provide information describing and quantifying the benefits of the Project and how it serves a public purpose and meets community needs.
- F. The Developer will secure rights-of-way on existing private property required to deliver the project.
- G. The Developer will provide technical support for City-led acquisition of rights-of-way from the State Land Office and will also cover costs associated with securing rights-of-way from the State Land Office.
- H. The Developer will proactively identify funding opportunities, present them to the City for consideration, and will fund the development of grant application documents when mutually agreed upon.
- I. The Developer acknowledges that the City does not presently have funds available to satisfy the expected local share commitment associated with a federal grant funding the construction phase of the Project. Developer therefore agrees to provide the required local share commitment for the pursuit of mutually agreed upon discretionary federal funding opportunities and will seek and encourage additional participation from partners to meet cost share requirements. This provision shall not prevent the City, at its sole discretion, from agreeing to allocate non-federal resources towards the project in the future.
- J. The Developer will quantify costs for and include construction management and materials testing as eligible costs to be included within proposed federal grant budgets.
- K. The Developer will, upon notification of award of federal funding, work with the City on a Development Agreement which further details the roles and responsibilities of the Parties, through the construction phase. Developer responsibilities, to be included in the Agreement are as follows:
 - a. The dedication of Developer's financial resources to enable construction phase design services by the engineer of record.
 - b. The dedication of Developer's financial resources to provide consultant support for grant management, federal compliance, and National Environmental Policy Act (NEPA) documentation required for the Project.

- c. Timing, sequence, and amounts of payment necessary to convey local match requirements to the City, associated with federal funding.

ARTICLE III – GENERAL REQUIREMENTS OF THE CITY

3.1 City Responsibilities

- A. The City will work with the Developer to review planning and design submittals, provide comments, and process the submittals for approval. The City retains exclusive authority to approve or reject all submittals.
- B. The City will prioritize and expedite plan reviews, permitting, and approvals related to the Project.
- C. The City will waive any fees associated with plan submittal and review processes.
- D. The City will prioritize the Mesa Grande Drive Project for future federal funding pursuit.
- E. The City will work to advance the Project through advocacy with local, regional, state, and federal partners.
- F. The City will request and coordinate meetings with other local, regional, state, and federal units of government which may be important to Project funding pursuit and overall Project development.
- G. The City will act as the applicant for federal grants—as identified and mutually agreed upon for pursuit—which will fund the construction phase of the Project, and will secure relevant City Council resolutions and approvals necessary to apply for and obtain such grants.
- H. The City will act as the applicant for, and will provide staff support, and assistance to the Developer to secure applicable rights-of-way from the State Land Office.
- I. If a grant award or agreement is achieved, the City will work with the Developer to expedite and draft a Development Agreement which will outline the roles and responsibilities of the parties through the construction phase of the Project. City responsibilities to be included in the Development Agreement include:
 - a. Entering into grant agreements with federal funding partners and other relevant public agencies.
 - b. Procuring, consistent with applicable law, the construction and grant-administration services necessary to carry out the

construction phase of the Project and otherwise holding the construction contract.

- c. Providing inspection services to ensure quality and enable final acceptance by the City as consistent with other City projects.
- d. Coordination with Developer-funded consultants to manage contract compliance, complete grant management activities, and meet project delivery schedule requirements; and
- e. Waiving any construction related permit fees.

ARTICLE IV – AGREEMENT TIME AND COMPLETION

4.1 General

- A. Time is of the essence of the Development Agreement. By executing the Agreement, both parties confirm that the term is a reasonable period for performing the Work.
- B. The Developer shall not, except by agreement of the City in writing, commence Work on the Project prior to the effective date of insurance required by this Agreement. The Agreement Time shall not be adjusted because of the Developer's failure to obtain insurance required under this Agreement in a timely manner

ARTICLE V – OWNERSHIP OF WORK PRODUCT

5.1 Pre-Development Materials

All documents, data, drawings, specification, software application and other products or materials produced by the Developer or its officers, employees, or agents in connection with the services to be rendered under this Agreement shall become the property of the City, whether the Project for which they are made is executed or not. All such documents, products and materials shall be forwarded to the City at its request and may be used by the City as it sees fit.

ARTICLE VI - CERTIFICATES OF INSURANCE AND ENDORSEMENTS

6.1 Insurance

The Developer agrees to obtain and maintain, at the Developer's expense, insurance necessary to cover all liability which may arise out of services provided under this Agreement. This includes, at a minimum:

- i. Workman's Compensation insurance consistent with State law;
- ii. Commercial General Liability Insurance in an amount not less than

- iii. \$1,000,000 per occurrence; and
Commercial Auto Liability in an amount not less than \$1,000,000 per occurrence.

The Developer must immediately notify the City if insurance is amended and/or canceled.

The City must be named as additional insured – this coverage must be as broad as the coverage provided to the insured; coverage must be primary and non-contributory before any other insurance or self-insurance. A copy of the endorsement(s) for this coverage must be provided as a condition of this Agreement.

Waiver of Subrogation will apply and shall be noted on the certificate for Commercial General Liability, Auto, and Worker's Compensation coverage.

ARTICLE VII – MISCELLANEOUS PROVISIONS

7.1 Indemnity and Limitation

Developer shall indemnify, defend, and hold harmless the City from and against any and all claims, suits, actions, judgments, demands, losses, costs, expenses, damages, and liability caused solely by, resulting solely from, or arising solely out of the negligent acts, errors, or omissions of Developer, its officers, employees, agents, or representatives in the performance of services under this Agreement.

7.2 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.

Developer shall abide and be governed by all applicable state law, City ordinances, and laws regarding the Developer's services or any work done pursuant to this Agreement.

7.3 Procurement

Any contract associated with this Agreement receiving public funding (local, state, or federal) shall be subject to the procurement laws, rules and regulations associated with the funding source.

7.4 Terms and Termination

The term of this Agreement shall commence on the date of execution and shall terminate, subject **Section 1.1(B) herein**. In addition, this Agreement shall not be effective unless countersigned by an authorized representative

of the City.

If the Developer fails to perform any material obligation on its part under this Agreement for 30 days after the City gives it written notice of such failure requesting that it be cured, or the Developer becomes insolvent, or all or a substantial part of the Developer's assets are assigned for the benefit of its creditors, or a receiver or trustee is appointed for the Developer (each an "Developer Default"), then the City may either terminate this Agreement by written notice to the Developer or allow the Developer to cure the Developer Default as provided below. So long as Developer commences to cure such Developer Default within the initial 30 days after the City gives it written notice of such failure and thereafter diligently prosecutes the cure to completion and provides the Authority documentation of such efforts, then the City will not terminate this Agreement; provided, however, that in the event of a Developer Default relating to an insolvency, assignment for the benefit of creditors, receivership or trustee appointment, the 30 day cure period shall be extended to 180 days so long as the obligations on the part of the Developer under this Agreement are otherwise being performed. The City's right to terminate this Agreement for any Developer Default is cumulative of all rights and remedies of the City which exist now or in the future.

The Developer may terminate this Agreement by written notice to the City if the City defaults in observing or performing a material obligation of this Agreement hereunder and fails to cure the default for 30 days after written notice of such default from the Developer.

7.5 Breach

In the event either party breaches any obligation contained in this Agreement, prior to instituting any action or dispute resolution procedure, the breached party shall provide written notice of such breach. In the event either party fails to remedy the breach or otherwise provide a written plan to remedy the breach, within thirty (30) working days of receiving such written notice, either party may terminate this Agreement by written notice.

7.6 Dispute Resolution

In the event that a dispute arises between City and Developer 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 through mediation prior to commencing any litigation. The costs of such mediation shall be born equally by the Parties.

7.7 Venue

This Agreement is entered into and performed in Doña Ana County, New Mexico, and the Developer and the City agree that mandatory venue for any legal action related to this contract shall be in the Third Judicial District Court of Doña Ana County, New Mexico.

7.8 Successors and Assigns

The City and Developer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained herein. Neither party to this Agreement shall assign it in whole or in part without the express written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Agreement and the attempted assignment shall be of no legal force or effect as to the other party.

7.9 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the party for which it was intended; or if delivered at, or sent by, registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice. Written notice, sent or transmitted by electronic mail or facsimile, must be received to be considered delivered and to comply with notice requirements herein. Transmission alone by electronic mail or facsimile does not constitute delivery.

7.10 Rights and Remedies

- A. Duties and obligations imposed by this Agreement, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.
- B. No action or failure to act by either party shall constitute a waiver of a right or duty afforded them under the Agreement, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be agreed upon in writing.
- C. Each of the parties hereto acknowledges that the other party will have no adequate remedy at law if it fails to perform any of its obligations under this Agreement. In such event, each of the parties agrees that the other party shall have the right, in addition to any other rights it may have (whether at law or in equity), to specific performance of this Agreement.

7.11 Interpretation

Unless otherwise stated herein, words which have well-known technical, or construction industry meanings, are used in accordance with such recognized meanings.

7.12 Conflict of Interest

Developer represents and warrants that Developer has no business, professional, personal, or other interest, including, but not limited to, the representation of other clients, who 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, Developer shall immediately inform the City in writing of such conflict. If, in the reasonable judgment of the City, such conflict poses a conflict to and with the performance of Developer'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 Developer; such termination of the Agreement shall be effective upon the receipt of such notice by Developer.

7.13 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, that this Agreement shall be construed in all respects as if such invalid or unenforceable provisions have been omitted.

7.14 Force Majeure

If any party hereto shall be unable to observe or perform any covenant or condition herein by reason of force majeure, then the failure to observe or perform such covenant or condition shall not constitute a default hereunder so long as the party shall use its best efforts to remedy with all reasonable dispatch the event or condition causing such inability and such event or condition can be cured within a reasonable amount of time. "Force majeure", as used herein, means any condition or event not reasonably within the control of a nonperforming party, including, without limitation, acts of God; strikes, lock-outs, or other disturbances of employer/employee relations; acts of public enemies; orders or restraints of any kind of the government of the United States or any state thereof or any of their departments, agencies, or officials, or of any civil or military authority; insurrection; civil disturbances; riots; epidemics; landslides; lightning; earthquakes; subsidence; fires; hurricanes; storms; droughts; floods; arrests; restraints of government and of people; explosions; and partial or entire failure of utilities. Failure to settle strikes, lock-outs, and other disturbances of employer/employee relations or to settle legal or administrative proceedings by acceding to the demands of the opposing party or parties, in either case when such course is in the judgment of the party hereto unfavorable to such party, shall not constitute failure to use its best efforts to remedy such a condition or event.

Agenda Item #8.3.

This Agreement is entered into as of the day and year written above ("the Effective Date").

SIERRA NORTE LAND
HOLDINGS, LLC

CITY OF LAS CRUCES

BY: _____
NAME
Managing Member

Date

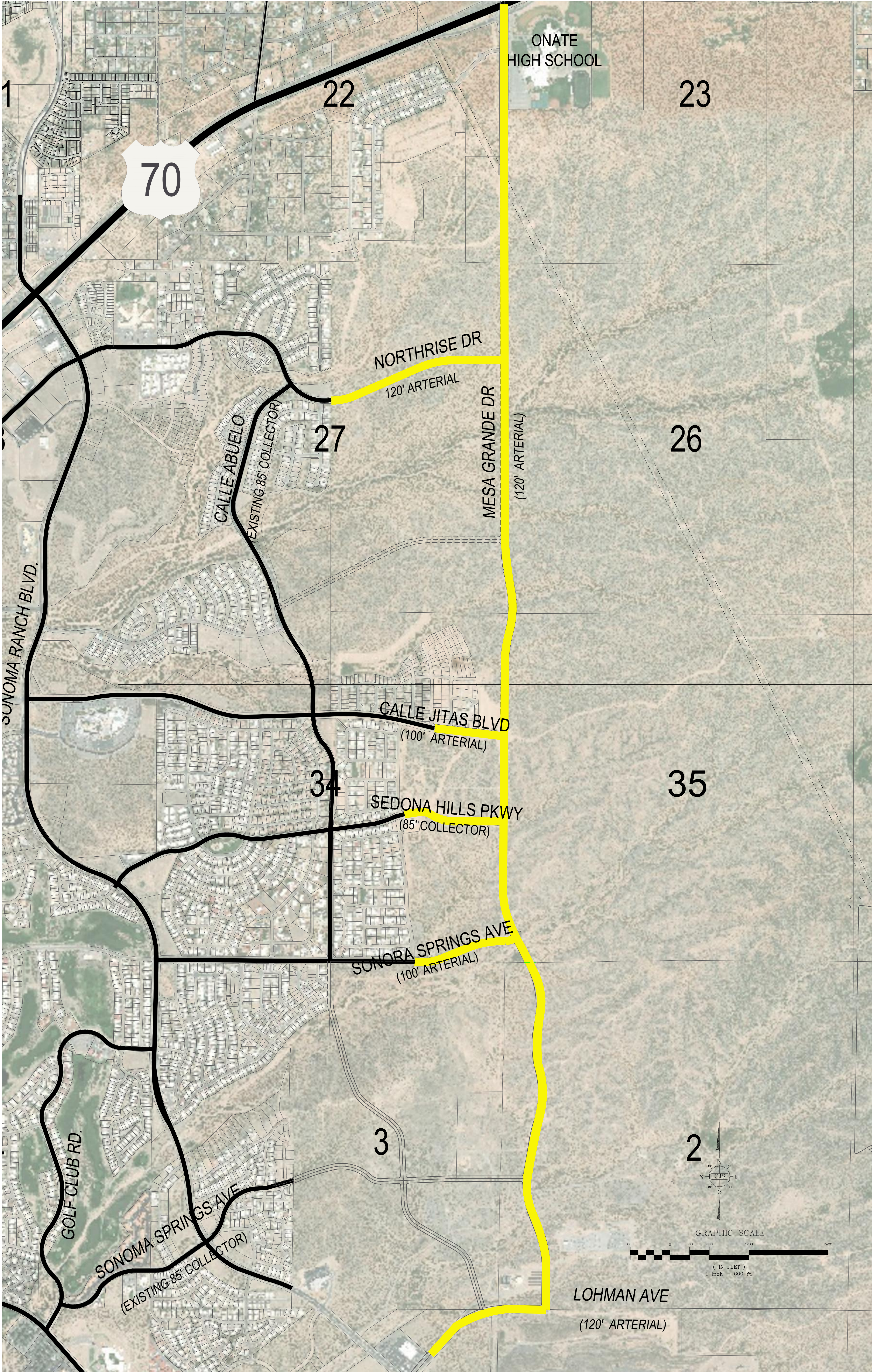
BY: _____
NAME
Title

Date

APPROVED AS TO FORM

 2/14/2023

City Attorney
*Reviewed & Approved /
by outside counsel.*





City of Las Cruces

City Council Action and Executive Summary

**3028; Council
Bill 23-022**

Type of Action:

☐ Resolution

☒ Ordinance

☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☒ 4 ☐ 5 ☐ 6 ☐ N/A
1st Reading:	March 6, 2023
Drafter:	Elizabeth Teeters
Program:	Business Development
Adopted:	March 20, 2023
Department:	Economic Development
Line of Business:	Business Development

Title: AN ORDINANCE SUPPORTING INVESTMENT OF \$897,596 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED \$3,000,000 IN THE PROJECT.

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

PURPOSE(S) OF ACTION:

Approve a Local Economic Development Act (LEDA) project for 828 Productions, LLC.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:

828 Productions, LLC, (Company) is a film production company that has selected Las Cruces as the location for its film studio. The State of New Mexico (State) via the State's Local Economic Development Act (LEDA) Program is committing \$3,000,000 in LEDA funding. The City of Las Cruces (City) has proposed providing LEDA funding of \$897,596 in Legislative Capital Outlay Funds. In exchange, the Company has committed to employing 100 full-time persons by December 31, 2029, with a capital investment of approximately \$75,000,000.

If approved by this proposed Ordinance, the City will enter into a Project Participation Agreement (Exhibit "A") with the Company, subject to the LEDA requirements and the adopted LEDA Plan by the City, for its investment in the project. Furthermore, the City will enter into an Intergovernmental Agreement (Exhibit "B") with the State to serve as the fiscal agent for the administration of up to \$3,000,000 of LEDA contribution to the project.

A separate resolution will be brought to City Council for a budget adjustment for both City and State when the State funding is received.

SUPPORT INFORMATION:

[Exhibit "A", Project Participation Agreement](#)

[Exhibit "B", Inter Governmental Agreement](#)

[Attachment "A", LEDA Application](#)

[Attachment "B", Executive Summary](#)

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

None

DOES THIS AMEND THE BUDGET?:

☐ Yes

☒ No

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

☐ Yes

☒ No

Does this action align with Elevate Las Cruces?

☐ Yes

☒ No

OPTIONS / ALTERNATIVES:

1. Vote "Yes", this will approve the Ordinance and authorize the City to provide local LEDA funding and to act as fiscal agent for State LEDA Project funds to 828 Productions, LLC.
2. Vote "No", this will not approve the Ordinance and authorize the City to provide local LEDA funding and to act as fiscal agent for State LEDA Project funds to 828 Products, LLC.
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 3028; COUNCIL BILL 23-022

AN ORDINANCE SUPPORTING INVESTMENT OF \$897,596 IN AN ECONOMIC DEVELOPMENT PROJECT IN ACCORDANCE WITH THE CITY OF LAS CRUCES LOCAL ECONOMIC DEVELOPMENT PLAN, AUTHORIZING A PROJECT PARTICIPATION AGREEMENT BETWEEN THE CITY AND 828 PRODUCTIONS, LLC., AND ENTERING INTO AN AGREEMENT TO SERVE AS FISCAL AGENT FOR THE STATE OF NEW MEXICO'S PARTICIPATION NOT TO EXCEED \$3,000,000 IN THE PROJECT.

The City Council is informed that:

WHEREAS, the City of Las Cruces (City) adopted an updated LEDA Plan in 2018 to encourage economic development; and

WHEREAS, 828 Productions, LLC., (the "Company") has applied for LEDA assistance from the City and the State of New Mexico; and

WHEREAS, the State of New Mexico has committed up to \$3,000,000 in LEDA funding and the City has proposed to provide LEDA funding of \$897,596 in Capital Outlay funds; and

WHEREAS, the State of New Mexico conducted an economic impact analysis establishing the benefit of this LEDA project to the community.

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 828 Productions, LLC., subject to the requirements of LEDA and the adopted LEDA Plan of the City, for its \$897,596 in investment in the project.

(II)

THAT the City hereby enters into an Intergovernmental Agreement with the State of New Mexico to serve as fiscal agent for the administration of up to \$3,000,000 the State will invest in the project, as shown in Exhibit "B" attached hereto and made part of this Ordinance.

(III)

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

(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

Agenda Item #8.4.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

PROJECT PARTICIPATION AGREEMENT

This Project Participation Agreement ("Agreement") is entered into on _____, 2023 by and between **CITY OF LAS CRUCES, NEW MEXICO** (the "City"), a political subdivision of the State of New Mexico (the "State"), and **828 Productions, LLC** (the "Company").

Recitals.

- A. Article 9, Section 14 of the New Mexico Constitution provides counties the ability to create new job opportunities by providing land, buildings or infrastructure for facilities to support new or expanding businesses, provided that adequate safeguards are employed to protect public monies and resources. Pursuant to the Local Economic Development Act, Sections 5-10-1 through 5-10-17 NMSA 1978 (the "Act"), public support for economic development may be provided if the governmental entity has adopted by ordinance an economic development plan and has approved by a second ordinance an application for a project in keeping with such plan.
 - B. Pursuant to City of Las Cruces Ordinance No. 2 8 7 3 (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:

<i>State of New Mexico LEDA Disbursement Schedule</i>		
<u><i>Tranche</i></u>	<u><i>Amount of State Contribution Available for Disbursement/Tranche</i></u>	<u><i>Disbursement Performance Milestone</i></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
<i>City of Las Cruces LEDA Disbursement Schedule</i>		
<u><i>Tranche</i></u>	<u><i>Amount of Local Contribution Available for Disbursement/Tranche</i></u>	<u><i>Release of Lien Performance Milestone</i></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.					

Year	Cumulative Spend Target	Minimum Spend	Spend Determination Period		Clawback %
5	\$55,000,000	\$50,000,000	Ordinance Date	12/31/2027	100%
10	\$350,000,000	\$315,000,000	1 /1/32	12/31/2032	50%
Clawback percentage is calculated on the shortfall quotient times the amount of LEDA received by the company time the percentage of clawback, example illustrated below					
Year 10 production spend by the company \$290,000,000 LEDA received \$3,897,000 $\$315,000,000 - \$290,000,000 = \$25,000,000$ $\$25,000,000 / \$315,000,000 = 7.94\%$ $7.94\% \times \$3,897,000 = \$309,285.71$ $\$309,285.71 \times 50\% = \$154,642.86$					

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 late than February 28 of each year beginning in 2024. This will reflect actual economic activity and hiring of the Q/E for the preceding calendar year. Failure to complete EIA data sheet by April 15th of any calendar year Q/E shall be subject to a 10% clawback of all

funds received.

- d. If the Company has been required to pay the Facility Closure Clawback, the Company will not be required to pay any Performance Clawback that may come due after the date of such payment.

11. Fees. Each party shall bear its own costs and expenses in connection with the negotiation, execution and delivery of this Agreement or any amendment or enforcement of this Agreement.

12. Annual Performance Review. To ensure the prudent use of the taxpayer's funds and as required by the LEDA statute and Ordinance, the Project will be subject to an annual performance review conducted by City or EDD staff beginning on June 30, 2023 and every year thereafter until this Agreement terminates. The review will evaluate whether the Project is meeting the requirements set forth in this Agreement and any subsequent agreements or amendments and shall be made available to the State. At this time, the Company may report any difficulties it has experienced under the terms of this Agreement or the LEDA program and may request any assistance it deems necessary. The City or State may request the Company provide data and information to assess the broader economic impact of the Project, but the Company shall not be required to divulge information or documents it considers confidential or proprietary.

If the requirements are not being met, the City may terminate this assistance to the Project by passage of an ordinance which terminates this Agreement and specifies the disposition of all obligations of the Project. In addition, in accordance with LEDA, the City may enact an ordinance revoking the LEDA Ordinance and terminating any further payments for any or all Projects thereunder. In the event the City terminates the LEDA Ordinance or this Agreement while the Company is in compliance with the terms and requirements of this Agreement, the City will not have a right to clawback any of the payments already made to the Company.

13. Termination. This Agreement shall terminate at the close of business on January 31, 2033 or when otherwise terminated by ordinance.

14. Request for early release of security. If the Company achieves and then sustains the Minimum Job Number of 100 permanent, full-time employees for six (6) consecutive months prior to December 31, 2030 and has made in excess of three hundred and fifty million dollars (\$350,000,000) in production spend the Company may request release of the Security and termination of the agreement. Said request shall be made to the City in writing and accompanied by documentation comprising its quarterly job reports demonstrating such employment. In no event shall the security be released until the Company has furnished contemporaneous job reporting documentation and completed the corresponding Annual Performance Review. A request for release of the Security may not be submitted prior to December 31, 2030. Upon receipt of such a request the New Mexico Economic

Development Department will work with the Company to gather sufficient documentation of the economic activity directly created by the Company during the period of this agreement and complete an economic impact analysis report. If said report verifies that the State of New Mexico has received direct tax revenues from the activity of the company said request shall be granted.

- 15. Liability.** No party shall be responsible for liability incurred as a result of the other party's acts or omissions. Nothing herein shall operate or be deemed to alter or expand any liabilities or obligations under the applicable provisions of the New Mexico Tort Claims Act (NMSA 1978 §§ 41-4-1, et seq.), or to waive any immunities, limitations or required procedures thereunder. Nothing in this Agreement constitutes a waiver of any party's right to seek judicial relief.
- 16. Amendments.** This Agreement shall not be altered, changed or amended, except by instrument in writing executed by all of the Parties hereto and EDD. Any amendments may be subject to the approval of the Governing Body of City of Las Cruces.
- 17. Governing Law/Venue.** This Agreement shall be governed by the laws of the State of New Mexico. The venue for any litigation shall be a competent court of jurisdiction located in New Mexico.
- 18. Miscellaneous.** This Agreement binds and inures to the benefit of the City and the Company and their respective successors and permitted assigns. This Agreement may not be assigned without the written consent of the non-assigning party and the EDD; provided, however, that with notice to the City and the EDD, the Company may assign this Agreement to any affiliate or other member of the Company that agrees in writing to assume and perform all of the Company's obligations under this Agreement. This Agreement may be executed in any number of counterparts, each of which is an original and all of which taken together constitute one instrument.
- 19. Notice.** All notices or other written communications, including requests for disbursement, that are required or permitted to be given pursuant to this Agreement must be in writing and delivered personally, by a recognized courier service, by a recognized overnight delivery service, by fax, by electronic mail, or by registered or certified mail, postage prepaid, to the parties at the addresses shown below. If notice is mailed, it will be deemed received on the earlier of actual receipt or on the third business day following the date of mailing. If a notice is hand-delivered or sent by overnight delivery service, it will be deemed received upon actual delivery. If any written notice is sent by facsimile or electronic mail, it will be deemed received upon printed or written confirmation of the transmission. A party may change its notice address by written notice to the other party to this Agreement.

The initial notice addresses for the parties are as follows:

If to the City:

City of Las Cruces
Attention: Economic Development
P O Box 20000
Las Cruces, New Mexico 88004

If to the Company:

828 Productions, LLC
100 S. Church Street
Las Cruces, NM 88001

Effective Date: _____

Attachment:

1. Example of Clawback Calculations

SIGNATURE PAGE TO PROJECT PARTICIPATION AGREEMENT

CITY OF LAS CRUCES, NEW MEXICO

By _____

Name Ifo Pili

Title City Manager

828 Productions, LLC

By _____

Name: _____

Title: _____

Attachment 1 Example of Clawback Calculations

Clawback Calculations

Clawback Formula = (Job Creation % Shortfall) * (Cumulative LEDA Dollars Distributed)

Job Creation % Shortfall = $(1 - (\text{actual jobs} / \text{cumulative hiring target})) * 100\%$

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

**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: _____

APPROVED AS TO FORM

By: _____

The City of Las Cruces Attorney

NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT

By: _____

Alicia J. Keyes
Cabinet Secretary

Date: _____

APPROVED AS TO FORM

By: _____

Jesika Ulibarri
General Counsel

FY22 LEDA Application

Applicant	Todd Lundbohm		
Applicant ID	APP-015963		
Company Name	828 Studio NM, LLC	828 Productions LLC	
Email	todd@828productions.com		
Status	Submitted		
Application Amount	\$0.00		
Funded/Approved	☐		
LEDA Starting Job Count	0		
LEDA PPA Job Count Target	335		

Contact Information

Question: Legal Company Name

828 Productions LLC

Question: Trade Name (dba)

828 Productions LLC

Question: Project Name

828 Studios

Question: Company Street Address

~~100 South Church Street~~ 106 S Miranda St

Question: Company City

Las Cruces

Question: Company State

NM

Question: Company Zip

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~~88001~~ 88005

Question: Phone

2089124075

Question: Website

<https://828productions.com/>

Question: Primary Contact Person First Name

Todd

Question: Primary Contact Person Last Name

Lundbohm

Question: Federal Tax ID #

83-2900195

Question: NM State Tax and Revenue (CRS) #

03568111000

Question: City/County Business License Registration will be pursued

☒ Yes

☐ No

Question: NAICS Code(s)

512199

Question: DUNS # (preferred but not required)

Applied For

Question: This Business is organized as a:

☐ C-Corporation

☐ S-Corporation

☒ LLC

☐ Partnership

☐ Sole Proprietorship

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☐ B-Corporation

Question: Incorporation Papers

[828 PRODUCTIONS, LLC - DE - FORMATION.pdf](#) (9/17/2022, 11:10 AM)

Question: Resumes of all principals (owners, partners, directors or officers; required for businesses 1 year or younger)

[Todd bio.pdf](#) (9/17/2022, 11:13 AM)

[SDenton Bio 12 6 21 v3.pdf](#) (9/17/2022, 11:13 AM)

[Mark Andrews Bio.pdf](#) (9/17/2022, 11:13 AM)

Question: Company Contact for Project Administration (if different from above)

Christine Sheppard

Question: Title

Project Coordinator

Question: Telephone

~~575-520-6905~~ 575-323-1895

Question: Cell Phone

~~575-520-6905~~ 575-323-1895

Question: Email

csheppard@828productions.com

Project Information

Please include detailed information such as:

- Executive Summary; Business description and history
- Infrastructure Development/Needs
- Market analysis and strategy
- Summary of competition
- Tax Reporting Status
- Effect on Existing Industry and Commerce during and after Construction

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- Land Acquisition
- Local Purchasing
- Water Conservation
- Relocation of Individuals or Businesses
- Construction Schedule
 - Target Close Date
 - General Contract Signed
 - Construction Start
 - Construction End
 - New Facility Operational Date
- Operations plan; Organizational chart
- Any document or record that the local governing body, in its sole discretion, deems necessary.

Question: Description of the Proposed Development, its product and its timeline.

828 Productions plans to construct a movie studio in Las Cruces, New Mexico (the “Studio”) as well as provide financing for independent films. Construction on the first phase of the project is anticipated to begin in Q4 of 2022 with an estimated construction period of 18 months. Employees started to be hired in May of 2022 and will continue for initial management employees. Start up hiring for the studio operation will begin six months prior to construction completion. The film financing operations are anticipated to begin in Q4 of 2022/ Q1 of 2023.

Question: Provide a detailed scope of work that is specific to the funding request/award and what the funds will be used for.

828 Productions plans to construct a movie studio in Las Cruces, New Mexico (the “Studio”) and will be managing the production of films in Las Cruces as well as in other locations. Over 100 employees in the next 6 years will be hired. The first phase of the studio will include 4 sound stages, office space, mill, etc. Funding will be used for construction as well as start-up payroll for an approximate 6 month period that studio operations ramps up.

Question: Business Plan (required for businesses 1 year or younger)

See supporting documentation - studio model with construction costs as well as start-up budget and estimated revenues and expenses.

Question: Supporting Documentation

[828 Studios Redevelopment Schedule Rev 09 16 22.pdf](#) (9/29/2022, 3:58 PM)

Financial Information

*Upload sources and uses chart; enter N/A and zero for questions that do not apply to your business

Question: Provide detailed assumptions for your project including three years of projected cash flow income statements. If the applicant has been in business less than one year, you may be requested to provide additional financial information after review.

[828 Operating Financials Phase I CONFIDENTIAL Rev 9.10.22.pdf](#) (9/29/2022, 4:01 PM)

Question: Provide financial statements (balance sheet, profit and loss and cash flow) or tax returns for the past three years. Also provide interim statements within 90 days of application date.

[828 Productions financial history description.docx](#) (9/17/2022, 11:31 AM)

Question: What is the collateral/security to be pledged to the funds awarded?

- ☐ Letter of Credit
- ☒ Surety Bond
- ☐ Mortgage Security
- ☐ Security Agreement/Escrow
- ☐ Security Agreement/Lien
- ☐ Security Interest/Lien

Question: What is the method of appraisal for stated security (if Security Mortgage or Lien were selected above)?

N/A

Question: What is the equity investment from the applicant?

\$1,000,000.00

Question: External Equity Investment Sources

Equity raised from outside investors

Question: External Equity Investment Amount

\$25,000,000.00

Question: City/County Funding Source

City of Las Cruces Cinematic Infrastructure funds

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Question: City/ County Funding Amount

\$897,596.12

Question: Bank Loan Source (financial institution names), type (commercial, USDA, SBA 504, etc.), and stage (applied or approved)

Currently working on initial discussions with banks

Question: Bank Loans Amount Total

\$25,000,000.00

Question: Other Loans Source

~~828 Media Capital~~ 828 Affiliates

Question: Other Loans Amount

\$20,000,000.00

Question: Other Sources

N/A

Question: Other Sources Amount

\$0.00

Question: Total Project Amount (Sum of above)

\$71,000,000.00

Question: Supporting financial documentation

[LEDA Job Creation Additional Financial Information.pdf](#) (9/30/2022, 1:20 PM)

Company History and Background

Question: How long has the company been in operation, as of the date of application?

828 Productions was formed in 2021 and will begin operations with the beginning of this project 2022

Question: At the time of this application, how many full-time employees do you currently employ? Please provide the most recent Department of Workforce Solutions report below. If no employees, disregard report. Enter 0.

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3.00

Question: List owners with more than 20% ownership stake in the company. Additionally, please list principal directors and/or officers.

Owners

Todd Lundbohm

Directors/officers

Stephanie Denton

Mark Andrews

Question: Are owners and/or officers current with financial obligations/payments to the State of New Mexico or any other Federal or State entity? If no, please explain.

Yes

Question: Does the applicant have any loans or other financial obligations on which payments are not current? If yes, please explain.

No

Question: Please identify any financially affiliated/associated companies in which any of the applicant's owners have a 20% stake.

828 Productions, Inc is the only entity associated with 828 Productions LLC. There are other entities that were formed to lend or invest in, movies specifically, that have not been listed.

~~Please let us know if you need a more detailed list of entities.~~

Community Aspects

Question: At the community level, what are the infrastructure needs not yet in place or in process that will affect this project's application?

TBD

Question: What specific incentives are being REQUESTED from the COMMUNITY? Please explain where the applicant is in this process and provide an idea of a timeline for incentives' deployment.

1. Asking for allocation of funds from the EDD. Application is ongoing. We anticipate deployment of funds in Q4 of 2022/Q1 2023
2. Asking for allocation of funds from JTIP. We anticipate deployment of funds in Q4 of 2022/ Q1 2023
3. Asking for allocation of funds from the City of Las Cruces. We anticipate deployment of funds in Q4 of 2022/ Q1 2023

Question: What specific incentives will be PROVIDED from the COMMUNITY?(e.g. parcel of

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land, building lease, waiver of fees, utility access/extension)?

City of Las Cruces Cinematic Infrastructure funds, LEDA funds

Job Creation / Performance

Please download the job creation worksheet to work up the required information for this section.

- [Job Creation Worksheet](#)

Question: Outline the number and types of jobs to be created.

Additoinal part time jobs (annually) depending on production type

Full Time Jobs - total 100 :

Year Round Management

Year Round Studio Staff

Year Round Studio Crew

Year Round VFX, LED, MoCap & Post Team

Year Round Accounting Team

Question: Outline the proposed pay scale and payroll proposed by the entity.

100 jobs with an average salary of \$75,000 per year.

Question: Outline the benefits offered to the employees, including but not limited to health care and retirement.

Permanent employees will be offered PTO, health, dental, and 401(k) with discretionary match.

Question: Outline any efforts being made or proposed by the applicant to hire people within the local employment pool.

We are going to fill as many jobs locally as possible. All efforts will be made to relocate individuals that are needed for employment outside of the local job pool.

Question: Attach job creation worksheet

[828 Job Creation Worksheet Final.pdf](#) (9/30/2022, 1:09 PM)

Question: Starting Headcount (from worksheet above)

0.00

Question: Total new jobs to be created Year 1 (from worksheet above)

62.00

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Question: Total new payroll Year 1 (from worksheet above)

\$4,635,000.00

Question: Total number of new jobs to be created Year 2 (from worksheet above)

28.00

Question: Total new payroll Year 2 (from worksheet above)

\$2,295,000.00

Question: Total number of new jobs to be created Year 3 (from worksheet above)

10.00

Question: Total new payroll Year 3 (from worksheet above)

\$575,000.00

Economic Impact Analysis

NMEDD will perform an Economic Impact Analysis to address the impact to the local tax base, the school system, etc. using the Economic Impact Datasheet provided by the applicant.

Question: Outline any impacts to the environment, positively or negatively.

The studio will be built as sustainably possible with the smallest carbon footprint feasible. Modern building standards will be used with renewable energy sources utilized where feasible(i.e. solar).

Question: Status of permitting/regulatory matters needed for project.

In process with City of Las Cruces

Attachments

Please download the authorization for examination and release of information template and the example employer quarterly wage and contribution report.

- [Authorization for examination and release of information form](#)
- [Employer quarterly wage and contribution report example](#)

If you are a new business, please apply for a NM Tax Identification Number here:

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<http://www.tax.newmexico.gov/Businesses/wage-withholding-tax.aspx>

Please download the LEDA Application Affirmation Template here:

[LEDA Application Affirmation Template](#)

[Click here](#) to view a filled out sample.

Question: New Mexico Economic Development Department authorization for examination and release of information.

[FE Authorization for examination and release of information Notarized.pdf](#) (9/30/2022, 1:13 PM)

Question: Latest New Mexico employer's quarterly wage and contribution report submitted to the Department of Workforce Solutions.

[LEDA NM Quarterly Wage Report.pdf](#) (9/30/2022, 1:18 PM)

Question: Affirmation and any other supporting documents

[FE_2020_LEDA_App_Affirmationpdp.pdf](#) (9/26/2022, 9:21 AM)

Delaware

The First State

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*I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF
DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT
COPY OF THE CERTIFICATE OF FORMATION OF "828 PRODUCTIONS, LLC",
FILED IN THIS OFFICE ON THE NINETEENTH DAY OF DECEMBER, A.D.
2018, AT 7:52 O`CLOCK P.M.*



Jeffrey W. Bullock, Secretary of State

7202282 8100
SR# 20188269978

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 204150649
Date: 12-20-18

STATE OF DELAWARE
CERTIFICATE OF FORMATION
OF LIMITED LIABILITY COMPANY

The undersigned authorized person, desiring to form a limited liability company pursuant to the Limited Liability Company Act of the State of Delaware, hereby certifies as follows:

1. The name of the limited liability company is 828 Productions, LLC.

2. The Registered Office of the limited liability company in the State of Delaware is located at 850 New Burton Road, Suite 201 (street), in the City of Dover, Zip Code 19904. The name of the Registered Agent at such address upon whom process against this limited liability company may be served is COGENCY GLOBAL INC..

By: Morgan Sloane
Authorized Person

Name: Morgan Sloane
Print or Type

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Todd Lundbohm is an award-winning filmmaker with broad ranging experience in Development, Production, Postproduction and VFX. He began his career as an Art Director for NXNW Productions, working on several national campaigns before diving headfirst into narrative filmmaking: writing, directing and producing multiple projects, working throughout the US, Mexico, South America and Western Europe. Todd's feature screenplay, *MERIDIAN* has won numerous awards, as well as recognition from the SXSW Film Festival and Francis Ford Coppola's American Zoetrope writing competition.

As Founder and CEO of 828 Media Capital, Todd has financed projects with a total production spend north of \$50 million. 828 is a full-service film finance and production company, whose recent films include millennial murder mystery, ***Helen's Dead***, starring Tyrese Gibson, Anabelle Dexter-Jones, and Emile Hirsch; *Deauville Film Festival Grand Special Prize Nominee* ***The Last Son*** starring Sam Worthington, Colson Baker, Thomas Jane, and Heather Graham; Camille Delmarre's high octane action film, ***Assassin Club***, starring, Henry Golding, Noomi Rapace and Sam Neil; ***The Price We Pay***, from legendary horror director Ryûhei Kitamura, starring Emile Hirsch and Stephen Dorff; Gothic horror ***Raven's Hollow*** starring William Moseley, Melanie Zanetti, Kate Dickie and David Hayman; WWII Submarine movie ***Operation Seawolf*** Starring Dolph Lundgren and Frank Grillo; ***The Requin*** starring Alicia Silverstone and James Tupper; and *SXSW Grand Jury Prize winner* ***The Fallout*** starring Jenna Ortega, Maddie Ziegler, Shailene Woodley, and Julie Bowen.

Stephanie Denton is a feature film and television executive who has headed up acquisitions, sales, and distribution divisions for the industry's leading independent film and television companies, including Lionsgate International, Lakeshore Entertainment, Initial Entertainment Group and Bold Films.

Over the last 25 years, Denton has sold over 250 feature films, worked with legendary filmmakers such as Martin Scorsese, Lasse Halstrom, Sam Rami, Mark Pellington, Jon Amiel, Garry Marshall, Peter Howitt, James Mangold, Stephen Merchant, and James Wan to produce and sell high-profile films out of the independent film sector. Noteworthy releases include *THE AVIATOR*, *UNFINISHED LIFE*, *THE GIFT*, *ARLINGTON ROAD*, *LAWS OF ATTRACTION*, *UNDERWORLD*, *310 TO YUMA*, *WAR*, *HOTEL RWANDA*, *DAYBREAKERS*, *RUNAWAY BRIDE*, *FIGHTING WITH MY FAMILY*, and the box office record-breaking *SAW* franchise.

Denton's steady hand as a film and tv executive was evident in her leadership of the launch of Arc Animation Studios Original I.P. and Sales division during its transition from STARZ Entertainment, and her experience in acquisitions and co-production for WWE Studios in Los Angeles where she drove the company's marketing and production initiative to release brand adjacent content across platforms, and spearheaded a theatrical co-distribution deal in North America with Blumhouse Productions for Festival film favorites, *OCCULUS*, *SLIGHT*, and *BIRTH OF A DRAGON*.

A few of Denton's premier accomplishments include the development and production of Len Wiseman's hugely successful *UNDERWORLD* franchise for Lakeshore Entertainment, sourcing and selling high profile projects such as *WAR* starring Jason Statham and Jet Li, and *DAYBREAKERS* starring Ethan Hawke for Lionsgate Entertainment. She also closed multi-picture domestic distribution deals with Sony/Screen Gems, Universal Pictures, and Paramount Studios.

Denton began consulting for 828 Media in 2020, assisting with the company's expanding lending portfolio, and has since become a member of the 828 Productions team. Utilizing her extensive relationships in Production and Distribution, Denton's main focus will be sourcing co-production and development opportunities, and securing key distribution alliances in both the Domestic and International markets that will establish 828 Productions as an industry leader in the Indie Film space.

BIOGRAPHY

Mark Andrews

Mark started his career in finance & management consulting but his real passion was for film. This passion was realized in 1995 when he invested in his first feature film '**Mainline Run**'. Three years later he took the plunge and became a full time producer, co-writing and producing the feature film '**Distant Shadow**' which made more than 4 times its budget. This led to being hired to produce budgets & schedules for the UK's Spice Factory and oversee production on '**Redemption Road**'.

Seeing the opportunities film financing in the United Kingdom offered, Mark co-founded '**Studio Finance**,' a UK Film tax shelter utilizing the UK Government's Section 48 Tax breaks for film production before going on to consult for another film financing group, '**UKFS**' backed by Guernsey based Channel House Trustees. In their three years of operating, UKFS were responsible for more than \$300 million of tax shelter film financing for the UK film industry. It was here acting as a Senior Finance Executive that he oversaw such films as '**Wake of Death**,' '**Modigliani**,' '**School for Seduction**,' '**Out of Season**' and '**Battle of the Brave**' amongst others.

In 2004 Mark moved to Los Angeles where he began consulting for various production companies, investors and independent producers, was Head of Entertainment for Exemplar Capital an East Coast Investment Bank and Law Firm and was instrumental in forming various film financing structures including a \$150m film fund.

Some of the projects he has been instrumental in developing or setting up at various companies are Animated Horror '**Down Satan**' in partnership with re-known Horror Author '**Clive Barker**'; Supernatural Thriller '**Indelible**' being Directed by National Film Award Winner '**Howard J Ford**' (The Dead 1&2, Never Let Go); '**Kill the Messenger**' from the creator of (RoboCop), '**Michael Miner**,' and the Epic Western '**The Girl With No Name**' in conjunction with **Co-Op Entertainment** and **LegionM** being directed by '**Tanya Wexler**' (Buffaloed, Jolt).

In 2018 Mark produced the movie '**Dead Water**' starring '**Casper Van Dien**' and '**Judd Nelson**,' released by **Saban** in July 2019.

He currently oversees the development, financing and production operations for 828 Productions a west coast full service film finance and production company where he has executive produced and produced such films as **THE FALLOUT** starring Jenna Ortega, Maddie Ziegler, Shailene Woodley and Julie Bowen, **THE LAST SON** starring Sam Worthington, Colson Baker, Thomas Jane and Heather Graham, **THE PRICE WE PAY**, directed by horror legend Ryûhei Kitamura, starring Emile Hirsch and Stephen Dorff, and the recently wrapped **RAVENS HOLLOW** starring William Moseley, Melanie Zanetti, Kate Dickie and David Hayman.

In summary, Mark is a highly accomplished and seasoned writer, producer & production executive with a proven track record of over twenty years of experience in development, financing, production and distribution. He is a high impact contributor and versatile professional with exceptional business and production acumen who is comfortable working alone or managing hundreds of individuals while ensuring timely completion of project deadlines and remaining on, or under budget.

He holds a National Diploma in Business and Finance from the UK and a Certificate of Achievement for Contract Law from HarvardX University.

Mark lives in Colorado Springs with his wife and dog 'Piper'.

PROJECT OVERVIEW

MON 8/15/22 - MON 11/18/24

% COMPLETE

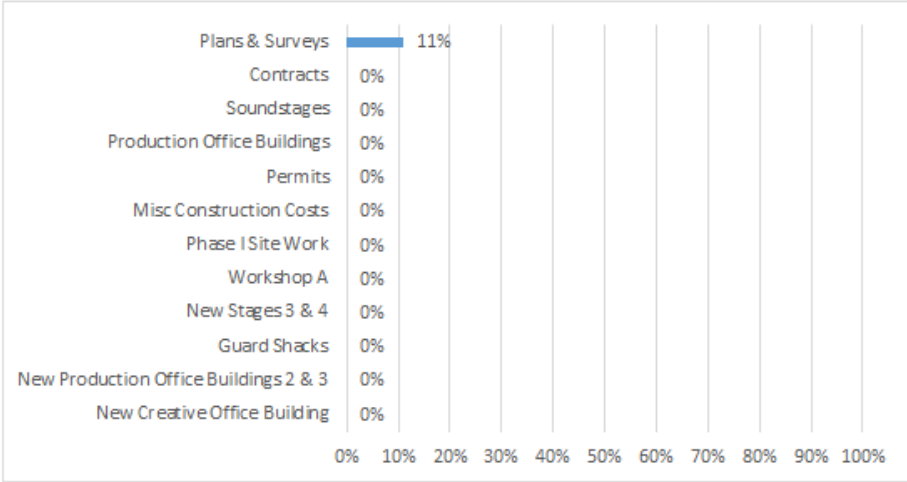
1%

MILESTONES DUE

Milestones that are coming soon.

Name	Finish
Stage 1 COA	Thu 10/26/23
Stage 2 COA	Mon 8/12/24
Workshop A COA	Tue 7/9/24
Stage 3 COA	Fri 12/29/23
Stage 4 COA	Mon 1/8/24

% COMPLETE



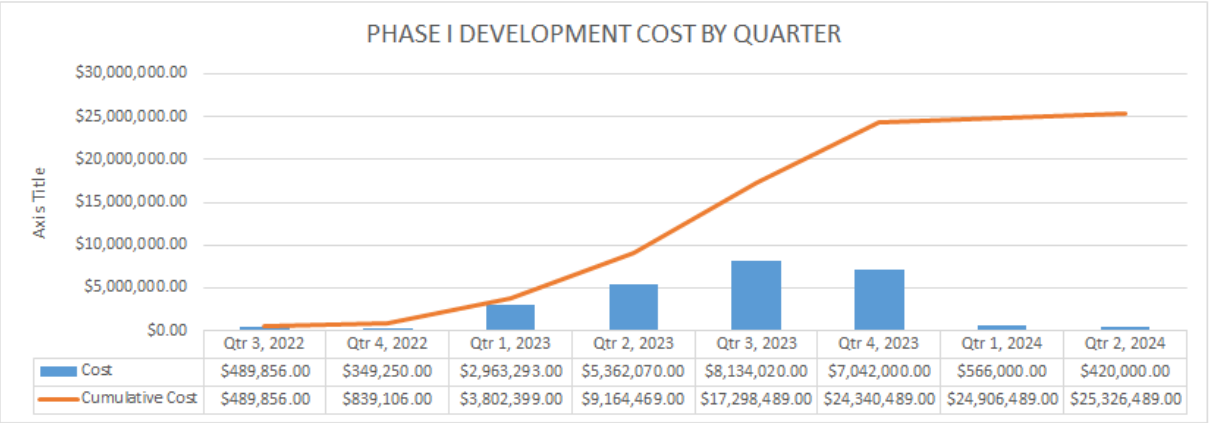
LATE TASKS

Tasks that are past due.

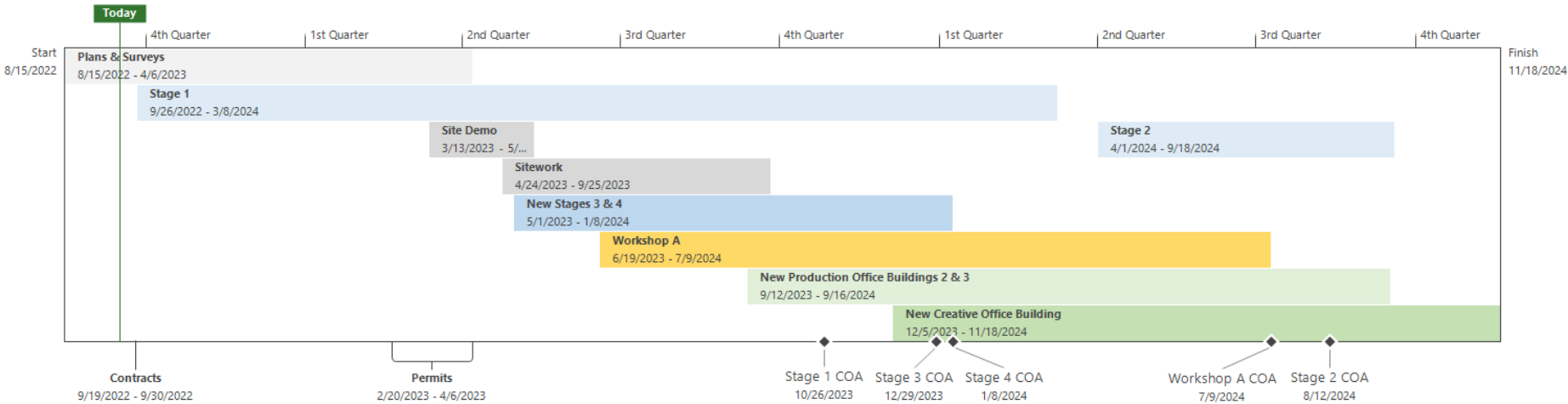
Name	Start	Finish	% Complete
DD Drawings	Mon 9/12/22	Mon 12/26/22	0%

CASH FLOW

Cost	Remaining Cost
\$25,326,489.00	\$25,326,489.00



Name	Cost	Start	Unique ID
828 STUDIOS NM	\$25,326,489.00	Mon 8/15/22	1
RENOVATION	\$9,341,489.00	Mon 8/15/22	171
Contracts	\$0.00	Mon 9/19/22	2
Plans & Surveys	\$532,100.00	Mon 8/15/22	7
Permits	\$103,500.00	Mon 2/20/23	312
Phase I Site Work	\$1,858,393.00	Mon 3/13/23	17
Misc Construction Costs	\$166,141.00	Mon 3/13/23	314
Soundstages	\$4,743,605.00	Mon 9/26/22	68
Workshop A	\$1,846,000.00	Mon 6/19/23	110
Production Office Buildings	\$91,750.00	Tue 11/1/22	157
NEW CONSTRUCTION	\$15,985,000.00	Mon 5/1/23	172
New Stages 3 & 4	\$14,000,000.00	Mon 5/1/23	173
New Production Office Buildings 2 & 3	\$1,280,000.00	Tue 9/12/23	298
New Creative Office Building	\$640,000.00	Tue 12/5/23	141
Guard Shacks	\$65,000.00	Tue 9/5/23	158



Project Timeline and Budgetary Estimates are derived from Highland Enterprises Inc. and Giant Entertainment & Management Inc. with supporting detail located in the appendix of this project summary.

Although preliminary in nature, the following schedule and associated costs are based on prior experience in respective fields. Even so, fixed costs can only be determined after full review of Construction Drawings, still to be developed.

828 Studios Redevelopment Schedule.mpp																							
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	September 21/10	January 10/21	May 1 5/28	September 7/23	January 11/12	May 1 3/3	September 4/28	January 18/10	May 1 12/8						
1		828 STUDIOS NM	578 days?	Mon 8/15/22	Mon 11/18/24	\$25,326,489.00											1%						
2		RENOVATION	535 days?	Mon 8/15/22	Wed 9/18/24	\$9,341,489.00											1%						
3		Contracts	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
4		General Contractor	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
5		Architectural	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
6		Engineering	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
7		Mechanical	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
8		Electrical	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
9		Plumbing	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
10		Structural	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
11		Civil	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
12		Surveys	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
13		Geotech	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
14		Project Management	10 days	Mon 9/19/22	Fri 9/30/22	\$0.00											0%						
15		Plans & Surveys	156 days?	Mon 8/15/22	Thu 4/6/23	\$532,100.00											11%						
		Critical		Task Progress		Baseline		Summary		Inactive Task													
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone													
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary													
		Task		Finish-only		Milestone		External Tasks		Deadline													
		Split		Duration-only		Summary Progress		External Milestone															
Page 1																							

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 8/21	January 10/2	May 11/2	September 10/2	January 11/2	May 13/3	September 10/2	January 11/2	May 13/3
16		Conceptual Site Plans	15 days	Mon 8/15/22	Fri 9/2/22	\$0.00										
17		DD Drawings	76 days	Mon 9/12/22	Mon 12/26/22	\$257,500.00										
18		Construction Drawings	39 days	Tue 12/27/22	Fri 2/17/23	\$257,500.00										
19		Demo Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00										
20		Geotechnical Survey	30 days	Mon 9/26/22	Fri 11/4/22	\$8,000.00										
21		Topographical Survey	10 days	Mon 9/26/22	Fri 10/7/22	\$9,100.00										
22		Stormwater Plans	41 days	Wed 10/19/22	Mon 12/26/22	\$0.00										
23		Materials testing	15 days	Mon 11/7/22	Tue 11/29/22	\$0.00										
24		Traffic Study				\$0.00										
25		Traffic Circulation Plan	15 days	Mon 8/15/22	Fri 9/2/22	\$0.00										
26		Permits	34 days?	Mon 2/20/23	Thu 4/6/23	\$103,500.00										
27		Grading Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00										
28		Underground Utilities Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00										
29		MEP Permits	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00										
30		Structural Building Plans/Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00										

Critical

Critical Split

Critical Progress

Task

Split

Task Progress

Manual Task

Start-only

Finish-only

Duration-only

Baseline

Baseline Split

Baseline Milestone

Milestone

Summary Progress

Summary

Manual Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Deadline

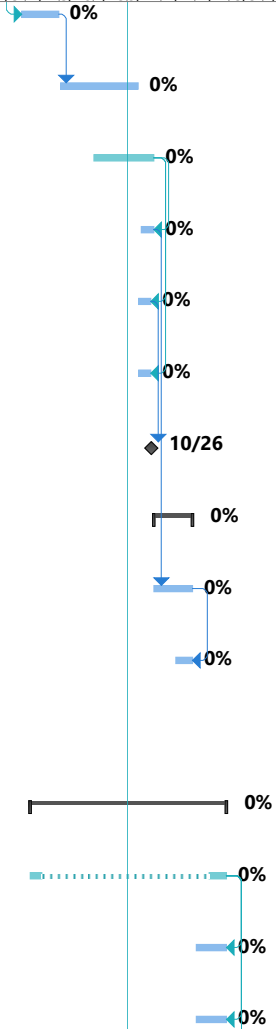
828 Studios Redevelopment Schedule.mpp																				
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26/8/21	September 10/2	January 11/2/5	May 1 4/2	September 7/23	January 11/12	May 1 3/3	September 6/23	January 11/10	May 1 8/10	September 12/8	January 12/2	May 1 3/30
31		Stormwater Retention Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00								0%						
32		Landscaping Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00								0%						
33		Fire Life Safety Permits	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00								0%						
34		Stage 1 Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00								0%						
35		Stage 2 Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00								0%						
36		Workshop Renovation Permit	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00								0%						
37		Creative Office Building Permit				\$0.00														
38		Guard Shack Permits	34 days	Mon 2/20/23	Thu 4/6/23	\$0.00								0%						
39		Phase I Site Work	141 days	Mon 3/13/23	Mon 9/25/23	\$1,858,393.00								0%						
40		Site Demo	45 days	Mon 3/13/23	Fri 5/12/23	\$390,403.00								0%						
41		Tree removal	45 days	Mon 3/13/23	Fri 5/12/23	\$52,096.00								0%						
42		Removal of volcanic rock to Phase 2	45 days	Mon 3/13/23	Fri 5/12/23	\$166,000.00								0%						
43		Removal of tires	45 days	Mon 3/13/23	Fri 5/12/23	\$1,500.00								0%						
44		Removal of trash and debris	45 days	Mon 3/13/23	Fri 5/12/23	\$18,226.00								0%						
45		Removal of RV trailer	45 days	Mon 3/13/23	Fri 5/12/23	\$2,700.00								0%						
		Critical		Task Progress		Baseline		Summary		Inactive Task										
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone										
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary										
		Task		Finish-only		Milestone		External Tasks		Deadline										
		Split		Duration-only		Summary Progress		External Milestone												
Page 3																				

828 Studios Redevelopment Schedule.mpp																									
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	8/21	10/10	12/2/21	2/5/22	4/25/22	7/23/22	9/17/22	11/12/22	1/7/23	3/3/23	4/28/23	6/23/23	8/18/23	10/13/23	12/8/23	2/2/24	3/30/24
46		Waste Removal; Stage 1	45 days	Mon 3/13/23	Fri 5/12/23	\$8,650.00																			
47		Waste Removal; Stage 2	45 days	Mon 3/13/23	Fri 5/12/23	\$37,100.00																			
48		Waste Removal WS-A	45 days	Mon 3/13/23	Fri 5/12/23	\$30,000.00																			
49		Clean and expose RR Tracks	45 days	Mon 3/13/23	Fri 5/12/23	\$22,601.00																			
50		Demolition - above grade concrete	45 days	Mon 3/13/23	Fri 5/12/23	\$44,830.00																			
51		Demo Bagging Equip WS-A	45 days	Mon 3/13/23	Fri 5/12/23	\$6,700.00																			
52		Sitework	111 days	Mon 4/24/23	Mon 9/25/23	\$1,467,990.00																			
53		Rough Grading	36 days	Mon 4/24/23	Mon 6/12/23	\$0.00																			
54		Access road to Stage 1 and Work Shop	30 days	Tue 6/13/23	Mon 7/24/23	\$304,790.00																			
55		Asphalt Parking - Lot 4	30 days	Tue 6/13/23	Mon 7/24/23	\$159,100.00																			
56		Asphalt Parking - Lot 5	30 days	Tue 6/13/23	Mon 7/24/23	\$167,015.00																			
57		Asphalt Parking Work Shop	33 days	Wed 7/12/23	Fri 8/25/23	\$96,144.00																			
58		Asphalt Parking - Lot 6	30 days	Tue 6/13/23	Mon 7/24/23	\$172,715.00																			
59		Asphalt Parking - Stage 1 Lot	31 days	Mon 8/14/23	Mon 9/25/23	\$83,328.00																			
60		Asphalt Parking - POB Lots 2&3	30 days	Tue 6/13/23	Mon 7/24/23	\$119,900.00																			
		Critical		Task Progress		Baseline		Summary		Inactive Task															
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone															
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary															
		Task		Finish-only		Milestone		External Tasks		Deadline															
		Split		Duration-only		Summary Progress		External Milestone																	
Page 4																									

828 Studios Redevelopment Schedule.mpp																								
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	8/21	September 10/2	January 11/2	May 1 12/5	8/27	September 9/17	January 11/12	May 1 1/7	3/3	4/28	6/23	8/18	October 13/10	January 11/12	May 1 2/2	3/30
61		Graveled area temp power plants	30 days	Tue 6/13/23	Mon 7/24/23	\$33,250.00								0%										
62		Cantina Slab	30 days	Tue 6/13/23	Mon 7/24/23	\$7,200.00								0%										
63		Underground Retention Ponds	30 days	Tue 6/13/23	Mon 7/24/23	\$75,000.00								0%										
64		Landscape Phase 1 (12,000 SF)	30 days	Tue 7/25/23	Mon 9/4/23	\$249,548.00								0%										
65		Misc Construction Costs	347 days	Mon 3/13/23	Tue 7/9/24	\$166,141.00								0%										
66		Contractor Fee	347 days	Mon 3/13/23	Tue 7/9/24	\$125,000.00								0%										
67		Temporary Facilities	347 days	Mon 3/13/23	Tue 7/9/24	\$2,100.00								0%										
68		Temporary Utilities	347 days	Mon 3/13/23	Tue 7/9/24	\$19,041.00								0%										
69		Builders Risk Insurance	347 days	Mon 3/13/23	Tue 7/9/24	\$20,000.00								0%										
70		Soundstages	505 days?	Mon 9/26/22	Wed 9/18/24	\$4,743,605.00								0%										
71		Stage 1	367 days?	Mon 9/26/22	Fri 3/8/24	\$4,323,605.00								0%										
72		Remove and replace 9,000 SF of existing floor	30 days	Mon 9/26/22	Wed 4/12/23	\$215,256.00								0%										
73		Replace Roof & Walls	156 days	Mon 3/27/23	Mon 10/30/23	\$2,303,249.00								0%										
74		Add sub-framing as required	10 days	Thu 3/30/23	Wed 4/12/23	\$0.00								0%										
75		Remove Sheeting	30 days	Mon 3/27/23	Fri 5/5/23	\$0.00								0%										
		Critical		Task Progress		Baseline		Summary		Inactive Task														
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone														
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary														
		Task		Finish-only		Milestone		External Tasks		Deadline														
		Split		Duration-only		Summary Progress		External Milestone																
Page 5																								

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 6/26	January 10/1	May 1 11/2	September 7/23	January 11/1	May 1 12/1	September 3/3	January 4/28	May 1 6/23	September 8/18	January 11/12	May 1 2/2	September 3/30
76		Modify Steel Structure (panel prep)	45 days	Mon 3/27/23	Fri 5/26/23	\$0.00														
77		Install 4 Kingspan Insulated panels	92 days	Tue 5/30/23	Wed 10/4/23	\$0.00														
78		Install 6 interior SIP panels	71 days	Mon 7/24/23	Mon 10/30/23	\$0.00														
79		Install Duct liner on roof and wall interior	15 days	Tue 10/10/23	Mon 10/30/23	\$0.00														
80		1 ea - 18' W x 12' H barn door	14 days	Fri 10/6/23	Wed 10/25/23	\$0.00														
81		3ea - Hollow metal man doors	14 days	Fri 10/6/23	Wed 10/25/23	\$0.00														
82		Stage 1 COA	1 day	Thu 10/26/23	Thu 10/26/23	\$0.00														
83		Mechanical	46 days?	Tue 10/31/23	Tue 1/2/24	\$624,000.00														
84		HVAC - 150 TNS heating and cooling	46 days	Tue 10/31/23	Tue 1/2/24	\$624,000.00														
85		Exhaust Fans	20 days	Wed 12/6/23	Tue 1/2/24	\$0.00														
86		Gas Line (Heating)				\$0.00														
87		Electrical	232 days	Mon 4/10/23	Tue 2/27/24	\$615,100.00														
88		750 KVA Transformer 900 amp, 480V 3P	36 days	Mon 4/10/23	Tue 2/27/24	\$615,100.00														
89		Main Panel	36 days	Tue 1/9/24	Tue 2/27/24	\$0.00														
90		Bull Switches	36 days	Tue 1/9/24	Tue 2/27/24	\$0.00														



Critical

Critical Split

Critical Progress

Task

Split

Task Progress

Manual Task

Start-only

Finish-only

Duration-only

Baseline

Baseline Split

Baseline Milestone

Milestone

Summary Progress

Summary

Manual Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Deadline

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 6/26	January 10/10	May 1 11/2	September 12/5	January 1 4/2	May 1 5/28	September 7/23	January 1 11/1	May 1 1/7	September 3/3	January 1 4/28	May 1 6/23	September 8/18	January 1 10/12	May 1 2/2	September 3/30
91		high bay lighting	36 days	Tue 1/9/24	Tue 2/27/24	\$0.00																	
92		emergency lighting	36 days	Tue 1/9/24	Tue 2/27/24	\$0.00																	
93		ingress/egress, exterior wall pack lighting	36 days	Tue 1/9/24	Tue 2/27/24	\$0.00																	
94		general purpose 120V outlets through out	36 days	Tue 1/9/24	Tue 2/27/24	\$0.00																	
95		Plumbing	45 days	Mon 1/8/24	Fri 3/8/24	\$566,000.00																	
96		Install Waterline	45 days	Mon 1/8/24	Fri 3/8/24	\$20,000.00																	
97		Fire Sprinkler system	45 days	Mon 1/8/24	Fri 3/8/24	\$546,000.00																	
98		Stage 2	123 days?	Mon 4/1/24	Wed 9/18/24	\$420,000.00																	
99		Stage 2 Renovation	95 days	Mon 4/1/24	Fri 8/9/24	\$420,000.00																	
100		Remove Sheet Metal	19 days	Mon 4/1/24	Thu 4/25/24	\$0.00																	
101		Install 4 Kingspan panels	38 days	Mon 4/29/24	Wed 6/19/24	\$0.00																	
102		Install 6 SIP panels	38 days	Mon 6/10/24	Wed 7/31/24	\$0.00																	
103		Install interior Duct liner	10 days	Thu 7/18/24	Wed 7/31/24	\$0.00																	
104		1 ea - 16' W x 14' H Barn Door	14 days	Tue 7/23/24	Fri 8/9/24	\$0.00																	
105		3ea - Hollow metal man doors	14 days	Tue 7/23/24	Fri 8/9/24	\$0.00																	

Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp																							
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	8/21	September 10/21	January 11/25	May 1 4/25	28/7/23	September 9/17	January 11/12	May 1 3/3	4/28	6/23	8/18	October 13/12	January 11/2	May 1 3/30	
106		Stage 2 COA	1 day	Mon 8/12/24	Mon 8/12/24	\$0.00														8/12			
107		Mechanical	23 days	Mon 7/29/24	Wed 8/28/24	\$0.00														0%			
108		HVAC - 20 TNS	23 days	Mon 7/29/24	Wed 8/28/24	\$0.00														0%			
109		Exhaust fans	22 days	Tue 7/30/24	Wed 8/28/24	\$0.00														0%			
110		Electrical	23 days?	Mon 8/19/24	Wed 9/18/24	\$0.00														0%			
111		250 KVA Transformer	23 days	Mon 8/19/24	Wed 9/18/24	\$0.00														0%			
112		Interior Main				\$0.00																	
113		Bull Switches				\$0.00																	
114		warehouse lighting				\$0.00																	
115		emergency lighting ingress/ egress				\$0.00																	
116		exterior wall pack lighting				\$0.00																	
117		convenient outlets, 220V outlets				\$0.00																	
118		Plumbing	13 days?	Mon 7/22/24	Wed 8/7/24	\$0.00														0%			
119		Interior Water Lines/Sink	13 days	Mon 7/22/24	Wed 8/7/24	\$0.00														0%			
120		Fire Sprinkler System				\$0.00																	
		Critical		Task Progress		Baseline		Summary		Inactive Task													
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone													
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary													
		Task		Finish-only		Milestone		External Tasks		Deadline													
		Split		Duration-only		Summary Progress		External Milestone															
Page 8																							

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 8/21	September 10/10	January 1 1/2	May 1 5/28	September 9/17	January 1 1/12	May 1 5/3	September 8/23	January 1 1/18	May 1 5/30
121		Workshop A	277 days?	Mon 6/19/23	Tue 7/9/24	\$1,846,000.00											0%
122		2ea - Concrete Loading docks	67 days	Mon 6/19/23	Tue 9/19/23	\$208,000.00											0%
123		concrete approach ramps	67 days	Mon 6/19/23	Tue 9/19/23	\$208,000.00											0%
124		hand railing	10 days	Wed 9/6/23	Tue 9/19/23	\$0.00											0%
125		dock levelers	10 days	Wed 9/6/23	Tue 9/19/23	\$0.00											0%
126		Workshop A Renovation	93 days?	Mon 11/20/23	Wed 3/27/24	\$1,638,000.00											0%
127		Remove existing roof and wall sheeting	25 days	Mon 11/20/23	Fri 12/22/23	\$0.00											0%
128		Modify Steel Structure (panel prep)	38 days	Mon 12/11/23	Wed 1/31/24	\$0.00											0%
129		Install PBR 26 ga roof sheets	33 days	Mon 2/5/24	Wed 3/20/24	\$0.00											0%
130		Install/replace sub-framing				\$0.00											0%
131		Install exterior OSB/SIP panels	38 days	Mon 2/5/24	Wed 3/27/24	\$0.00											0%
132		Install interior metal wall panels				\$0.00											0%
133		install under roof insulation				\$0.00											0%
134		Remove wood frame breezeway				\$0.00											0%
135		Add metal frame breezeway				\$0.00											0%

Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 8/21	January 10/2	May 11/25	September 9/17	January 11/12	May 13/3	September 8/23	January 10/13	May 11/28
136	★?	3ea demising walls in the building				\$0.00										
137	★?	10 ea Exterior man doors				\$0.00										
138	★?	6 ea 12' x 10' Overhead doors				\$0.00										
139	➡	Mechanical	36 days?	Mon 3/25/24	Mon 5/13/24	\$0.00										0%
140	➡	HVAC - 75 TNS	36 days	Mon 3/25/24	Mon 5/13/24	\$0.00										0%
141	★?	Gas (Heating)				\$0.00										
142	➡	Electrical	36 days?	Mon 3/25/24	Mon 5/13/24	\$0.00										0%
143	➡	Transformer (TBD)	36 days	Mon 3/25/24	Mon 5/13/24	\$0.00										0%
144	★?	Interior Electrical Panels				\$0.00										
145	★?	220V convenience power				\$0.00										
146	★?	Warehouse lighting				\$0.00										
147	★?	Emergency lighting ingress/egress				\$0.00										
148	★?	Exterior lighting				\$0.00										
149	➡	Plumbing	136 days	Mon 1/1/24	Mon 7/8/24	\$0.00										0%
150	★	Restrooms	25 days	Mon 1/1/24	Fri 2/2/24	\$0.00										0%

Critical	Task Progress	Baseline	Summary	Inactive Task
Critical Split	Manual Task	Baseline Split	Manual Summary	Inactive Milestone
Critical Progress	Start-only	Baseline Milestone	Project Summary	Inactive Summary
Task	Finish-only	Milestone	External Tasks	Deadline
Split	Duration-only	Summary Progress	External Milestone	

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 8/21	January 10/2	May 12/5	September 15/28	January 17/30	May 13/3	September 18/30	January 11/2	May 13/30
151		Fire sprinkler system	36 days	Mon 5/20/24	Mon 7/8/24	\$0.00										
152		Workshop A COA	1 day	Tue 7/9/24	Tue 7/9/24	\$0.00										
153		Production Office Buildings	60 days	Tue 11/1/22	Thu 2/9/23	\$91,750.00										
154		POB 1	60 days	Tue 11/1/22	Thu 2/9/23	\$91,750.00										
155		Exterior T.I. (TBD)	30 days	Tue 11/1/22	Wed 12/14/22	\$45,875.00										
156		Interior T.I. (TBD)	30 days	Thu 12/15/22	Thu 2/9/23	\$45,875.00										
157		NEW CONSTRUCTION	406 days	Mon 5/1/23	Mon 11/18/24	\$15,985,000.00										
158		New Stages 3 & 4	181 days	Mon 5/1/23	Mon 1/8/24	\$14,000,000.00										
159		Stage Structural Assembly	99 days	Mon 5/1/23	Thu 9/14/23	\$7,000,000.00										
160		Stage 3 Structural Assembly	50 days	Mon 5/1/23	Fri 7/7/23	\$3,500,000.00										
161		Base Plates	10 days	Mon 5/1/23	Fri 5/12/23	\$0.00										
162		Prep Modules 1-3	2 days	Mon 5/15/23	Tue 5/16/23	\$0.00										
163		Assembly Module 1	2 days	Wed 5/17/23	Thu 5/18/23	\$0.00										
164		Assembly Module 2	2 days	Fri 5/19/23	Mon 5/22/23	\$0.00										
165		Assembly Module 3	2 days	Tue 5/23/23	Wed 5/24/23	\$0.00										

Critical		Task Progress		Baseline		Summary		Inactive Task	
Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone	
Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary	
Task		Finish-only		Milestone		External Tasks		Deadline	
Split		Duration-only		Summary Progress		External Milestone			

828 Studios Redevelopment Schedule.mpp																						
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	8/21	September 10/2	January 12/5	May 14/2	September 17/23	January 11/12	May 13/3	September 4/28	January 6/23	May 8/18	September 10/13	January 12/8	May 2/2	September 3/30
166		Prep Modules 4-5	2 days	Thu 5/25/23	Fri 5/26/23	\$0.00																
167		Assembly Module 4	2 days	Mon 5/29/23	Tue 5/30/23	\$0.00																
168		Assembly Module 5	2 days	Wed 5/31/23	Thu 6/1/23	\$0.00																
169		Assembly Single Frame	3 days	Fri 6/2/23	Tue 6/6/23	\$0.00																
170		Pulling Roof Module 1-5	1 day	Wed 6/7/23	Wed 6/7/23	\$0.00																
171		Stage 3 Module Lift	1 day	Thu 6/8/23	Thu 6/8/23	\$0.00																
172		Purlins, Cables, Braces	3 days	Fri 6/9/23	Tue 6/13/23	\$0.00																
173		Roof & Insulation & Tension Bars	5 days	Wed 6/14/23	Tue 6/20/23	\$0.00																
174		Gable End	3 days	Wed 6/21/23	Fri 6/23/23	\$0.00																
175		Gable Leg Sections	2 days	Mon 6/26/23	Tue 6/27/23	\$0.00																
176		Wall Panel Installation	8 days	Wed 6/28/23	Fri 7/7/23	\$0.00																
177		Corners & Gutters	3 days	Wed 6/28/23	Fri 6/30/23	\$0.00																
178		Weather Sealing	2 days	Mon 7/3/23	Tue 7/4/23	\$0.00																
179		Stage 4 Structural Assembly	49 days	Mon 7/10/23	Thu 9/14/23	\$3,500,000.00																
180		Base Plates	10 days	Mon 7/10/23	Fri 7/21/23	\$0.00																
		Critical		Task Progress		Baseline		Summary		Inactive Task												
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone												
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary												
		Task		Finish-only		Milestone		External Tasks		Deadline												
		Split		Duration-only		Summary Progress		External Milestone														
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828 Studios Redevelopment Schedule.mpp																						
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	8/21	September 10/10	January 12/11	May 14/25	7/23	September 17/11	January 11/12	May 13/3	4/28	6/23	8/18	September 10/11	January 12/12	May 13/30
181		Prep modules 1-3	2 days	Mon 7/24/23	Tue 7/25/23	\$0.00																0%
182		Assembly Module 1	2 days	Wed 7/26/23	Thu 7/27/23	\$0.00																0%
183		Assembly Module 2	2 days	Fri 7/28/23	Mon 7/31/23	\$0.00																0%
184		Assembly Module 3	2 days	Tue 8/1/23	Wed 8/2/23	\$0.00																0%
185		Prep Modules 4-5	2 days	Thu 8/3/23	Fri 8/4/23	\$0.00																0%
186		Assembly Module 4	2 days	Mon 8/7/23	Tue 8/8/23	\$0.00																0%
187		Assembly module 5	2 days	Wed 8/9/23	Thu 8/10/23	\$0.00																0%
188		Pulling Roof Module 1-5	2 days	Fri 8/11/23	Mon 8/14/23	\$0.00																0%
189		Stage 4 Module Lift	2 days	Tue 8/15/23	Wed 8/16/23	\$0.00																0%
190		Purlins, Cables, Braces	3 days	Thu 8/17/23	Mon 8/21/23	\$0.00																0%
191		Roof Insulation & Tension Bars	5 days	Tue 8/22/23	Mon 8/28/23	\$0.00																0%
192		Gable Leg Sections	2 days	Tue 8/29/23	Wed 8/30/23	\$0.00																0%
193		Gable End	3 days	Thu 8/31/23	Mon 9/4/23	\$0.00																0%
194		Wall Panel Installation	8 days	Tue 9/5/23	Thu 9/14/23	\$0.00																0%
195		Corners & Gutters	3 days	Tue 9/5/23	Thu 9/7/23	\$0.00																0%
		Critical		Task Progress		Baseline		Summary		Inactive Task												
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone												
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary												
		Task		Finish-only		Milestone		External Tasks		Deadline												
		Split		Duration-only		Summary Progress		External Milestone														
Page 13																						

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 8/21	September 10/10	January 11/2	May 12/5	May 14/2	May 15/28	September 7/23	September 11/11	January 11/12	May 13/3	May 14/28	September 6/23	September 18/10	January 11/12	May 12/8	May 13/30
196		Weather Sealing	2 days	Fri 9/8/23	Mon 9/11/23	\$0.00																	
197		Stage Interior	52 days	Fri 9/15/23	Mon 11/27/23	\$3,500,000.00																	
198		Stage 3 Interior	42 days	Fri 9/15/23	Mon 11/13/23	\$1,750,000.00																	
199		Stage 3 Flooring	10 days	Fri 9/15/23	Thu 9/28/23	\$0.00																	
200		Stage 3 Plywood	8 days	Fri 9/29/23	Tue 10/10/23	\$0.00																	
201		Acoustic Wall Liner	10 days	Wed 10/11/23	Tue 10/24/23	\$0.00																	
202		Staircases & Emergency Exit Ladders	3 days	Wed 10/25/23	Fri 10/27/23	\$0.00																	
203		Rat Holes	2 days	Mon 10/30/23	Tue 10/31/23	\$0.00																	
204		Elephant Door	3 days	Wed 11/1/23	Fri 11/3/23	\$0.00																	
205		Airlock Vestibules	5 days	Mon 11/6/23	Fri 11/10/23	\$0.00																	
206		Personnel Doors (Exterior)	3 days	Mon 11/6/23	Wed 11/8/23	\$0.00																	
207		Cable Port Guillotines	2 days	Thu 11/9/23	Fri 11/10/23	\$0.00																	
208		Elephant Door Balustrades	2 days	Mon 11/6/23	Tue 11/7/23	\$0.00																	
209		Handrails	2 days	Mon 11/6/23	Tue 11/7/23	\$0.00																	
210		Stage 3 Floor Painting	4 days	Wed 11/8/23	Mon 11/13/23	\$0.00																	

Critical

Critical Split

Critical Progress

Task

Split

Task Progress

Manual Task

Start-only

Finish-only

Duration-only

Baseline

Baseline Split

Baseline Milestone

Milestone

Summary Progress

Summary

Manual Summary

Project Summary

External Tasks

External Milestone

Inactive Task

Inactive Milestone

Inactive Summary

Deadline

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828 Studios Redevelopment Schedule.mpp																						
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	8/21	September 10/1	January 11/2	May 1 12/5	September 17/23	January 11/12	May 1 1/7	3/3	4/28	6/23	8/18	January 11/10	May 1 12/8	September 13/30
211		Stage 4 Interior	42 days	Fri 9/29/23	Mon 11/27/23	\$1,750,000.00																
212		Stage 4 Flooring	10 days	Fri 9/29/23	Thu 10/12/23	\$0.00																
213		Stage 4 Plywood	3 days	Fri 10/13/23	Tue 10/17/23	\$0.00																
214		Acoustic Wall Liner	2 days	Wed 10/18/23	Thu 10/19/23	\$0.00																
215		Staircases & Emergency Exit Ladders	3 days	Fri 10/20/23	Tue 10/24/23	\$0.00																
216		Rat Holes	5 days	Wed 10/25/23	Tue 10/31/23	\$0.00																
217		Elephant Door	3 days	Wed 11/1/23	Fri 11/3/23	\$0.00																
218		Airlock Vestibules	2 days	Mon 11/6/23	Tue 11/7/23	\$0.00																
219		Personnel Doors (Exterior)	2 days	Wed 11/8/23	Thu 11/9/23	\$0.00																
220		Cable Port Guillotines	2 days	Fri 11/10/23	Mon 11/13/23	\$0.00																
221		Elephant Door Balustrades	4 days	Tue 11/14/23	Fri 11/17/23	\$0.00																
222		Handrails	2 days	Mon 11/20/23	Tue 11/21/23	\$0.00																
223		Stage 4 Floor Painting	4 days	Wed 11/22/23	Mon 11/27/23	\$0.00																
224		Stage Fit Out	54 days	Wed 10/25/23	Mon 1/8/24	\$3,500,000.00																
225		Stage 3 Fit Out	47 days	Wed 10/25/23	Thu 12/28/23	\$1,750,000.00																
		Critical		Task Progress		Baseline		Summary		Inactive Task												
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone												
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary												
		Task		Finish-only		Milestone		External Tasks		Deadline												
		Split		Duration-only		Summary Progress		External Milestone														
Page 15																						

828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 8/21	January 10/2	May 11/2	September 17/7	January 11/12	May 13/3	September 18/6	January 11/10	May 13/12
226		House Lighting	5 days	Wed 10/25/23	Tue 10/31/23	\$0.00						0%				
227		Bull Switches	5 days	Wed 11/1/23	Tue 11/7/23	\$0.00						0%				
228		Heating Control	3 days	Wed 11/8/23	Fri 11/10/23	\$0.00						0%				
229		Signage	1 day	Mon 11/13/23	Mon 11/13/23	\$0.00						0%				
230		Electrical Infrastructure	5 days	Tue 11/14/23	Mon 11/20/23	\$0.00						0%				
231		MV Cable Trench/Duct Installation	3 days	Tue 11/21/23	Thu 11/23/23	\$0.00						0%				
232		Transformer Pad	5 days	Fri 11/24/23	Thu 11/30/23	\$0.00						0%				
233		Transformer Installation	3 days	Fri 12/1/23	Tue 12/5/23	\$0.00						0%				
234		MV Electrical Connection/Installation	3 days	Wed 12/6/23	Fri 12/8/23	\$0.00						0%				
235		HVAC Installation	5 days	Mon 12/11/23	Fri 12/15/23	\$0.00						0%				
236		Fire Detection System	3 days	Mon 12/18/23	Wed 12/20/23	\$0.00						0%				
237		Red Light & Bell	3 days	Thu 12/21/23	Mon 12/25/23	\$0.00						0%				
238		Mesh Installation	3 days	Tue 12/26/23	Thu 12/28/23	\$0.00						0%				
239		Stage 3 COA	1 day	Fri 12/29/23	Fri 12/29/23	\$0.00						12/29				
240		Stage 4 Fit Out	49 days	Wed 11/1/23	Mon 1/8/24	\$1,750,000.00						0%				

Critical

Critical Split

Critical Progress

Task

Split

Task Progress

Manual Task

Start-only

Finish-only

Duration-only

Baseline

Baseline Split

Baseline Milestone

Milestone

Summary Progress

Summary

Manual Summary

Project Summary

External Tasks

External Milestone

Inactive Task

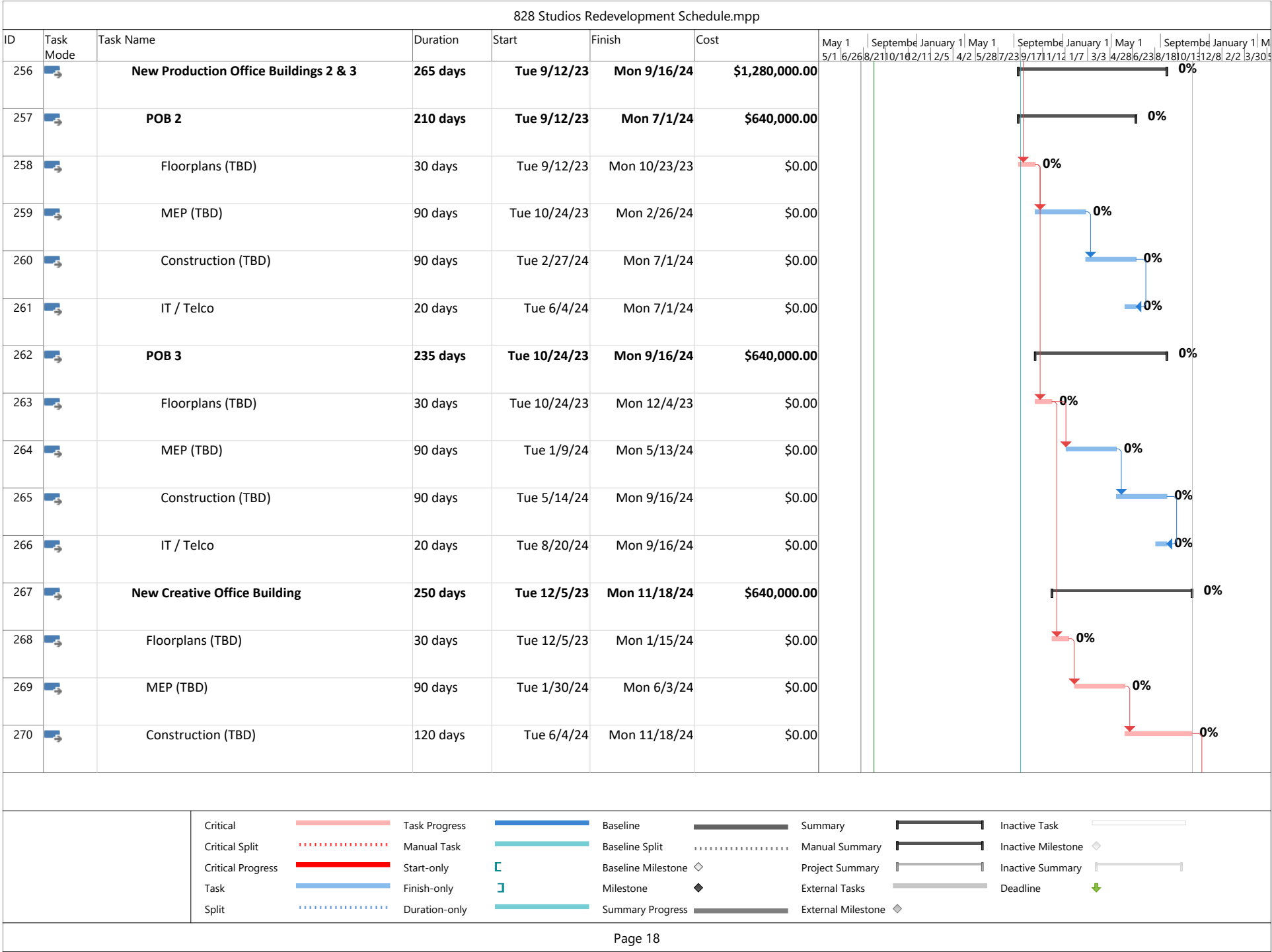
Inactive Milestone

Inactive Summary

Deadline

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828 Studios Redevelopment Schedule.mpp																											
ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	6/26	8/21	September 10/1	January 11/2	May 1 5/5	4/25	May 1 5/28	7/23	September 17/1	January 11/12	May 1 1/7	3/3	4/28	6/23	8/18	October 13/10	January 11/12	May 1 8/2	3/30	
241		House Lighting	5 days	Wed 11/1/23	Tue 11/7/23	\$0.00																					0%
242		Bull Switches	5 days	Wed 11/8/23	Tue 11/14/23	\$0.00																					0%
243		Heating Control	3 days	Wed 11/15/23	Fri 11/17/23	\$0.00																					0%
244		Signage	1 day	Mon 11/20/23	Mon 11/20/23	\$0.00																					0%
245		Electrical Infrastructure	5 days	Tue 11/21/23	Mon 11/27/23	\$0.00																					0%
246		MV Cable Trench/Duct Installation	3 days	Tue 11/28/23	Thu 11/30/23	\$0.00																					0%
247		Transformer Pad	5 days	Fri 12/1/23	Thu 12/7/23	\$0.00																					0%
248		Transformer Installation	3 days	Fri 12/8/23	Tue 12/12/23	\$0.00																					0%
249		MV Electrical Connection/Installation	3 days	Wed 12/13/23	Fri 12/15/23	\$0.00																					0%
250		HVAC Installation	5 days	Mon 12/18/23	Fri 12/22/23	\$0.00																					0%
251		Fire Detection System	3 days	Mon 12/25/23	Wed 12/27/23	\$0.00																					0%
252		Red Light & Bell	3 days	Thu 12/28/23	Mon 1/1/24	\$0.00																					0%
253		Mesh Installation	3 days	Tue 1/2/24	Thu 1/4/24	\$0.00																					0%
254		Mesh Installation	1 day	Fri 1/5/24	Fri 1/5/24	\$0.00																					0%
255		Stage 4 COA	1 day	Mon 1/8/24	Mon 1/8/24	\$0.00																					1/8
		Critical		Task Progress		Baseline		Summary		Inactive Task																	
		Critical Split		Manual Task		Baseline Split		Manual Summary		Inactive Milestone																	
		Critical Progress		Start-only		Baseline Milestone		Project Summary		Inactive Summary																	
		Task		Finish-only		Milestone		External Tasks		Deadline																	
		Split		Duration-only		Summary Progress		External Milestone																			
Page 17																											



828 Studios Redevelopment Schedule.mpp

ID	Task Mode	Task Name	Duration	Start	Finish	Cost	May 1 5/1	September 1 9/1	January 1 1/1	May 1 5/1	September 1 9/1	January 1 1/1	May 1 5/1	September 1 9/1	January 1 1/1	May 1 5/1	September 1 9/1	January 1 1/1	May 1 5/1
271		IT / Telco	20 days	Tue 10/22/24	Mon 11/18/24	\$0.00													
272		Guard Shacks	20 days	Tue 9/5/23	Mon 10/2/23	\$65,000.00													
273		Floorplans	5 days	Tue 9/5/23	Mon 9/11/23	\$0.00													
274		MEP	10 days	Tue 9/12/23	Mon 9/25/23	\$0.00													
275		Construction	5 days	Tue 9/26/23	Mon 10/2/23	\$65,000.00													

Critical

Critical Split

Critical Progress

Task

Split

Task Progress

Manual Task

Start-only

Finish-only

Duration-only

Baseline

Baseline Split

Baseline Milestone

Milestone

Summary Progress

Summary

Manual Summary

Project Summary

External Tasks

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Inactive Task

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Inactive Summary

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16 Conceptual Site Plans

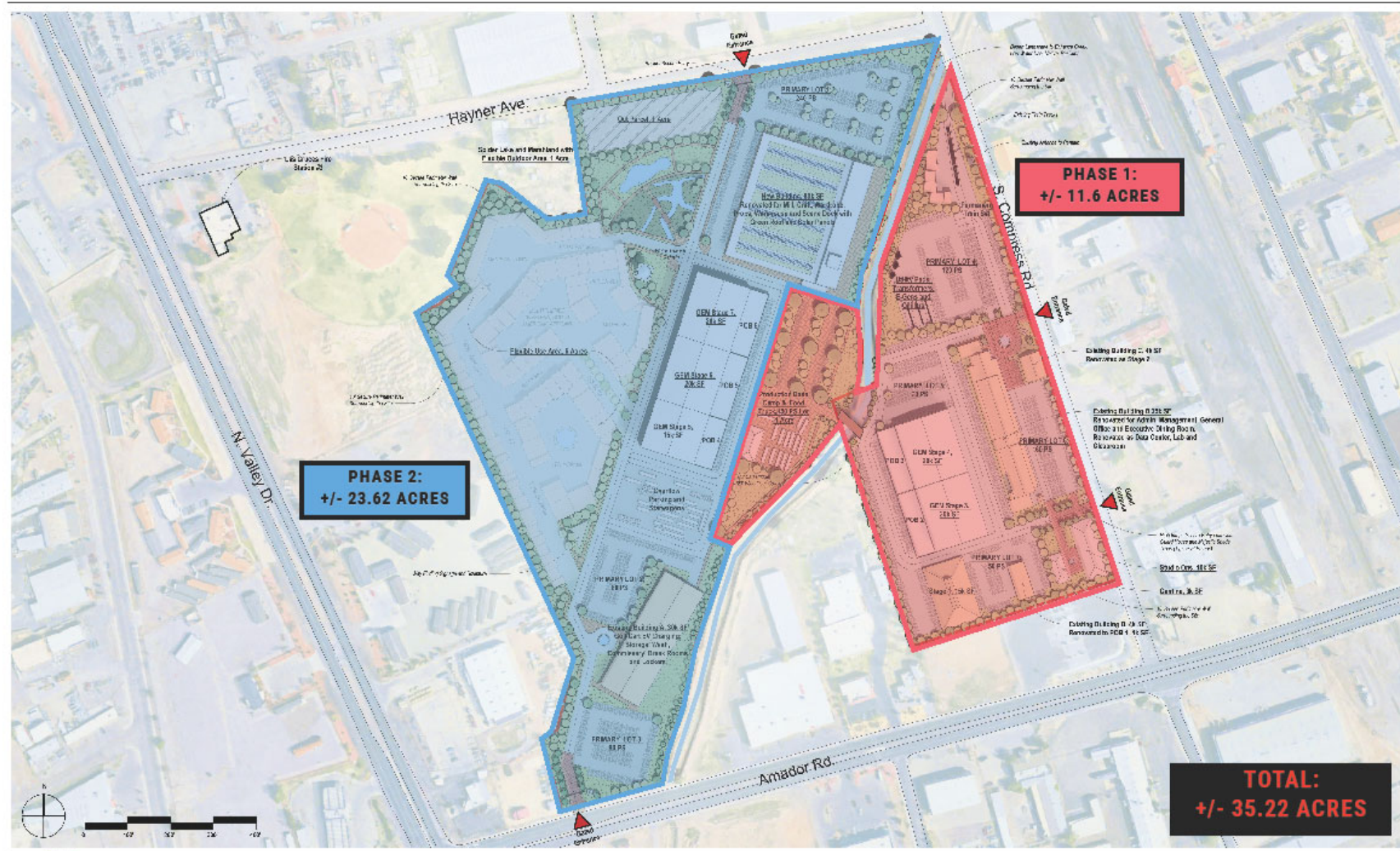
CONCEPTUAL SITE PLAN



CONCEPTUAL PERSPECTIVE



PHASING PLAN



18 Construction Drawings

Placeholder pending architect agreement & scope.

Confirmation needed from GC re: 70 days ending 1/27/23 (Currently showing 70 days from 9/26/22 at a 5 day work week with two days off for Thanksgiving and two weeks off for Christmas/New Years)

19 Demo Permit

Confirm if demo permit can be obtained prior to completion of DD's.

25 Traffic Circulation Plan

CIRCULATION PLAN



Online Land Planning

CLANF INTERACTIVE MANAGEMENT INC.

828 STUDIOS | LAS CRUCES, NEW MEXICO

SEPTEMBER 02 2022 3

26 Permits

Permit cost based on Highland Enterprises summarized estimate and not yet broken out by category.

27 Grading Permit

All permits, starting with grading, reflected in a 30 day window after completion of CD's

- 82 Stage 1 COA**
Stage 1 Certificate Of Occupancy placeholder pending confirmation.
- 88 750 KVA Transformer 900 amp, 480V 3P**
Interior power distribution schedule currently reflected in Task #82 and not yet broken out individually.
- 106 Stage 2 COA**
Stage 2 Certificate Of Occupancy placeholder pending confirmation
- 107 Mechanical**
Stage 2 Mechanical assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".
- 110 Electrical**
Stage 2 Electrical assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".
- 111 250 KVA Transformer**
Interior electrical installation currently reflected in Task #100; not broken out by task numbers.
- 118 Plumbing**
Stage 2 Plumbing assumed in Highland Stage 2 Renovation estimate located in Task #99 "Replace Roof & Walls".
- 120 Fire Sprinkler System**
Stage 2 Fire Sprinkler System installation requirements TBD
- 126 Workshop A Renovation**
WS-A Renovation cost includes subcategories (Task #122-#133)
- 139 Mechanical**
Workshop A Mechanical assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"
- 142 Electrical**
Workshop A Electrical assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"
- 143 Transformer (TBD)**
Workshop interior electrical installation currently reflected in Task#131 and not broken out by task.
- 149 Plumbing**
Workshop A Plumbing assumed in Highland Workshop Renovation estimate located in Task #121 "Workshop A Renovation"
- 152 Workshop A COA**
Workshop A COA placeholder pending confirmation
- 153 Production Office Buildings**
POB 1 T.I.'s TBD
- 157 NEW CONSTRUCTION**
All new construction tasks TBD pending design.
- 257 POB 2**
POB cost and schedule placeholder pending design
- 262 POB 3**
POB 3 cost and schedule placeholder pending design
- 272 Guard Shacks**
Guard Shack schedule TBD



HIGHLAND ENTERPRISES, INC.

General Contractors • Lic. No. 4460
Labor Registration No. 0036820050601
P.O. BOX 2409 Las Cruces, NM 88004
Phone (575) 524-3551 Fax (575) 526-0835
Email – hei@highlandnm.com

MARK HETTINGA , PRESIDENT

Budgetary Estimate No. One Date September 8, 2022
Project 828 Studios Renovations Location 111 S. Compress Rd Las Cruces, NM 88005
To: 828 Studios

Budgetary Estimate

This is a budgetary estimate and is preliminary in nature. This estimate represents our best estimation of the project based on our interpretation the Customer's ideas, comments and available information. This is not a firm fixed price. A firm fixed price may be offered upon a fully developed set of plans that has been approved by the City of Las Cruces.

Scope of Work

This Scope of Work is limited to Phase 1 which pertains to the following:

- Removal of Trash and debris from 8 acre portion of site
- Removal of large piles of volcanic rock. Rock is to be placed on adjacent lot
- Removal of existing concrete structures
- Construction of Parking Lots and roadways as described
- Renovation of large and tall building to become Stage 1
- Renovation of long building to become Work Shop
- Renovation of metal building to become Stage 2
- Renovation of existing Administration building to become POB 1

Plan Development Requirements

- Architectural and Engineering fees for:
Demolition plans
Site Plan Floor Plans
Elevation Views
Structural Foundation plans
Structural Building Plans
Plumbing plans
HVAC plans
Electrical plans
Fire Protection plans
- Contractor Design/Build Fee
- Topographical Survey
- Geo Technical Study
- Storm Water Pollution Prevention Plan

General Requirements

- Bond (add 2% to estimate total if required)
- Building Permit fees
- Builder's Risk Insurance
- Temporary Facilities
- Temporary Utilities

Demolition / Site Clean Up

- Tree removal
- Removal of Existing stock piles of volcanic rock to Phase 2
- Removal of tires

Agenda Item #8.4.

- Removal of trash and debris
- Removal of RV trailer
- Removal of building contents Stage 1
- Removal of building contents Stage 2
- Removal of building contents Work Shop
- Clean and expose RR Tracks
- Demolition - Existing above grade concrete structures
- Demo Bagging equipment at Work Shop

Site Work

- Materials testing
- Access road to Stage 1 and Work Shop
- Construction of remaining site roadways (Phase 2)
- Asphalt Parking - Lot 4
- Asphalt Parking - Lot 5
- Asphalt Parking Work Shop
- Asphalt Parking - Lot 6
- Asphalt Parking - Stage 1 Lot
- Asphalt Parking - POB Lots 2&3
- Graveled area for Chiller, Satellite Dishes, Generators
- Cantina Slab
- Landscape Phase 1 (12,000 SF)
- Landscape Phase 2 (35,990 SF)
- Phase 1 - Underground Retention Ponds
- Phase 2 - Underground Retention Ponds

Renovation of Sound Stage 1

- Remove and replace 9,000 SF of existing floor
- Remove existing sheeting on roof and walls
- Add sub-framing as required to receive new exterior and interior panel products
- Replace exterior sheeting with 4" Kingspan Insulated panels
- Install 6" SIP panels, roof and walls, on interior of building
- Install Duct liner on roof and walls on interior of the building
- 1 ea - 18' wide by 12' tall, bi-parting, insulated door
- 3ea - Hollow metal man doors
- Plumbing - gas piping
- HVAC - 150 TNS heating and cooling, ventilation fans, gas
- Electrical - 750 KVA, 900 amp, 480V 3 phase service, distribution transformers and panel boards at 6 places around the building, high bay lighting, emergency lighting, ingress/egress, exterior wall pack lighting, general purpose 120V outlets through out
- Fire Sprinkler system

Renovate Work Shop - 350' x 72' x 12' Metal Building

- Remove existing roof and wall sheeting
- Install PBR 26 ga roof sheets
- Install/replace/repair sub-framing as required
- Install OSB/SIP panels at exterior walls
- Install metal wall panels on interior side of SIP panels
- Insulate roof with vinyl backed fiberglass insulation
- Remove existing wood framing structure (Breeze Way) and replace with metal building framing
- 3ea demising walls in the building
- 10 ea Exterior man doors
- 6 ea 12' x 10' Overhead doors
- 2ea - Construct Loading docks with concrete approach ramps, hand railing, dock levelers

Agenda Item #8.4.

- HVAC - 75 TNS
- Plumbing - Restrooms, gas
- Electrical - Distribution transformers and panel boards, warehouse lighting, emergency lighting ingress/egress, exterior wall pack lighting, convenient outlets, 220V outlets
- Fire Sprinkler system

Renovate Stage 2 - 3,750 SF

- Remove existing roof and wall sheeting
- Replace exterior sheeting with 4" Kingspan Insulated panels
- Install 6" SIP panels, roof and walls, on interior of building
- Install Duct liner on roof and walls on interior of the building
- 1 ea - 16' wide by 14' tall, bi-parting, insulated door
- 3ea - Hollow metal man doors
- HVAC - 20 TNS, ventilation fans
- Electrical - Distribution transformers and panel boards, warehouse lighting, emergency lighting ingress/egress, exterior wall pack lighting, convenient outlets, 220V outlets

Misc. Buildings

- Studio Ops Building (Generic SF Price \$160.00/SF)
- Renovate POB 1 - make repairs and minor modifications (Generic SF Price \$25.00/SF)
- Stages 3&4 POB 2 & 3 - ???
- 2 ea Pre-manufactured Guard House
- Proposed buildings at north end of RR tracks ???

Estimated Cost - Please Refer to Breakdown Sheet Attached

Exclusions / Assumptions:

- Assumes existing building foundations and slabs are suitable for intended purposes
- Assumes existing metal building frames, joist, rafters are structurally sufficient for intended use
- Excludes Development and Impact fees
- Excludes Traffic Studies
- Excludes Flood Plain Studies
- Excludes Site Survey (To be provided by Owner)
- Excludes Mobilization / Demobilization charges
- Excludes City induced improvements along Compress Rd. i.e. sidewalks, bike paths, traffic signage etc.
- Excludes underground unforeseen conditions - buried slabs, footings, basements, unknown utilities
- Excludes removal/abatement of any hazardous materials that may be found on site
- Excludes removal of existing utilities
- Excludes existing concrete slabs on site
- Excludes retaining walls near Workshop
- Excludes any utility extensions - Water, sewer, electrical, gas
- Excludes camera, surveillance systems, security systems, telephone systems, fiber optics
- Excludes repair or alteration of existing footings
- Excludes filling vent pipes with concrete

Respectfully submitted

HIGHLAND ENTERPRISES, INC.

By 

Phase 1 8 Acres	Qty	unit	Budget	Phase 1	Phase 2
PLAN DEVELOPMENT REQUIREMENTS					
Architectural Fees			\$ 515,000.00	\$ 515,000.00	
Contractor Design/Build Fee	1		\$ 125,000.00	\$ 125,000.00	
Topo Survey	1		\$ 9,100.00	\$ 9,100.00	
Geo Tech Report	1		\$ 8,000.00	\$ 8,000.00	
Storm Water Pollution Prevention Plan	1		\$ 7,000.00	\$ 7,000.00	
GENERAL REQUIREMENTS					
Bond			???	???	
Building Permit	1		\$ 103,500.00	\$ 103,500.00	
Development/ Impact Fees	1		???	???	
Insurance Builder's Risk	1		\$ 20,000.00	\$ 20,000.00	
Temporary Facilities	1		\$ 2,100.00	\$ 2,100.00	
Temporary Utilities	1		\$ 19,041.00	\$ 19,041.00	
DEMOLITION /SITE CLEAN UP					
Tree Removal	22	EA	\$ 52,096.00	\$ 52,096.00	
Removal of volcanic rock to Phase 2	2,490	CY	\$ 166,000.00	\$ 166,000.00	
Tire Removal	1	LS	\$ 1,500.00	\$ 1,500.00	
Misc Trash	1	LS	\$ 18,226.00	\$ 18,226.00	
RV Trailer	1	LS	\$ 2,700.00	\$ 2,700.00	
Stage 1 Clean Out	1	LS	\$ 8,650.00	\$ 8,650.00	
Stage 2 Clean Out	1	LS	\$ 37,100.00	\$ 37,100.00	
Work Shop Clean Out	1	LS	\$ 30,000.00	\$ 30,000.00	
Clean Gravel at RR Tracks	1	LS	\$ 22,601.00	\$ 22,601.00	
Demo above grade concrete Structures	1	LS	\$ 44,830.00	\$ 44,830.00	
Demo Bagging Equipment	1	LS	\$ 6,700.00	\$ 6,700.00	
SITE WORK					
Materials Testing	1		\$ 7,000.00	\$ 7,000.00	
Site Security Systems	1		???	???	
Utility Extension Water	1		???	???	
Utility Extension Sewer	1		???	???	
Utility Extension Gas	1		???	???	
Utility Extension Electric	1		???	???	
Utility Extension Fiber Optic	1		???	???	
Site Rough Grading	???	CY	???	???	???
Access Road ST1 & Work Shop	3,460	SY	\$ 304,790.00	\$ 304,790.00	
Remaining Access Roads	47,144	SY	\$ 203,000.00		\$ 203,000.00
Asphalt paved Parking Lot Parking Lot - Lot 4	3,280	SY	\$ 159,100.00		\$ 159,100.00
Asphalt paved Parking Lot - Lot 5	3,155	SY	\$ 167,015.00	\$ 167,015.00	
Asphalt paved Parking Lot - Work Shop	1,694	SY	\$ 93,144.00	\$ 93,144.00	
Asphalt paved Parking Lot - Lot 6	3,280	SY	\$ 172,715.00	\$ 172,715.00	
Asphalt paved Parking Lot - Stage 1 Lot	1,509	SY	\$ 83,328.00	\$ 83,328.00	\$ -
Asphalt Paved Parking Lot -POB Lots 2&3	2,162	SY	\$ 119,900.00		\$ 119,900.00
Graveled Lot for Chillers, Satellites, Generators	4,646	SY	\$ 33,250.00		\$ 33,250.00
Cantina Slab	950	SF	\$ 7,200.00		\$ 7,200.00
Landscape	47,990	SF	\$ 249,548.00	\$ 62,387.00	\$ 187,161.00
Area Adjacent to East Side to Stage 3&4	6,746	SF	???		???
Phase 1 Underground Storm Retention	2	EA	\$ 575,000.00	\$ 575,000.00	
Phase 2 Underground Storm Retention	2	EA	\$ 575,000.00		\$ 575,000.00

SOUND STAGE 1 RENOVATION					
Floor - Demo and Replace	9,000	SF	\$ 215,256.00	\$ 215,256.00	
Remove existing wall sheets, Replace with King Span Panels	32,000	SF	\$ 2,303,249.54	\$ 2,303,249.54	
Install SIPS Panels Interior Walls and Roof					
Install Duct Liner					
18' wide Bi-parting door	1	EA			
Hollow Metal Man Doors	3	EA			
Plumbing	15,600	SF	\$ 20,000.00	\$ 20,000.00	
HVAC 150 TNS	15,600	SF	\$ 624,000.00	\$ 624,000.00	
Electrical 750 KVA, 900 amp, 3Ph Service	15,600	SF	\$ 615,100.00	\$ 615,100.00	
Fire Sprinkler System w/ booster pump	15,600	SF	\$ 546,000.00	\$ 546,000.00	

WORK SHOP RENOVATION					
Work Shop Bldg 350' x 72' x 12	25,200	SF	\$ 1,638,000.00	\$ 1,638,000.00	
Loading Dock	2	EA	\$ 208,000.00	\$ 208,000.00	

STAGE 2 RENOVATION					
Stage 2 Bldg 50'x75'x14'	3,750	SF	\$ 420,000.00	\$ 420,000.00	

MISC. BUILDINGS					
Studio Ops Bldg	4,000	SF	\$ 640,000.00		\$ 640,000.00
POB 1 Building Renovate	3,670	SF	\$ 91,750.00	\$ 91,750.00	
Stages 3,4 POB 2,3	62,962	SF	???		???
Guard Shacks	2	EA	\$ 65,000.00	\$ 65,000.00	
Proposed Train Set Buildings	4,901	SF	???		???

Total Budget So Far	Phase 1	Phase 2 So Far
\$ 11,335,489.54	\$ 9,410,878.54	\$ 1,924,611.00

8.1875% NMGR Tax

\$ 770,515.68

\$ 10,181,394.22 Phase 1 w/ tax

828 Productions Financial History Description

828 Productions, LLC is a start up with no prior financial data. The business plan and projections submitted in this application are the financial information that is currently available.



LEDA Application

Job Creation Additional Information

The current LEDA Application for 828 Productions is pertaining only to the work being proposed for 828 Studios NM. Future expansions to 828 Productions will include the following areas:

- Film Financing
- Production Accounting
- Production Services
- Postproduction Services

Additional models are being developed for these business areas and will be included in any future LEDA funding applications.

828 Productions LLC				Number of Jobs Created			Payroll Calculations**		
Job Type/Dept and Title:	*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
Studio	Director, Studio Operations	L \$ 150,000.00	1				\$ 150,000.00	\$ -	\$ -
Studio	Asst to Director of Studio Operations	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
Studio	Manger, Studio Operation	L \$ 70,000.00	1				\$ 70,000.00	\$ -	\$ -
Studio	Manager, Accounting	L \$ 125,000.00	1				\$ 125,000.00	\$ -	\$ -
Studio	Coordinator, Studio Facilities	L \$ 65,000.00	1				\$ 65,000.00	\$ -	\$ -
Studio	Studio Electrician	L \$ 100,000.00	1				\$ 100,000.00	\$ -	\$ -
Studio	Studio Electrician	L \$ 100,000.00	1				\$ 100,000.00	\$ -	\$ -
Studio	Maintenance Worker	L \$ 65,000.00	1				\$ 65,000.00	\$ -	\$ -
Studio	Maintenance Worker	L \$ 65,000.00	1				\$ 65,000.00	\$ -	\$ -
Studio	Stage Department Manager	L \$ 100,000.00	1				\$ 100,000.00	\$ -	\$ -
Studio	Stage Manager	L \$ 65,000.00	1				\$ 65,000.00	\$ -	\$ -
Studio	Stage Hand	L \$ 50,000.00	1				\$ 50,000.00	\$ -	\$ -
Studio	Stage Hand	L \$ 50,000.00		1			\$ -	\$ 50,000.00	\$ -
Studio	Stage Hand	L \$ 50,000.00			1		\$ -	\$ -	\$ 50,000.00
Studio	Catering Manager	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
Studio	UPM	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
Studio	Set Designer	L \$ 65,000.00	1				\$ 65,000.00	\$ -	\$ -
Studio	Property Manager	L \$ 50,000.00	1				\$ 50,000.00	\$ -	\$ -
Studio	Transporation and Logistics Manger	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
Studio	Transporatation Asst	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
Studio	Transporatation Asst	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
Studio	Grip	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
Studio	Grip	L \$ 60,000.00	0	1			\$ -	\$ 60,000.00	\$ -
Studio	Lighting Foreman	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
Studio	Mill Supervisor	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
Studio	Mill Assistant	L \$ 30,000.00	1				\$ 30,000.00	\$ -	\$ -
Studio	Painter	L \$ 30,000.00	1				\$ 30,000.00	\$ -	\$ -
Studio	Construction Grip	L \$ 45,000.00	1				\$ 45,000.00	\$ -	\$ -
Studio	IT Support	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
Studio	Security Superisor	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
Studio	Security Guard	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
Studio	Security Guard	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
Studio	Security Guard	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
Studio	Security Guard	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
Studio	Security Guard	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
Studio	Security Guard	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
Studio	Security Guard	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
Studio	Security Guard	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
Studio	Security Guard	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
Studio	Security Guard	L \$ 40,000.00			1		\$ -	\$ -	\$ 40,000.00
Studio	Security Guard	L \$ 40,000.00			1		\$ -	\$ -	\$ 40,000.00
Studio	Security Guard	L \$ 40,000.00			1		\$ -	\$ -	\$ 40,000.00
Studio	Security Guard	L \$ 40,000.00			1		\$ -	\$ -	\$ 40,000.00
828 Productions	CEO	L \$ 300,000.00	1				\$ 300,000.00	\$ -	\$ -
828 Productions	Project Coordinator	L \$ 50,000.00	1				\$ 50,000.00	\$ -	\$ -
828 Productions	Project Manager	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -

828 Productions LLC				Number of Jobs Created			Payroll Calculations**		
Job Type/Dept and Title:	*Jobs Filled:	Estimated Pay Scale	At Start Up	Beginning of Year 2	Beginning of Year 3		Yr 1	Yr 2	Yr 3
828 Productions	Project Manager	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Productions	EVP, Sales and Distribution	L \$ 150,000.00	1				\$ 150,000.00	\$ -	\$ -
828 Productions	Asst to EVP Sales and Distribution	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Productions	EVP, Physical Production	L \$ 150,000.00	1				\$ 150,000.00	\$ -	\$ -
828 Productions	Asst to EVP Physical Production	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Productions	Director, Creative Services? DM	L \$ 125,000.00	1				\$ 125,000.00	\$ -	\$ -
828 Productions	Office Manager	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Productions	Office Assistant	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
828 Productions	Director of Human Resources	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Productions	EVP of Production Accounting	L \$ 150,000.00	1				\$ 150,000.00	\$ -	\$ -
828 Productions	VP of Production Accounting	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Productions	Production Accountant	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
828 Productions	Production Accountant	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
828 Productions	Production Accountant	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
828 Productions	Production Accountant	L \$ 60,000.00		1			\$ -	\$ 60,000.00	\$ -
828 Productions	Production Accountant	L \$ 60,000.00		1			\$ -	\$ 60,000.00	\$ -
828 Productions	Production Accountant	L \$ 60,000.00			1		\$ -	\$ -	\$ 60,000.00
828 Productions	Production Accounting Asst.	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
828 Productions	Production Accounting Asst.	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
828 Productions	Production Accounting Asst.	L \$ 40,000.00	1				\$ 40,000.00	\$ -	\$ -
828 Productions	Production Accounting Asst.	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
828 Productions	Production Accounting Asst.	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
828 Productions	Production Accounting Asst.	L \$ 40,000.00			1		\$ -	\$ -	\$ 40,000.00
828 Productions	Legal Counsel	L \$ 300,000.00		1			\$ -	\$ 300,000.00	\$ -
828 Productions	Paralegal	L \$ 100,000.00		1			\$ -	\$ 100,000.00	\$ -
828 VFX Facility	VFX Producer	L \$ 200,000.00		1			\$ -	\$ 200,000.00	\$ -
828 VFX Facility	VFX Supervisor	L \$ 150,000.00		1			\$ -	\$ 150,000.00	\$ -
828 VFX Facility	VFX Controller	L \$ 150,000.00			1		\$ -	\$ -	\$ 150,000.00
828 VFX Facility	Technical Director	L \$ 150,000.00		1			\$ -	\$ 150,000.00	\$ -
828 VFX Facility	Lead Animator	L \$ 100,000.00		1			\$ -	\$ 100,000.00	\$ -
828 VFX Facility	Animator	L \$ 100,000.00		1			\$ -	\$ 100,000.00	\$ -
828 VFX Facility	Lighting and Rendering Lead	L \$ 90,000.00		1			\$ -	\$ 90,000.00	\$ -
828 VFX Facility	VFX Assistant	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
828 VFX Facility	VFX Assistant	L \$ 40,000.00		1			\$ -	\$ 40,000.00	\$ -
828 VFX Facility	Art Dept Assistant	L \$ 40,000.00	1	0			\$ 40,000.00	\$ -	\$ -
828 VFX Facility	Office Manager	L \$ 60,000.00	1				\$ 60,000.00	\$ -	\$ -
828 Post Production	VP Post Production	L \$ 150,000.00	1				\$ 150,000.00	\$ -	\$ -
828 Post Production	Post Production Supervisor	L \$ 100,000.00	1				\$ 100,000.00	\$ -	\$ -
828 Post Production	Post Production Supervisor	L \$ 100,000.00		1			\$ -	\$ 100,000.00	\$ -
828 Post Production	Editor	L \$ 90,000.00	1				\$ 90,000.00	\$ -	\$ -
828 Post Production	Editor	L \$ 90,000.00		1			\$ -	\$ 90,000.00	\$ -
828 Post Production	Asst. Editor	L \$ 75,000.00		1			\$ -	\$ 75,000.00	\$ -
828 Post Production	Asst. Editor	L \$ 75,000.00			1		\$ -	\$ -	\$ 75,000.00
828 Post Production	Colorist	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Post Production	Colorist	L \$ 75,000.00		1			\$ -	\$ 75,000.00	\$ -
828 Post Production	Sound Designer	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -
828 Post Production	Sound Designer	L \$ 75,000.00		1			\$ -	\$ 75,000.00	\$ -
828 Post Production	Music Supervisor	L \$ 75,000.00	1				\$ 75,000.00	\$ -	\$ -

Total Estimated Payroll At year 3	\$	7,505,000.00
Average Payscale	\$	75,050.00

** Projections are based on 3 years per the requirements of the online application, but will be accomplished over a 5-7 year span as directed by NMEDD.

***NEW MEXICO ECONOMIC DEVELOPMENT DEPARTMENT
AUTHORIZATION FOR EXAMINATION AND RELEASE OF
INFORMATION**

Todd Lundbohm hereby grants permission to the New Mexico Economic Development Department to conduct a review, full disclosure, and release of any and all information authorized pursuant to federal and state law. The purpose for obtaining and examining the information is to construct a record of the company's personal and professional history, including credit history, to ensure it meet the requirements that the New Mexico Economic Development Department has established for potential recipients of State funds. The company understands an investigation will be conducted by the New Mexico Economic Development Department, the New Mexico Department of Public Safety, or their contractors, and the results of the investigation will only be supplied to the New Mexico Economic Development Department.

Todd Lundbohm, hereby grants the New Mexico Economic Development Department permission to obtain any information in its background pertaining to any credit (to include obtaining a copy of a commercial credit report), education, bankruptcy, investigation, arrest and/or conviction of it or its principals in any criminal or civil matter. The company also authorizes an employee of the New Mexico Economic Development Department, as its authorized representative, to obtain from the New Mexico Taxation and Revenue Department and/or the Department of Workforce Solutions any tax information that is in any way related to a company Todd Lundbohm owns or has invested in. Todd Lundbohm, hereby directs you to release such information upon the request of this bearer. Todd Lundbohm, hereby releases you as a custodian of such records for any criminal justice, law enforcement or court agency, including its officers and employees, or related personnel, both individually and collectively, from any and all liability for damages of whatever kind, that may at any time result to the New Mexico Economic Development Department or the State of New Mexico because of compliance with this authorization and request to release information; or any attempt to comply with it.

1. The information reviewed, disclosed, and/or released may be used by the New Mexico Economic Development Department for any lawful purpose and/or to determine the company's suitability to receive funds from the State of New Mexico.
2. Todd Lundbohm hereby releases the providers and users of the information collected pursuant to this authorization from any liability under state or federal privacy laws and further release the New Mexico Economic Development Department, its contractors, agents, and/or employees from any liability which may be incurred as a result of the collection and use of information.

3. Todd Lundbohm, understands that it may revoke this authorization in writing at any time.

FULL NAME: Todd Lundbohm
SIGNATURE: [Signature]
TITLE: CEO
COMPANY: 828 Productions llc

The above named certifies that they are authorized to commit to this release on behalf of the company identified.

Please provide below information if company is a sole proprietorship:

SSN: _____
DOB: _____

DATE: 9/29/2022

**** This Document is only valid if notarized***
A Notary Public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy, or validity of that document.

Scribed and sworn to me on this 29th day of September
2022 of San Diego County, New Mexico
California

Signed [Signature]

My Commission expires: 6-15-2023

Notary Public

GMN1



GMN1

M.W. BOYD
COMM. # 2293232
NOTARY PUBLIC - CALIFORNIA
SAN DIEGO COUNTY
My Commission Expires June 15, 2023



LEDA Application

NM Quarterly Wage Report

The current LEDA Application does not include a quarterly wage report due to 828 Productions being a start up company. Wage details will be provided with any future LEDA applications as the organization adds jobs.

Agenda Item #8.4.



Michelle Lujan Grisham • Governor
Alicia J. Keyes • Cabinet Secretary

Exhibit C – LEDA Application

Affirmation of officer of Company

Declaration of 828 Productions LLC **Officer**

I, Todd Lundbohm, declare as follows:

I am CEO for 828 Productions LLC and I have been employed in this capacity since 6/15/2020. Except where otherwise noted, I have personal knowledge of the facts set forth in this declaration.

Date: 9/24/2022

I declare under penalty of perjury that the foregoing is true and correct.

DocuSigned by:
Todd Lundbohm
89EB88C4B4E340D...

Name Todd Lundbohm

Job Title CEO

Name of Company 828 Productions LLC



EDD

ECONOMIC
DEVELOPMENT
DEPARTMENT

3/30/2022

FISCAL IMPACT ANALYSIS AND ECONOMIC IMPACT OF THE EXPANSION OF 828 PRODUCTIONS

Prepared by:

New Mexico Economic Development Department
Joseph Montoya Building
1100 S. St. Francis Drive
Santa Fe, New Mexico 87505





Purpose and Limitations:

This report and analysis, provided by the New Mexico Economic Development Department, relies on prospective estimates of business activity. These estimates, which are provided by the company, may not be realized due to unforeseen events that are outside the control of the company and unknown to the New Mexico Economic Development Department.

The New Mexico Economic Development Department made reasonable efforts to ensure that the estimates provided by the company, are realistic estimates of future activity.

The model was created by the New Mexico Economic Development Economists and used assumptions to generate the final report. The report and analysis provided by the New Mexico Economic Development Department is not a guarantee that any of the estimates or results contained in this report will actually be achieved.

Introduction:

This report and analysis presents the results of an economic impact analysis performed using a model developed by the New Mexico Economic Development Department. The report estimates the impact that a potential project may have on the state and local economies and estimates the costs and benefits for the state and local economies over a 10-year period. The report and analysis uses RIMS II Multipliers produced by the U.S. Bureau of Economic Analysis (BEA).

Most projects produce a growth in population and/or a growth in the workforce in a City, County and the State of New Mexico. All growth comes at a cost, the additional economic activity and population growth stimulated by the project will generate additional costs in terms of providing basic infrastructure (roads and utilities) and public services (including public safety and schools). For example, if the applicant hires employees from outside the State, County and City, those workers who end up relocating their residence to within one or all of those areas, the population for which the government must provide services also increases. The costs associated with the expansion are broken down into two categories: 1) New residents to the State, County and City. 2) New Mexican residents hired to work for the company. The analysis assumes that all workers will live in the area of the expansion.

Description of the Company:

0

Description of the Project:

828 Productions is looking to develop multiple stages and postproduction facilities in the Las Cruces area. This will be a combination of productions and permanent full-time positions dedicated to post and pre- production.

Total Impacts



Fiscal Impact of Existing and Expanded Operations Over the Next Ten Years

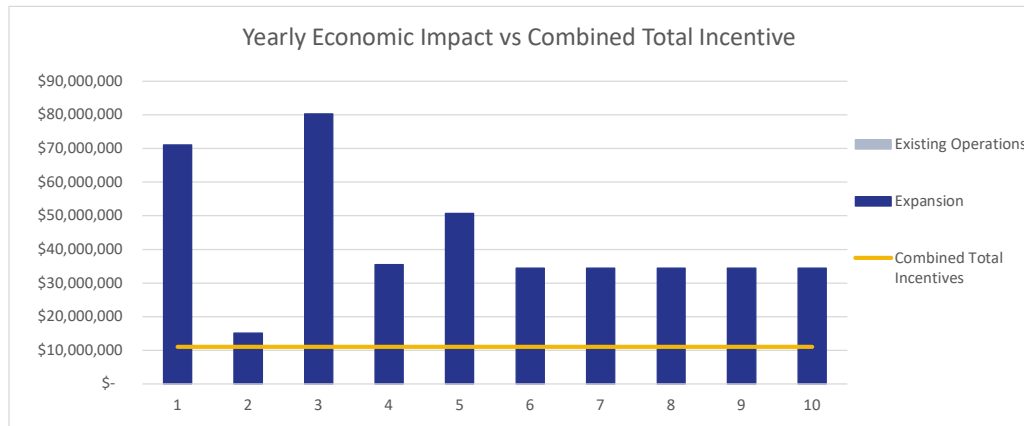
Cumulative Net Benefits					
	Existing Operations	Expansion	Existing & Expanded Operations	Present Value of Net Benefits*	
State of New Mexico	\$ -	\$ 18,050,424	\$ 18,050,424	\$	15,061,099
County	\$ -	\$ 7,642,060	\$ 7,642,060	\$	6,243,473
City	\$ -	\$ 10,567,772	\$ 10,567,772	\$	8,899,565
School District	\$ -	\$ 4,202,609	\$ 4,202,609	\$	3,306,051
Special Taxing District	\$ -	\$ 830,883	\$ 830,883	\$	653,628
Total	\$ -	\$ 41,293,749	\$ 41,293,749	\$	34,163,816

* The Present Value of Net Benefits expresses the future stream of net benefits received over several years as a single value in today's dollars. Today's dollar and a dollar to be received at differing times in the future are not comparable because of the time value of money. The time value of money is the interest rate or each taxing entity's discount rate. This analysis uses a discount rate of 5% to make the dollars comparable.

** In the cumulative net benefits of the existing and expanded operations for the State of New Mexico, corporate income tax has been removed from the existing operations total to avoid double counting.

Total Economic Impact

	Total
Estimated Economic Impact Over 10 Years:	\$ 424,743,368
Combined Total Incentive Over 10 Years:	\$ 10,994,818
Economic Impact Rate of Return:	3,763%

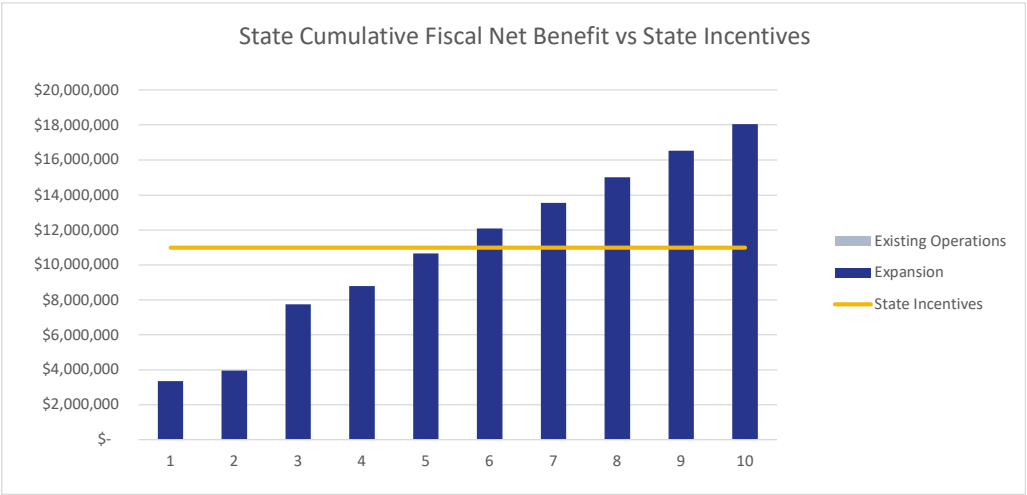


Workers and New Residents over 10 years

	Direct	Indirect and Induced
Number of Jobs Created:	335	177
Estimated Number of Construction Workers:	1002	
Estimated Number of New Residents to the State:	0	
Estimated Number of New Residents to the County:	0	
Estimated Number of New Residents to the City:	0	

State Impacts





Incentives

Total State Incentive:	\$	10,994,818
State Incentive Per Job:	\$	32,820

Combined Payback and Return

State Payback Period Combined:	5.24	Years
State Rate of Return Combined:	37%	

Expansion Only Payback and Return

State Payback Period Expansion:	5.24	Years
State Rate of Return Expansion:	37%	

State Net Benefits Of Current Operations

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	-	\$	-	\$	-	\$ -
2	\$	-	\$	-	\$	-	\$ -
3	\$	-	\$	-	\$	-	\$ -
4	\$	-	\$	-	\$	-	\$ -
5	\$	-	\$	-	\$	-	\$ -
6	\$	-	\$	-	\$	-	\$ -
7	\$	-	\$	-	\$	-	\$ -
8	\$	-	\$	-	\$	-	\$ -
9	\$	-	\$	-	\$	-	\$ -
10	\$	-	\$	-	\$	-	\$ -

State Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 3,348,162	\$ -	\$ 3,348,162	\$ 3,348,162
2	\$ 608,048	\$ -	\$ 608,048	\$ 3,956,211
3	\$ 3,791,510	\$ -	\$ 3,791,510	\$ 7,747,721
4	\$ 1,041,353	\$ -	\$ 1,041,353	\$ 8,789,073
5	\$ 1,861,537	\$ -	\$ 1,861,537	\$ 10,650,611
6	\$ 1,436,182	\$ -	\$ 1,436,182	\$ 12,086,792
7	\$ 1,457,746	\$ -	\$ 1,457,746	\$ 13,544,538
8	\$ 1,479,634	\$ -	\$ 1,479,634	\$ 15,024,172
9	\$ 1,501,851	\$ -	\$ 1,501,851	\$ 16,526,023
10	\$ 1,524,401	\$ -	\$ 1,524,401	\$ 18,050,424

State Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 3,348,162	\$ -	\$ 3,348,162	\$ 3,348,162
2	\$ 608,048	\$ -	\$ 608,048	\$ 3,956,211
3	\$ 3,791,510	\$ -	\$ 3,791,510	\$ 7,747,721
4	\$ 1,041,353	\$ -	\$ 1,041,353	\$ 8,789,073
5	\$ 1,861,537	\$ -	\$ 1,861,537	\$ 10,650,611
6	\$ 1,436,182	\$ -	\$ 1,436,182	\$ 12,086,792
7	\$ 1,457,746	\$ -	\$ 1,457,746	\$ 13,544,538
8	\$ 1,479,634	\$ -	\$ 1,479,634	\$ 15,024,172
9	\$ 1,501,851	\$ -	\$ 1,501,851	\$ 16,526,023
10	\$ 1,524,401	\$ -	\$ 1,524,401	\$ 18,050,424

State Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 8,355,193
Personal Income Taxes	\$ 9,695,231
Corporate Income Taxes	\$ -
Misc. Taxes and Revenue	\$ -
Subtotal of Benefits	\$ 18,050,424

Costs

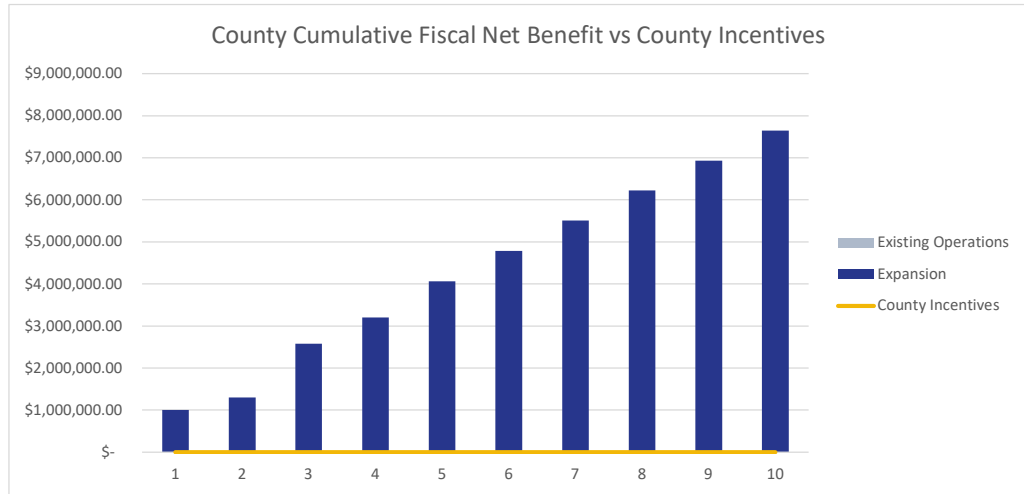
Costs	\$ -
Subtotal of Costs	\$ -

Net Benefits

Net Benefits	\$ 18,050,424
Present Value	\$ 15,061,099

County Impacts





Incentives

Total County Incentive:	\$	-
County Incentive Per Job:	\$	-

Combined Payback and Return

County Payback Period Combined:	-	Years
County Rate of Return Combined:	N/A	

Expansion Only Payback and Return

County Payback Period Expansion:	-	Years
County Rate of Return Expansion:	N/A	

County Net Benefits Of Current Operations

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	-	\$	-	\$	-	\$ -
2	\$	-	\$	-	\$	-	\$ -
3	\$	-	\$	-	\$	-	\$ -
4	\$	-	\$	-	\$	-	\$ -
5	\$	-	\$	-	\$	-	\$ -
6	\$	-	\$	-	\$	-	\$ -
7	\$	-	\$	-	\$	-	\$ -
8	\$	-	\$	-	\$	-	\$ -
9	\$	-	\$	-	\$	-	\$ -
10	\$	-	\$	-	\$	-	\$ -

County Net Benefits Of Expansion

Year	Benefits		Costs	Net Benefits		Cumulative Net Benefits
1	\$	1,000,293	\$ -	\$	1,000,293	\$ 1,000,293
2	\$	300,654	\$ -	\$	300,654	\$ 1,300,946
3	\$	1,280,261	\$ -	\$	1,280,261	\$ 2,581,207
4	\$	619,670	\$ -	\$	619,670	\$ 3,200,877
5	\$	860,723	\$ -	\$	860,723	\$ 4,061,600
6	\$	725,341	\$ -	\$	725,341	\$ 4,786,941
7	\$	720,495	\$ -	\$	720,495	\$ 5,507,436
8	\$	715,868	\$ -	\$	715,868	\$ 6,223,304
9	\$	711,465	\$ -	\$	711,465	\$ 6,934,769
10	\$	707,291	\$ -	\$	707,291	\$ 7,642,060

County Combined Net Benefits

Year	Benefits		Costs	Net Benefits		Cumulative Net Benefits
1	\$	1,000,293	\$ -	\$	1,000,293	\$ 1,000,293
2	\$	300,654	\$ -	\$	300,654	\$ 1,300,946
3	\$	1,280,261	\$ -	\$	1,280,261	\$ 2,581,207
4	\$	619,670	\$ -	\$	619,670	\$ 3,200,877
5	\$	860,723	\$ -	\$	860,723	\$ 4,061,600
6	\$	725,341	\$ -	\$	725,341	\$ 4,786,941
7	\$	720,495	\$ -	\$	720,495	\$ 5,507,436
8	\$	715,868	\$ -	\$	715,868	\$ 6,223,304
9	\$	711,465	\$ -	\$	711,465	\$ 6,934,769
10	\$	707,291	\$ -	\$	707,291	\$ 7,642,060

County Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$	2,677,947
Misc. Taxes and Revenue	\$	-
Property Taxes	\$	4,964,113
Subtotal of Benefits	\$	7,642,060

Costs

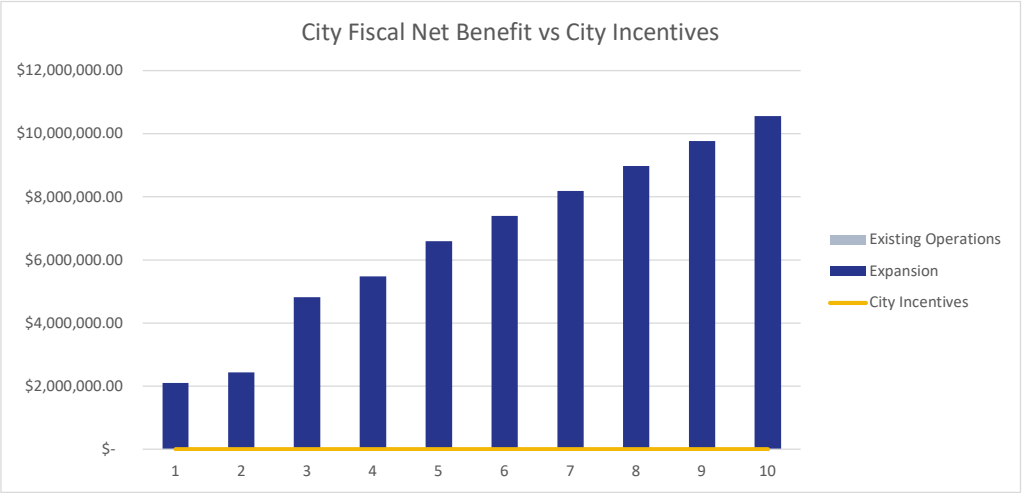
Costs	\$	-
Subtotal of Costs	\$	-

Net Benefits

Net Benefits	\$	7,642,060
Present Value	\$	6,243,473

City Impacts





Incentives

Total City Incentive:	\$	-
City Incentive Per Job:	\$	-

Combined Payback and Return

City Payback Period Combined:	-	Years
City Rate of Return Combined:	N/A	

Expansion Only Payback and Return

City Payback Period Expansion:	-	Years
City Rate of Return Expansion:	N/A	

City Net Benefits Of Current Operations

Year	Benefits		Costs		Net Benefits	Cumulative Net Benefits
1	\$	-	\$	-	\$	\$
2	\$	-	\$	-	\$	\$
3	\$	-	\$	-	\$	\$
4	\$	-	\$	-	\$	\$
5	\$	-	\$	-	\$	\$
6	\$	-	\$	-	\$	\$
7	\$	-	\$	-	\$	\$
8	\$	-	\$	-	\$	\$
9	\$	-	\$	-	\$	\$
10	\$	-	\$	-	\$	\$

City Net Benefits Of Expansion

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 2,101,596	\$ -	\$ 2,101,596	\$ 2,101,596
2	\$ 332,213	\$ -	\$ 332,213	\$ 2,433,809
3	\$ 2,389,140	\$ -	\$ 2,389,140	\$ 4,822,949
4	\$ 647,923	\$ -	\$ 647,923	\$ 5,470,872
5	\$ 1,124,271	\$ -	\$ 1,124,271	\$ 6,595,143
6	\$ 794,255	\$ -	\$ 794,255	\$ 7,389,398
7	\$ 794,166	\$ -	\$ 794,166	\$ 8,183,565
8	\$ 794,300	\$ -	\$ 794,300	\$ 8,977,864
9	\$ 794,659	\$ -	\$ 794,659	\$ 9,772,523
10	\$ 795,249	\$ -	\$ 795,249	\$ 10,567,772

City Combined Net Benefits

Year	Benefits	Costs	Net Benefits	Cumulative Net Benefits
1	\$ 2,101,596	\$ -	\$ 2,101,596	\$ 2,101,596
2	\$ 332,213	\$ -	\$ 332,213	\$ 2,433,809
3	\$ 2,389,140	\$ -	\$ 2,389,140	\$ 4,822,949
4	\$ 647,923	\$ -	\$ 647,923	\$ 5,470,872
5	\$ 1,124,271	\$ -	\$ 1,124,271	\$ 6,595,143
6	\$ 794,255	\$ -	\$ 794,255	\$ 7,389,398
7	\$ 794,166	\$ -	\$ 794,166	\$ 8,183,565
8	\$ 794,300	\$ -	\$ 794,300	\$ 8,977,864
9	\$ 794,659	\$ -	\$ 794,659	\$ 9,772,523
10	\$ 795,249	\$ -	\$ 795,249	\$ 10,567,772

City Breakdown of Combined Benefits, Costs, and Net Benefits Over the Next 10 Years

Taxes and Revenue

Gross Receipt Taxes	\$ 6,775,205
Misc. Taxes and Revenue	\$ -
Property Taxes	\$ 3,792,568
Subtotal of Benefits	\$ 10,567,772

Costs

Costs	\$ -
Subtotal of Costs	\$ -

Net Benefits

Net Benefits	\$ 10,567,772
Present Value	\$ 8,899,565

Special Taxing District and Public Schools



Special Taxing District

Special Taxing District Net Benefits of Current Operations

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	-	\$	-	\$	-	\$ -
2	\$	-	\$	-	\$	-	\$ -
3	\$	-	\$	-	\$	-	\$ -
4	\$	-	\$	-	\$	-	\$ -
5	\$	-	\$	-	\$	-	\$ -
6	\$	-	\$	-	\$	-	\$ -
7	\$	-	\$	-	\$	-	\$ -
8	\$	-	\$	-	\$	-	\$ -
9	\$	-	\$	-	\$	-	\$ -
10	\$	-	\$	-	\$	-	\$ -

Special District Net Benefits of Expansion

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	40,673	\$	-	\$	40,673	\$ 40,673
2	\$	40,607	\$	-	\$	40,607	\$ 81,280
3	\$	80,554	\$	-	\$	80,554	\$ 161,834
4	\$	87,181	\$	-	\$	87,181	\$ 249,014
5	\$	99,835	\$	-	\$	99,835	\$ 348,849
6	\$	98,650	\$	-	\$	98,650	\$ 447,500
7	\$	97,497	\$	-	\$	97,497	\$ 544,996
8	\$	96,375	\$	-	\$	96,375	\$ 641,371
9	\$	95,285	\$	-	\$	95,285	\$ 736,656
10	\$	94,228	\$	-	\$	94,228	\$ 830,883

Special District Combined Net Benefits

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	40,673	\$	-	\$	40,673	\$ 40,673
2	\$	40,607	\$	-	\$	40,607	\$ 81,280
3	\$	80,554	\$	-	\$	80,554	\$ 161,834
4	\$	87,181	\$	-	\$	87,181	\$ 249,014
5	\$	99,835	\$	-	\$	99,835	\$ 348,849
6	\$	98,650	\$	-	\$	98,650	\$ 447,500
7	\$	97,497	\$	-	\$	97,497	\$ 544,996
8	\$	96,375	\$	-	\$	96,375	\$ 641,371
9	\$	95,285	\$	-	\$	95,285	\$ 736,656
10	\$	94,228	\$	-	\$	94,228	\$ 830,883

Public Schools

Public Schools Net Benefits of Current Operations

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	-	\$	-	\$	-	\$ -
2	\$	-	\$	-	\$	-	\$ -
3	\$	-	\$	-	\$	-	\$ -
4	\$	-	\$	-	\$	-	\$ -
5	\$	-	\$	-	\$	-	\$ -
6	\$	-	\$	-	\$	-	\$ -
7	\$	-	\$	-	\$	-	\$ -
8	\$	-	\$	-	\$	-	\$ -
9	\$	-	\$	-	\$	-	\$ -
10	\$	-	\$	-	\$	-	\$ -

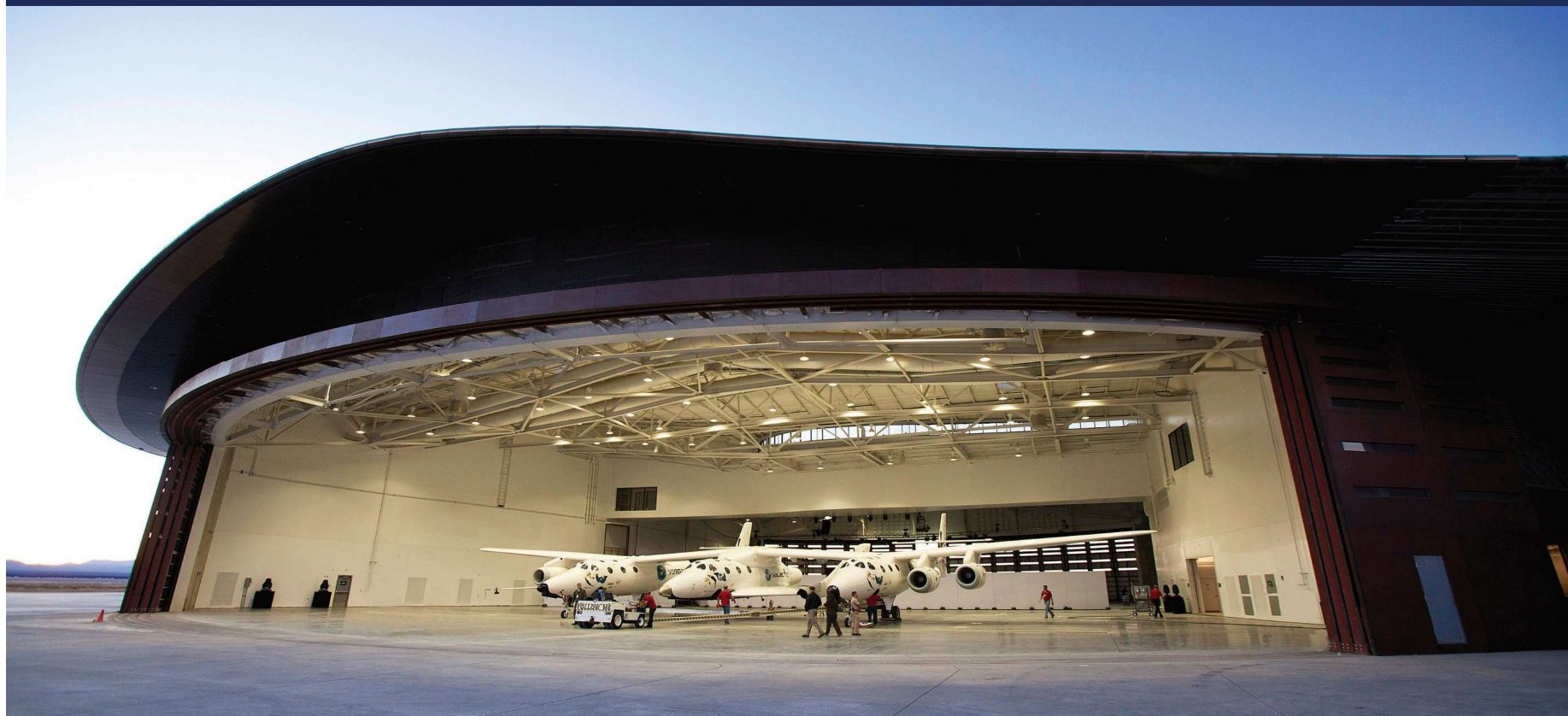
Public Schools Net Benefits of Expansion

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	205,726	\$	-	\$	205,726	\$ 205,726
2	\$	205,389	\$	-	\$	205,389	\$ 411,115
3	\$	407,440	\$	-	\$	407,440	\$ 818,555
4	\$	440,960	\$	-	\$	440,960	\$ 1,259,515
5	\$	504,965	\$	-	\$	504,965	\$ 1,764,480
6	\$	498,973	\$	-	\$	498,973	\$ 2,263,453
7	\$	493,138	\$	-	\$	493,138	\$ 2,756,592
8	\$	487,463	\$	-	\$	487,463	\$ 3,244,054
9	\$	481,950	\$	-	\$	481,950	\$ 3,726,004
10	\$	476,604	\$	-	\$	476,604	\$ 4,202,609

Public Schools Combined Net Benefits

Year	Benefits		Costs		Net Benefits		Cumulative Net Benefits
1	\$	205,726	\$	-	\$	205,726	\$ 205,726
2	\$	205,389	\$	-	\$	205,389	\$ 411,115
3	\$	407,440	\$	-	\$	407,440	\$ 818,555
4	\$	440,960	\$	-	\$	440,960	\$ 1,259,515
5	\$	504,965	\$	-	\$	504,965	\$ 1,764,480
6	\$	498,973	\$	-	\$	498,973	\$ 2,263,453
7	\$	493,138	\$	-	\$	493,138	\$ 2,756,592
8	\$	487,463	\$	-	\$	487,463	\$ 3,244,054
9	\$	481,950	\$	-	\$	481,950	\$ 3,726,004
10	\$	476,604	\$	-	\$	476,604	\$ 4,202,609

Property Tax Exemptions and Industrial Revenue Bonds



Property Tax Exemptions and Industrial Revenue Bonds

The City and/or the County is considering abating taxes on the Project's property. Below is a table that identifies the types of property that are under consideration for property tax abatement:

Land:	No
Building and Property Improvements:	No
Furniture, Fixtures and Equipment:	No

Property Tax Percentage Exemptions On Land and Building

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Property Tax Percentage Exemptions On Furniture, Fixtures and Equipment

County	City	Schools	Special Taxing District
0%	0%	0%	0%

Value of Exemption Through 10 Years:	\$	-	\$	-	\$	-	\$	-
*Value of Payment in Lieu of Taxes Through 10 Years:	\$	-	\$	-	\$	-	\$	-

*The model assumes that the payment in lieu of taxes will be administered to the either the county or city, and the local government will disperse the amounts to the appropriate districts.

Percentage of Gross Receipt Taxes Foregone on Newly Purchased Furniture, Fixtures and Equipment Over 10 Years

Year	State	County	City
1	0%	0%	0%
2	0%	0%	0%
3	0%	0%	0%
4	0%	0%	0%
5	0%	0%	0%
6	0%	0%	0%
7	0%	0%	0%
8	0%	0%	0%
9	0%	0%	0%
10	0%	0%	0%
Value of Exemption Through 10 Years:	\$ -	\$ -	\$ -



City of Las Cruces

City Council Action and Executive Summary

3029; Council Bill 23-023

Type of Action:
☐ Resolution
☒ Ordinance
☐ TIDD Resolution

District:	☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5 ☐ 6 ☒ N/A		
1st Reading:	March 20, 2023	Adopted:	April 3, 2023
Drafter:	Natalie Green	Department:	City Manager's Office
Program:	Housing and Neighborhood Services	Line of Business:	Housing and Neighborhood Services
Title:	AN ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED (LCMC), SECTIONS 2-496 THROUGH 2-499 TO REVISE THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND ADVISORY COMMITTEE, RESPECTIVELY, WITHIN CHAPTER 2, ARTICLE IV, DIVISION 3, NONSTANDARD BOARDS DIVISION OF THE LCMC.		

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

PURPOSE(S) OF ACTION:
To amend the Municipal Code.

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS:
In 2009 through Resolution 10-057 the City of Las Cruces (City) adopted the Affordable Housing Strategic Plan which called for the creation of both an affordable housing land bank and an affordable housing trust fund. In general, the land bank would be used to accept land donations or purchases that can be disposed of through grants or low-interest loans for qualified affordable housing projects. The trust fund would be a dedicated and restricted source of funding used to finance affordable housing projects similarly through grants or loans.

On November 1, 2010, the City Council through Ordinance No. 2592 created the Affordable housing land bank and trust fund which in turn called for the creation of an advisory committee that would make recommendations to the City Council on the land bank disposals and use of trust fund monies. The Affordable Housing Land Bank and Trust Fund (AHLBTF) Advisory Committee was created through Ordinance No. 2593.

The committee was established as a Nonstandard Board and the membership was further revised on September 19, 2011, through Ordinance No. 2631.

The revised membership consists of representation from each of the following groups:

1. Building industry;
2. Realty industry;
3. Banking and/or mortgage brokerage industry;
4. Land title industry;
5. Greater Las Cruces Chamber of Commerce provided such representation is not from subsections (a)(1) through (4) immediately above;
6. Hispano Chamber of Commerce of Las Cruces, provided such representation is not from subsections (a)(1) through (4) immediately above;

Agenda Item #10.1.

7. Green Chamber of Commerce of Las Cruces, provided such representation is not from subsections (a)(1) through (4) immediately above; and
8. Member of the public, at-large appointment.
9. Plus, one representative of the following existing boards and commissions of the city
 - a. Planning and zoning commission;
 - b. Health and human services advisory committee; and
 - c. Mesilla Valley Public Housing Authority, and limited to representation from city appointees only.

The ordinance also required the Mayor to appoint an alternate member from each of the eight industries or associations.

This ordinance, if approved, would improve staffs' overall implementation of Affordable Housing programming including the 2022 General Obligation bond.

Key Changes:

- Shortened name - "Affordable Housing Advisory Committee"
- Reduced committee size - 5 member-at-large
- Adjust board composition - desirable not required industries
- Remove exemptions - cannot serve on more than one city board

SUPPORT INFORMATION:

[Exhibit "A" - AH Committee](#)

[Attachment A - AH Committee Redline Version](#)

PLAN(S):

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

COMMITTEE/BOARD REVIEW:

Housing 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 within LCMC Chapter 2, Article IV, Division 3, Section 2-496 through 2-499, respectively, and amend the affordable housing committee.
2. Vote "No"; this will not approve the Ordinance within LCMC Chapter 2, Article IV, Division 3, Section 2-496 through 2-499, respectively nor amend the affordable housing committee.
3. Vote to "Amend"; this would allow City Council to modify the proposed ordinance.

Agenda Item #10.1.

4. Vote to "Table"; this would postpone the decision to amend the ordinance and would allow City Council to further direct staff.

ORDINANCE 3029; COUNCIL BILL 23-023

AN ORDINANCE AMENDING THE LAS CRUCES MUNICIPAL CODE 1997, AS AMENDED (LCMC), SECTIONS 2-496 THROUGH 2-499 TO REVISE THE AFFORDABLE HOUSING LAND BANK AND TRUST FUND ADVISORY COMMITTEE, RESPECTIVELY, WITHIN CHAPTER 2, ARTICLE IV, DIVISION 3, NONSTANDARD BOARDS DIVISION OF THE LCMC.

The City Council is informed that:

WHEREAS, in 2009 through Resolution 10-057 the City of Las Cruces (City) adopted the Affordable Housing Strategic Plan which called for the creation of both an affordable housing land bank and an affordable housing trust fund; and

WHEREAS, the City Council through Ordinance No. 2592 created the Affordable housing land bank and trust fund which in turn called for the creation of an advisory committee that would make recommendations on land bank disposals and use of trust fund monies; and

WHEREAS, the Affordable Housing Land Bank and Trust Fund (AHLBTF) Advisory Committee was created through Ordinance No. 2593 and further revised through Ordinance No. 2631; and

WHEREAS, changes to the advisory committee are needed to improve the overall implementation of affordable housing programming including the 2022 General Obligation bond.

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

(I)

THAT Sections 2-496 through 2-499 within Chapter 2, Article IV, Division 3, Non-Standard Boards of the Las Cruces Municipal Code, as shown in Exhibit "A" attached hereto and made part of this Ordinance, are hereby amended and 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

Agenda Item #10.1.

APPROVED

ATTEST:

Moved by:

Seconded by:

AYES

NAYS

PART II - MUNICIPAL CODE
Chapter 2 - ADMINISTRATION
ARTICLE IV. - BOARDS, COMMISSIONS AND COMMITTEES
DIVISION 3. - NONSTANDARD BOARDS
Subdivision II. Affordable Housing Land Bank and Trust Fund Advisory Committee

Subdivision II. Affordable Housing Advisory Committee

Sec. 2-496. Established.

There is established the affordable housing advisory committee.

(Ord. No. 2814, § II(exh. A), 5-15-17)

Sec. 2-497. Composition; appointment.

- (a) The affordable housing advisory committee shall consist of five members at large, appointed by the mayor with the advice and consent of the city councillors. The members may reside in the city or in the county.
- (b) It is desirable that the respective members of the board will have experience in community and social services, banking, finance, building, or real estate development industries.

(Ord. No. 2814, § II(exh. A), 5-15-17)

Sec. 2-498. Duties.

The affordable housing advisory committee shall evaluate proposals and/or applications for land acquisition and disposition and funding using city-established guidelines in accordance with chapter 13 of this Code under the Affordable Housing Land Bank and Trust Fund Ordinance.

(Ord. No. 2814, § II (exh. A), 5-15-17)

PART II - MUNICIPAL CODE
Chapter 2 - ADMINISTRATION
ARTICLE IV. - BOARDS, COMMISSIONS AND COMMITTEES
DIVISION 3. - NONSTANDARD BOARDS
Subdivision II. Affordable Housing Land Bank and Trust Fund Advisory Committee

Subdivision II. Affordable Housing ~~Land Bank and Trust Fund~~ Advisory Committee

Sec. 2-496. Established.

There is established the affordable housing ~~land bank and trust fund~~ advisory committee.

(Ord. No. 2814, § II(exh. A), 5-15-17)

Sec. 2-497. Composition; appointment.

~~(a)~~ ~~(a)~~—The affordable housing ~~land bank and trust fund~~ advisory committee shall consist of ~~nine~~ five members ~~at large, appointed~~ large, appointed by the mayor with the advice and consent of the city councillors. ~~The members may reside in the city or in the county. ; one from each of the following industries and/or associations:~~

~~(a)~~ (b) It is desirable that the respective members of the board will have experience in community and social services, banking, finance, building, or real estate development industries.

~~(1)~~ ~~Building industry;~~

~~(2)~~ ~~Realty industry;~~

~~(3)~~ ~~Banking and/or mortgage brokerage industry;~~

~~(4)~~ ~~Land title industry;~~

~~(5)~~ ~~Greater Las Cruces Chamber of Commerce, provided such representation is not from subsections (a)(1) through (4) immediately above;~~

~~(6)~~ ~~Hispano Chamber of Commerce of Las Cruces, provided such representation is not from subsections (a)(1) through (4) immediately above;~~

~~(7)~~ ~~Green Chamber of Commerce of Las Cruces, provided such representation is not from subsections (a)(1) through (4) immediately above; and~~

~~(8)~~ ~~Member of the public, at large appointment.~~

~~Plus, one representative of the following existing boards and commission of the city:~~

~~(1)~~ ~~Planning and zoning commission;~~

~~(2)~~ ~~Health and human services advisory committee; and~~

~~(3)~~ ~~Mesilla Valley Public Housing Authority, and limited to representation from city appointees only.~~

~~(b)~~—The mayor shall also appoint an alternate member for each of those represented in subsections ~~(a)(1) through (8)~~ in the event that the regular appointee should have a conflict of interest with an application that is before the committee. The appointees from the planning and zoning commission, the health and human services advisory committee, and the Mesilla Valley Public Housing Authority shall be selected by the respective board, commission, or committee from within their own membership and shall also appoint an

~~alternate member in the event that the regular appointee should have a conflict of interest with an application that is before the committee.~~

~~(Ord. No. 2814, § II(exh. A), 5-15-17)~~

Sec. 2-498. Duties.

The affordable housing ~~land bank and trust fund~~ advisory committee shall evaluate proposals and/or applications for land acquisition and disposition and funding using city-established guidelines in accordance with chapter 13 of this Code under the Affordable Housing Land Bank and Trust Fund Ordinance.

(Ord. No. 2814, § II (exh. A), 5-15-17)

~~Sec. 2-499. Exemptions.~~

~~The members appointed to the affordable housing land bank and trust fund advisory committee from the planning and zoning commission, the health and human services advisory committee, and the Mesilla Valley Public Housing Authority Board are exempt from the provision of serving on more than one board at a time under subsection 2-188(a)(5) of this chapter.~~

(Ord. No. 2814, § II(exh. A), 5-15-17)